

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1076
(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

AN ACT to amend and reenact section 61-16.1-38 of the North Dakota Century Code relating to the department of water resources authority regarding water permit thresholds for dikes, dams, and other devices; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-38 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency.

~~No dikes~~Dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or water storage of water which ~~are~~must be constructed in accordance with this chapter. A permit is required from the department for the construction of a low-hazard dam or other device capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water ~~or; a medium-hazard or high-hazard dam capable of retaining, obstructing, or diverting more than twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter; an agricultural dike capable of protecting more than eighty acres [32.37 hectares] of land area; or any dike capable of protecting an occupied residence or structure or public infrastructure.~~ A permit application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be ~~presented first~~submitted to the department of water resources. Except for low-hazard dams less than ten feet [3.05 meters] in height ~~or, agricultural dikes less than two feet [0.61 meters] in height, or a farmstead ring dike,~~ the plans and specifications must be completed by a professional engineer. The professional engineer must be registered in this state. ~~After receipt, the~~The department shall consider the application in such detail as the department deems necessary and proper. The department shall refuse to allow the construction of any unsafe or improper dike, dam, or other device ~~which that~~ would interfere with the orderly control of the water resources of the district, or may order changes, conditions, or modifications as in the ~~judgment of the department~~department's judgment may be necessary for safety or the protection of property. Within forty-five days after application receipt ~~of the application,~~ except in unique or complex situations, the department shall complete the initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board shall consider the application within forty-five days, and suggest any changes, conditions, or modifications to the department. If the board approves the application, the board shall forward the approved application to the department. If the board fails to respond within forty-five days, the board will be deemed to have no changes, conditions, or modifications to make. The department shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The department may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device ~~capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam,~~ without first securing a necessary permit ~~to do so,~~ as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

Dennis E. Johnson
Speaker of the House

Tammy Miller
President of the Senate

Bull J. Reick
Chief Clerk of the House

Sharon Morgan
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1076.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 45 Nays 0 Absent 2

Bull J. Reick
Chief Clerk of the House

Received by the Governor at 11:40 AM. on March 24, 2023.

Approved at 2:35 PM. on March 29, 2023.

Doug Burgum
Governor

Filed in this office this 30th day of March, 2023,

at 1:40 o'clock P M.

Michael Howe
Secretary of State