

## **CHAPTER 61-03 STATE ENGINEER**

### **61-03-01. State engineer - Appointment - Qualifications - Term - Salary - Engaging in private practice.**

A state engineer shall be appointed by the state water commission. Such engineer shall be a technically qualified and experienced hydraulic engineer and also shall be an experienced irrigation engineer. The state engineer shall serve as secretary and chief engineer of the commission. Such engineer shall hold the office for such term as the commission may determine, and the commission shall fix the state engineer's salary and shall allow the state engineer's actual and necessary traveling expenses while away from the office in the discharge of official duties. The state engineer shall not engage in private practice but shall devote all of the state engineer's time to the duties and requirements of the office.

### **61-03-02. Oath of state engineer.**

Before entering upon the duties of office, the state engineer shall take the oath prescribed for civil officers.

### **61-03-03. Auditing of claims.**

All claims for services rendered, expenses incurred, or materials or supplies furnished under direction of the state engineer and which are payable from the funds appropriated for the prosecution of the work under the state engineer's direction and supervision shall be approved by the state engineer.

### **61-03-04. Biennial report.**

The state engineer may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

### **61-03-05. Fees of state engineer.**

The state engineer shall be paid and receive the following fees to be collected in advance and shall be paid by the state engineer into the general fund of the state treasury:

1. Repealed by S.L. 1977, ch. 569, § 27.
2. For recording any permit, certificate of construction or license issued, or any other water right instrument, two dollars for the first hundred words and twenty-five cents for each additional hundred words or fraction thereof.
3. For filing any other paper, two dollars.
4. For issuing a certificate of construction or a license to appropriate water, three dollars each.
5. For providing computer disks or copies of documents, including copies of blueprints of maps or drawings, government land office plats, benchmark books, survey notes, and water laws, a reasonable fee to be determined by the state engineer.
6. For transmitting documents electronically, a reasonable fee to be determined by the state engineer.
7. For certifying copies, two dollars for each certificate.
8. For examining and approving in connection with water right applications, plans, and specifications for any dam, not exceeding ten feet [3.05 meters] in extreme height from the foundation, twenty dollars, for a dam higher than ten feet [3.05 meters] and not exceeding thirty feet [9.14 meters], forty dollars, for a dam higher than thirty feet [9.14 meters] and not exceeding fifty feet [15.24 meters], fifty dollars, and for a dam higher than fifty feet [15.24 meters], seventy-five dollars.
9. For examining and approving in connection with water right applications, plans and specifications for a canal or other water conduit of an estimated capacity exceeding fifty and not more than one hundred cubic feet [1.42 and not more than 2.83 cubic meters] per second, forty dollars, and for a canal or other water conduit exceeding one hundred cubic feet [2.83 cubic meters] per second, sixty dollars.

10. For inspecting damsites and construction work when required by law, or when necessary in the judgment of the state engineer, twenty-five dollars per day and actual and necessary traveling expenses. The fees for any inspection deemed necessary by the state engineer and not paid on demand shall be a lien on any land or other property of the owner of the works, and may be recovered by the state engineer in any court of competent jurisdiction.
11. Rating ditches or inspection plans and specification of works for the diversion, storage, and carriage of water, at the request of private parties, not in connection with an application for the right to appropriate water, actual cost and expenses. The state engineer shall attach the state engineer's approval to such plans and specifications if found satisfactory.
12. For such other work as may be required of the state engineer's office, the fees provided by law.
13. For testifying personally in civil litigation involving private parties, or through the engineer's employees, in response to a subpoena in a case in which the engineer is not a party, the actual cost incurred, including mileage and travel expenses reimbursement, equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In ascertaining the actual cost of any work as the term is used in this section, the salary of any salaried officer for the time employed shall be included.

**61-03-05.1. Deposit of certain fees in special fund - Purposes of fund.**

All fees collected by the state engineer pursuant to sections 61-04-04.1 and 61-04-06.2 shall be deposited in the state treasury in a special fund to be known as the water use fund, and shall be used only for planning, research, and administration required to properly regulate the allocation and appropriation of the waters of North Dakota. The water use fund may be expended subject to appropriation by the legislative assembly for the purpose of meeting the costs directly incurred in conducting the planning and administration required for the proper regulation of the allocation and appropriation of the waters of the state.

**61-03-06. Records of state engineer - Open to public - Contents - Certified copies as evidence.**

The records of the office of the state engineer are public records, shall remain on file in the state engineer's office, and shall be open to the inspection of the public at all times during business hours. Such records shall show in full all permits, certificates of completion of construction, and licenses issued, together with all action thereon, and all action or decisions of the state engineer affecting any rights or claims to appropriate water. Certified copies of any records or papers on file in the office of the state engineer shall be evidence equally with the originals thereof, and when introduced as evidence shall be held as of the same validity as the originals.

**61-03-07. Investigations and reports for board of university and school lands.**

Repealed by S.L. 1989, ch. 747, § 1.

**61-03-08. Duty of state engineer to cooperate with boards of county commissioners when requested.**

Whenever requested so to do by the board of county commissioners of any county of this state, the state engineer shall cooperate with such board in the engineering work required to lay out, establish, and construct any drain to be used by any county or counties or portions of the same for the purpose of diverting floodwaters, lakes, or watercourses, and in general shall aid and assist the counties of this state in making preliminary surveys and establishing systems of drainage.

**61-03-09. State engineer's duties in construction of bridges and culverts.**

Repealed by S.L. 1989, ch. 747, § 1.

**61-03-10. Custodian of government plats.**

The state engineer shall be custodian of all plats, field notes, and records that have been or hereafter may be turned over to the state by the government. Suitable rooms shall be provided in the capitol building containing vaults for fireproof protection and the safekeeping of such records, and free access to any such field notes, maps, records, and other papers for the purpose of taking extracts therefrom or making copies thereof without charge of any kind, shall be allowed to all officers or employees of the United States during office hours.

**61-03-11. Furnishing copies.**

Repealed by S.L. 1993, ch. 595, § 2.

**61-03-12. Attorney general and state's attorney advisers of state engineer.**

The attorney general, and the state's attorney of the county in which legal questions arise, shall be the legal advisers of the state engineer, and shall perform any and all legal duties necessary in connection with the state engineer's work, without compensation other than their salaries as fixed by law, except when otherwise provided.

**61-03-13. Rules and regulations made by state engineer - Modification.**

The state engineer shall make all general rules necessary to carry into effect the duties devolving upon the state engineer's office, and may change the same from time to time. All such rules relating to applications for permits to appropriate water, for the inspection of works, for the issuance of licenses, and for the determination of rights to the use of water shall be modified by the state engineer, if required by a vote of the state water commission.

**61-03-14. Modification of rules and regulations of engineer voted upon only upon appeal from engineer.**

The modification of the rules and regulations of the state engineer provided for in section 61-03-13 shall be voted upon by the state water commission only on an appeal from a decision of the state engineer.

**61-03-15. Hydrographic surveys and investigations made by state engineer - Cooperating with federal agencies.**

The state engineer shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, and shall obtain and record all available data for the determination, development, and adjudication of the water supply of the state. The state engineer may cooperate with the agencies of the federal government engaged in similar surveys and investigations and in the construction of works for the development and use of the water supply of the state, expending for such purposes any money available for the work of the state engineer's office. The state engineer may accept and use, in connection with the operation of the state engineer's department, the results of the work of the agencies of the government.

**61-03-16. Suit for adjudication of water rights.**

Upon the completion of a hydrographic survey of any stream system, the state engineer shall deliver a copy thereof, together with copies of all data necessary for the determination of all rights to the use of the waters of such system, to the attorney general of the state, who, within sixty days thereafter, shall enter suit on behalf of the state for the determination of all rights to the use of such water, and shall prosecute the same to a final adjudication. If the suit for the adjudication of such rights shall have been begun by private parties, the attorney general shall not be required to bring suit, except that the attorney general shall intervene in any suit for the adjudication of rights to the use of water, on behalf of the state, if notified by the state engineer that, in the state engineer's opinion, the public interest requires such action.

**61-03-17. Parties to and costs of suit for adjudication of water rights.**

In any suit for the determination of a right to the use of the waters of any stream system, all who claim the right to use such waters shall be made parties. When any suit has been filed, the court, by its order duly entered, shall direct the state engineer to make or furnish a complete hydrographic survey of such stream system as is provided in this chapter, in order to obtain all data necessary to the determination of the rights involved. The cost of such suit, including the costs on behalf of the state, and of such surveys, shall be charged against each of the private parties thereto in proportion to the amount of the water right allotted.

**61-03-18. Hydrographic survey fund - Use - Payments.**

The hydrographic survey fund, a permanent fund, shall be used only for the payment of the expenses of the surveys ordered by the court as provided in section 61-03-17. All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the state engineer in the prosecution of such surveys shall be approved by the state engineer. The amounts paid by the parties to such suits, on account of such surveys, shall be paid to the state treasurer, who shall credit the same to such fund, which shall continue to be available for advancing the expenses of such surveys, as ordered by the court from time to time.

**61-03-19. Decree adjudicating water rights - Filing - Contents.**

Upon the adjudication of the rights to the use of the waters of a stream system, a certified copy of the decree shall be prepared by the clerk of the court, at the cost of the parties, and shall be filed in the office of the state engineer. Such decree, in every case, shall declare as to the water right adjudged to each party, the priority, amount, purpose, and place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.

**61-03-20. State engineer to cooperate with United States geological survey in making topographic maps.**

The state engineer may confer with the director of the United States geological survey and may accept the cooperation of the United States with this state in the execution of topographic surveys and maps of this state. The state engineer may arrange with the director or other authorized representative of the United States geological survey concerning the details of such work, the method of its execution, and the order in which these surveys and maps of different parts of the state shall be undertaken. In any such work, the director of the United States geological survey shall agree to expend on the part of the United States upon said work a sum equal to that appropriated by the state from time to time for this purpose. In arranging these details the state engineer, in addition to such other provisions as the state engineer may deem wise, shall require that the maps resulting from this survey show the outlines of all counties, towns, and extensive wooded areas, as existing on the ground at the time of the execution of the survey, the location of all railways, roads, streams, canals, lakes, and rivers, and contain contour lines showing the elevation and depression for at least every twenty feet [6.10 meters] in vertical interval of the surface of the country. The resulting map must recognize wholly the cooperation of the state of North Dakota and, as each manuscript sheet of the map is completed, the United States geological survey should furnish the state engineer with photographic copies of the same. As the engraving on each sheet is completed, the director shall furnish the state engineer with transfers from the copperplates of the same.

**61-03-21. State engineer may require plan of operation - Adequate structure.**

Every operator of a water storage reservoir in North Dakota having a capacity of more than one thousand acre-feet [1233481.84 cubic meters] shall annually, between the first and fifteenth day of February, file with the state engineer an operating plan for such reservoir for the calendar year in which the same is filed. The operator of any such reservoir shall be required to cooperate with the state engineer to the end that all water releases shall be compatible with the best interest of the greatest number of downstream water users and affected landowners. In the event that the state engineer declares an emergency to exist in connection with the operation of

any such reservoir, the operator thereof shall promptly submit to the state engineer a separate interim operating plan therefor in addition to the annual reservoir operating plan herein required. Such interim operating plan shall then be coordinated and integrated with the suggestions and plans of the state engineer to best serve the affected interests during such emergency. The state engineer may also require such operators to maintain adequate structures and to operate them in a manner that will prevent waste, promote the beneficial use of water, and not endanger the general health and welfare of persons affected thereby. In the event such operator fails to maintain and operate adequate structures in the manner provided in this section, the state engineer shall set a place and time for hearing and shall serve notice upon such operator to show cause at such time and place why the operator's water permit should not be declared terminated and canceled. A copy of any order terminating or canceling such water right shall be filed in the office of the recorder in the county or counties where the land to which the right is appurtenant is located. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

**61-03-21.1. Inspection by state engineer.**

Whenever the state engineer is authorized or mandated by law to inspect or investigate an alleged violation of a statute under this title, the state engineer shall have the authority to enter upon land for the purposes of conducting such an inspection or investigation. Except in emergency situations as determined by the state engineer, the state engineer shall request written permission from the landowner to enter the property. If the landowner refuses to give written permission, or fails to respond within five days of the request, the state engineer may request the district court of the district containing the property for an order authorizing the state engineer to enter the property to inspect or investigate the alleged violation.

**61-03-21.2. Removal or modification of unsafe or unauthorized works.**

If the state engineer pursuant to the state engineer's authority under this title determines that works are unsafe or unauthorized, the state engineer shall notify the landowners by registered mail at the landowner's last-known post-office address of record. A copy of the notice must also be sent to any tenant, if the state engineer has actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent of the noncompliance, the modifications necessary for compliance, and must state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the state engineer shall cause the removal or modification of the works and assess the cost thereof, or such portion as the state engineer shall determine, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well-founded and are not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay. In the event of an emergency, the state engineer may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove or modify the works. Any assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this title. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court of the county in which the land is located in accordance with the procedures provided under chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal, unless the hearing was denied by the state engineer.

For purposes of this section, the term "works" includes dams, dikes, wells, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

**61-03-21.3. Removal, modification, or destruction of dangers in, on the bed of, or adjacent to navigable waters.**

1. If the state engineer finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to waters that have been determined to be navigable by a court are, or are likely to be, a menace to life or property or public health or safety, the state engineer may issue an order to the person responsible for the object. If the state engineer issues an order, the order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the state engineer determines that an object covered by flood insurance is likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. If a building, structure, boat dock, debris, or other manmade object, except a fence or corral, is partially or completely submerged due to the expansion of navigable waters, the person responsible is the person who owns or had control of the property on which the object is located or the person who owned or had control of the property immediately before it became submerged by water.
2. If the action is not taken by the date specified, but not less than twenty days from the date of service of the notice, the state engineer may cause the action to be taken. The state engineer may require the action to be taken in less than twenty days if an emergency exists.
3. The state engineer may bring an action to enforce an order of the state engineer, or if the state engineer causes the action to be taken, the state engineer may:
  - a. Assess the costs of taking such action, or such portion as the state engineer determines, against any property of the person responsible; or
  - b. Bring a civil action against the person responsible to recover the costs incurred in taking the action.

If the state engineer chooses to recover costs by assessing the cost against property of the person responsible and the property is insufficient to cover the costs incurred, the state engineer may bring a civil action to recover any costs not recovered through the assessment process. Any assessments levied under this section must be collected in the same manner as other real estate taxes are collected and paid. Any costs recovered must be deposited in the fund from which the expenses were paid.

4. A person who receives an order, within ten days of the date of service of the order, may demand, in writing, a hearing on the matter. The demand for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.
5. In the event of an emergency, the state engineer may immediately apply to the district court of the county in which the property is located for an injunction ordering the person responsible to modify, remove, abate, or otherwise eliminate the dangerous condition.
6. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the land is located in accordance with chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal unless the hearing was denied by the state engineer.
7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice.
8. Any person claiming compensation for the destruction of property or costs incurred under subsection 7 must file a claim with the state engineer in the form and manner

required by the state engineer. Unless the amount of compensation is agreed to between the claimant and the state engineer, the amount of compensation must be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state. In determining compensation, the proceeds of any flood or other insurance or any other kind of compensatory payments must be subtracted from the amount paid.

**61-03-22. Hearing - Appeals from decision of state engineer.**

Except as more specifically provided in this title, any person aggrieved because of any action or decision of the state engineer under the provisions of this title has the right to a hearing by the state engineer if no hearing on the matter resulting in the action or decision has been held. If a hearing has been held, the person aggrieved has the right to petition for reconsideration and to appeal, all in accordance with the provisions of chapter 28-32.

**61-03-23. Penalties - Civil.**

In addition to criminal sanctions that may be imposed pursuant to law, a person who violates any provision of this title or any rules adopted under this title may be assessed a civil penalty not to exceed twenty-five thousand dollars for each day the violation occurred and continues to occur and may be required by the state engineer to forfeit any right to the use of water. The civil penalty for violation of an irrigation appropriation permit may not exceed five thousand dollars for each day the violation occurred and continues to occur. The civil penalty or forfeiture of a right to use water may be adjudicated by the courts or by the state engineer through an administrative hearing under chapter 28-32.

If a civil penalty levied by the state engineer after an administrative hearing is not paid within thirty days after a final determination that the civil penalty is owed, the civil penalty may be assessed against the property of the landowner responsible for the violation leading to the assessment of the penalty. The assessment must be collected as other assessments made under this title are collected. Notwithstanding the provisions of section 57-20-22, all interest and penalties due on the assessment must be paid to the state. Any civil penalty assessed under this section must be in addition to any costs incurred by the state engineer for enforcement of the order.