

2017 HOUSE AGRICULTURE

HB 1390

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1390
2/10/2017
Job #28239

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a limitation on county authority and subsurface drains on land that qualifies for prevented planting insurance coverage; relating to loans to farmers and subsurface drainage projects; and to provide for a legislative management study.

Minutes:

Attachments 1-6

Representative Headland, Sponsor: Explained the bill.

Section 1 is to increase the amount available from AG PACE through the Bank of North Dakota. When you start tiling it is capital intensive. The Bank of North Dakota has the ability to make increases themselves so we may not need this section of the bill. Increased productivity from tiling increases tax revenues to the political subdivisions.

Section 2 limitation about dumping in a drain, "subsurface" needs to be overstruck. To my knowledge we don't have legal subsurface drains. We are looking for the opportunity to dump into a legal drain.

Section 3 is requesting that Water Resource Board members have some education about tiling. The seminars are free and put on by NDSU several times a year.

Section 4 There are rules today that apply to water boards. The new language says that water boards don't have authority beyond what is in code today. There are examples of water boards moving beyond their legal authority.

Section 5 addresses rural water lines that cross agriculture property. There are examples of water boards requesting boundaries beyond the original easement of rural water lines. A farmer will be reluctant to give easements if they are restrictive on what he can do with his property.

This section also refers to U.S. Fish and Wildlife easements and wetlands certificates. There are examples where they are being requested by water boards. That shouldn't play

any role with a permit to tile. You can't tile acres that are under U.S. Fish and Wildlife easements.

Section 6 intent is to allow a piece of property that has qualified for prevented plant. It will give the property owner an opportunity while the land is sitting idle to put in tile in the middle of the summer when everything else is planted. Permits are often not authorized in a timely manner for this to occur. We are trying to allow property owners to fix their property. This is a way to move water and prevent taxpayers from paying for prevented planting acres.

Section 7 The Health Department is studying nutrient management. This study will give legislatures the opportunity to weigh in on the findings of that study.

Representative Schreiber-Beck: Page 2, lines 17 & 18 in reference to the education. Do you want a broader source beyond tiling?

Representative Headland: We are asking for specific education on tiling.

Representative Skroch: Page 2, lines 10-16 have been struck. Why?

Representative Headland: I don't know.

Representative Skroch: It appears to be eliminating terms of drainage boards.

Representative Headland: We are asking for qualifications. I need to check with Legislative Council.

Representative Boschee: Section 6, how many acres would that impact in the state?

Representative Headland: That would depend on the spring. In 2011 there was a lot of ground that didn't get planted. This past year had a dry spring. There was very little prevented planting except up in the Northeast.

Representative Boschee: Does this change any of the protections of downstream residents?

Representative Headland: It doesn't change anything in current law. We are trying to clarify and enhance with loans. Most of the issues addressed in this bill are things that should not be occurring today.

Representative McWilliams: Section 5, lines 18 & 19 reference the drain tile to be a minimum distance. Who sets that limit?

Representative Headland: I think the standard easement is 20 feet for rural water. There is an example where a water board stepped in and required a 50-foot boundary. That causes problems for the property owner.

Representative McWilliams: Who sets that minimum distance?

Representative Headland: The easement is in place for rural water. There is no additional easement. We are trying to address that there should be no ability from a water board to extend the original easement.

Representative McWilliams: Does this bill lay out what the minimum distance is? Who has the authority to set that minimum distance?

Representative Headland: I don't think anybody has the authority to set the minimum distance. You have to contact One Call and notify the tiler that there is a water line. An easement is around 20 feet.

Representative Skroch: Page 4, section 6, is the water boards' involvement in this process intended to protect adjacent landowners of someone putting in drain tile?

Representative Headland: There are parameters in law of what can be tiled, etc. This bill is for when you have a short window to install tile, because you were not able to get a crop planted, you don't have to go through the permitting process for that. You still have to abide by all of the restrictions that go along with tiling.

Daryl Lies, North Dakota Farm Bureau President: We are in support with one exception—the increased lending. If you give us the ability to have consistency and regulation, our members will take care of their financing. The bill has some good terms when it comes to education of those making the decisions.

The question about what is the setback, when you grant an easement, that is what you are giving that entity. We don't like the extra taking of lands without compensation and restricting our ability to do on those lands as we see fit for our bottom line.

The end of the bill has an important piece to have the legislature involved in the study of the nutrient management plan.

Representative Oliver: Section 6, can you explain that section better?

(23:48)

Daryl Lies: Section 6 dealing with the prevent plant acres, North Dakota leads the way in the nation for prevent plant acres. Prevent Plant is the Risk Management Agency's crop insurance protection coverage. On average there are about one million acres that doesn't produce revenue. You can't tile all of that in one year.

Representative Skroch: Section 6, I am interpreting it as removing local control or is the main problem time. Are they just too slow in issuing permits?

Daryl Lies: We see different instances with slow decisions or they are not in favor of tiling.

(27:51)

Levi Otis, Ellingson Companies: We have a number of customers that are afraid to address their water boards when they feel they are not treated fairly.

The AG PACE program tops out at \$250,000 which at \$800 to \$1,000 average gets used up in a quarter or half section. The economic impact of drain tile is huge. When you raise production and your taxes go up, this program is fantastic.

We've had water boards require easements on legal drains for projects. The reason for a legal drain is to move water.

NDSU has provided tile clinics with no charge. But not everyone attends.

This bill says that if the county commissioners are in disagreement with water boards, the members can be removed by county commissioners.

Rural water is fearing that if there is a leak, it will go into the tile. That makes it difficult to find the leak.

In reference to the Agriculture Department and NRCS with wetland determinations, it is not the job of a county water board to be the NRCS police. We don't drain wetlands and haven't been able to since 1985. To require someone to bring in a wetland determination as a part of their tile permit is not necessary.

Prevented plant is paying farmers not to farm because it is too wet. As a federal taxpayer I would like to see farmers improve and produce. We give \$70 an acre discounts for people that tiled June, July, or August. You don't know if you have prevented plant acres until June. We need to expedite the process to work while the ground is doing nothing.

Representative Skroch: Page 2, the struck language removes term limits and would give a water board indefinite terms. Why?

Levi Otis: I would defer to whoever wrote this.

Representative McWilliams: You mentioned there are water lines that cross fields, how often does that happen?

Levi Otis: Where we have seen it the most is in Walsh County. A 50-foot setback means 50 feet on each line. Some of our customers are seeing 100 feet right down the middle of their quarter. How can that be when an easement with rural water is at 20 feet.

Representative McWilliams: Is there a minimum distance?

Levi Otis: Twenty feet is great.

Representative Magrum: The Water Board is appointed every three years in Emmons County. Page 2, line 17 says the individual "shall" attend a course on water management. I think that should be "may" because it is really hard to get people to serve on the boards.

Levi Otis: The water conference that I referenced was an example. NDSU has gone all over the state. They would even hold it on a Saturday afternoon. I am fine paying our water boards to go to school. We need to find someone to do the job who is willing to go to school.

Chairman Dennis Johnson: When a farmer who spends \$800 to \$1,000 per acre, they want someone on the board that understands the process.

Levi Otis: Part of the reason there are so many bills this session on water is because we need education on the technology.

(42:56)

Chad Weckerly, for self and the North Dakota Farm Bureau: (Attachment 1)

Two miles out of Hurdsfield we had a slough that was hayed in 1992. It was completely dry. Today it is a 30-foot lake that Game and Fish stocks. The problems are not from surface drainage or subsurface drainage. Lake Hurdsfield has 6,500 acres of land that contribute to that lake. In years of excess rainfall, there are 27,000 acres that drain into Lake Hurdsfield and less than 400 that have been tiled.

We get side hill seeps. That is from surface erosion. Water moves sideways in the soil before it moves down. This is why tile doesn't create an unnecessary drought. Without tile there is a buildup of sodium and the land is often unable to be farmed.

With tile I can remove 3/8ths of an inch of rainfall in a 24-hour period. It also depends on soil type and tile spacing. In Hurdsfield we farm on a heavy clay soil.

I have eight quarters tiled and had a different experience with different water boards. There is a \$1,000 nonrefundable application permit fee in Sheridan County. In Wells County I may have to pay some fees if it is deemed that engineering is needed. State law says that a project less than 80 acres could be tiled without a permit. If you read the Sheridan County Water board language, there are no acreage exemptions. If I put tile around my home, I need to go to the Sheridan County Water Board with a \$1,000 permit. There should be an acreage exemption. Often times what I want to drain will go into a slough that sits right on my property.

Another policy is they require permanent perpetual easements. Permanent easements are not legal in North Dakota. Perpetual easements are only for U.S. Fish and Wildlife.

We are not trying to drain wetlands. I have ducks on my land whether I have tiled it or not. Some of the regulation and the burden put on the landowner has to be looked at whether it is worth it or not. I have more than \$20,000 worth of legal bills trying to stay compliant to the farm program in getting wetland determinations done.

(58:16)

Dan Wogsland, North Dakota Grain Growers Association: (Attachment 2)

There are three things that we like about this bill.

1. Education
2. Sections 4, 5, 6 clear up ambiguities in the law
3. Legislative oversight on a nutrient management plan

Representative Boschee: Section 2, what do we mean by dumping?

Dan Wogslund: It would mean the tile lines can go into a legal drain.

Opposition:

Leroy Becker, Anamoose, President of Sheridan County Water Board:

I have heard that we sit on paper work and we don't do it. It is hard to do it when you don't get it.

Follow the money. Who is making the money. The question is where are you draining the water to. In Sheridan County we are landlocked. It goes onto someone else's land.

I think there should still be a 3-year term.

Section 3 talked about a 30-day notice. I think that notice should be given. It is easy to blame the local boards.

The setback is because of wetland rules in the past.

Chairman Dennis Johnson: We passed legislation a couple of years ago to take it away from the State Water Commission to let local folks make this decision.

Leroy Becker: Before we adopted our rules in Sheridan County, we went to the State Water Board and they looked it over and approved what we did.

Representative Howe: How many members on the Sheridan Board have attended water management classes?

Leroy Becker: I am not sure.

Kevin Veitz, Sheridan County Water Board: I have numerous classes about tiling.

Leroy Becker: The education part is really good. It depends who teaches the classes. In the east they thought draining is taking salts away from the lands. But they are having problems. If you are under 80 acres you don't need filing. What about 10 guys with 79 acres. That is just about 800 acres. That is a lot of water moving with no paperwork.

The \$1,000 permit fee. Just this last week we have refunded to two different people.

We know the situation in our communities. We need local control.

Representative Headland: We as legislatures can't allow every city to decide because it creates inequities. We are asking the water boards to execute the laws. We are trying to clear up the gray areas.

Representative Blum: In your viewpoint wouldn't the landowner's right to improve his land be the purest level of local control?

Leroy Becker: As long as he isn't violating laws. I can't drain onto my neighbor.

Mike Dwyer, North Dakota Water Resource Districts: Water managers are not against tiling. This bill is about clearing up the gray areas. The water districts operate on a mill levy. They have to get the county commission to approve that.

The tiling law that was put in place in 2011, we have had numerous workshops on how to implement the law. The provision on dumping adds more gray area?

Removing the terms—changed from 5 years in 1985. That was changed so county commissioners could review that appointment more often. You are creating more confusion with this bill.

Education—we vigorously oppose mandating an education requirement. We have an annual convention in December every year with a training seminar for water managers. Every summer we have a meeting where we have an executive briefing. We have a handbook and training sessions for every manager. If you want to mandate classes, then the mill levies would have to be increased and approved by the county commissioners. They do this on their own, how can it be mandated?

Section 4 says the water board can't make rules regarding subsurface drainage.

The tiling process is going to have a major rewrite from the Senate.

As far as rural water systems, there is an easement.

Prevent plant was said to be a million acres per year. Many times prevent plant is not because of water but the late spring. With this you are saying there are a million acres a year that doesn't need a permit even though there is a permit process for tiling. Take the tiling law that we have and make it clear and fair.

Representative Schreiber-Beck: Section 4, did you say make rules regarding subsurface drainage systems?

Mike Dwyer: That is what that underlined language says.

Representative Schreiber-Beck: It is about the permits.

Mike Dwyer: What I read is that a board may not make a rule regarding subsurface drainage system permits.

Representative Boschee: What is dumping?

Mike Dwyer: That is an example of a gray area.

Representative Blum: If everything is going well, why is there so much heartburn between landowners and water boards?

Mike Dwyer: Since 2011 we have had numerous conferences on how to implement this law. When the surface drainage law was passed in 1975 and then amended in 1977 and in 1981 there was a number of lawsuits. Finally, we have a system that everybody knows what it is. Those who receive the water they don't want are the ones that have heartburn.

Representative Blum: Isn't requiring a flowage easement the same as a denial?

Mike Dwyer: There have been 800 tile permits approved. In the Senate bill they are proposing a change to a notarized letter of approval. Many times farmers don't want to issue an easement but they don't have trouble giving approval. They are trying to streamline that. It is only for one mile downstream.

Representative Headland: Do you think water boards are having trouble separating surface drainage laws from subsurface?

Mike Dwyer: One of the proponents of SB 2263 talked about the Jackson Drain. That happened to be a surface drainage project. Most water managers are very clear. When tiling started to be popular there was no law. Water boards were implementing the surface law. That is the reason for the law in 2011. They understand that surface drainage and subsurface drainage are two completely different things.

Arv Burvee, Richland County Water Resource District: (Attachment 3)

(1:33)

Recent USDA reports indicate that for the years 2014-16 there were a total of over 2,100,000 acres of prevent plant in North Dakota.

Representative Headland: If you are able to take advantage of an assessed drain by property that we are trying to allow to be dumped from a subsurface, wouldn't you use that drain?

Arv Burvee: Our concern is we need to monitor it and serve as a referee. We have never turned down a tile application in Richland County. We have a couple on hold. We would like to see the entire county tiled.

In regards to the education part of this bill, it is hard to teach common sense. Any good water manager has to have common sense.

In regards to the terms, the county commissioners will learn that water board members are not doing their job.

Representative McWilliams: With the increased use of drain tile, are there any challenges with main drains eroding?

Arv Burvee: No. The inlet to our legal drain needs to be erosion protected. We also require if there is a pump that there are certain setbacks for the pump.

Representative Blum: If it rains 2-4 inches, wouldn't that water go down stream regardless if the land was tiled or not.

Arv Burvee: It depends on how fast that rain comes.

Justin Johnson, Civil Technician, works with Arv Burvee: I don't think there is an issue on utilizing the main drains or the county drains for tile outlets. Our main concern is erosion control and the damage done to the bank when tile is installed. Even with the regulation there is damage.

When surface drainage first came about there was no regulation. If we don't have regulation for a downstream landowner, it will bring up old conflicts and problems.

Eric Lindstrom, Ducks Unlimited National Manager of Agriculture Policy:
(Attachment #4)

1. Education component—whose is providing that?
2. "Dumping" is ambiguous
3. Page 3, landowner certification—federal law
In order to receive prevent plant coverage, you have to be eligible for Federal Farm Program benefits. About 98% of North Dakota landowners are enrolled in the Federal Crop Insurance Program.
4. Prevent plant coverage statement has concerns about further wetland drainage.

Representative Headland: You said we have less wetlands. But when I look at a map from 1990 for my property, I have 3 or 4 times that amount today of wetlands.

Your statement of certification of wetlands—we can't tile or drain wetlands. When we put a tile plan together there are setbacks that we have to stay away from. When we take an application to a water board, why do they have to know that we have those wetlands certified?

Eric Lindstrom: North Dakota has lost over half of our original wetlands. That is a report done every 5 to 7 years by the Department of Interior. Not every wetland is created the same. Some hold water all year long where others may be dry for years.

Representative Headland: All those are determined with NRCS. They will not let us drain.

Eric Lindstrom: We are still losing wetlands because some is illegal drainage.

John Paczkowski, State Water Commission, Engineer: (Attachment 5)

We have concerns with the language in Section 6.

Erick Volk, Executive Director, North Dakota Rural Water Systems: (Attachment 6)

Easements for rural water can vary from 30 feet up to 100 feet.

Vice Chair Trottier: There is a difference between old and new water lines?

Erik Volk: Our systems out east leak and need a lot of repairs. It then goes into the drain tile never to be seen again which is taxing on the system.

(1:55:50)

Neil Breidenbach, Grand Forks-Trail water: This was the first system put in in North Dakota. We are losing about \$320,000 per year for water that we are losing. Some of it is going into the drain tiles. We can't find the leaks. When it goes into the tile it doesn't come up. We serve 240,000 people in North Dakota.

Representative Skroch: How are you able to identify a water leak that doesn't go into a tile?

Neil Breidenbach: You get a wet spot on top of the ground. We go out at 2:00 in the morning and shut off valves to locate where we are losing the water. We have 200,000 joints. With only a drop it adds up to 250 gallons a minute every day 24 hours a day. The setback is very important to us.

Representative Headland: How do you think you will get an easement if a farmer has unknown setbacks?

Neil Breidenbach: If they want water, they are happy to sign them.

Brian Riley, Walsh Rural Water District: We don't have issues with drain tile. I have a project with 40 miles of pipeline with 20 new users. I had zero issues with 50-foot easements on either side of laid pipe.

Representative Headland: As long as the footage is specified, there is no issue with the language in this bill.

Brian Riley, Walsh Rural Water District: The reason is 90% of the farms are fine staying away because rural water is what they want.

Monica Zentgraff, Downstream Landowner: There was drain tile put in with no consideration for us. Our culvert was sitting too high. It took seven years before we were allowed to lower the culvert and get rid of the water. Don't forget about the downstream landowner. Most water resource districts work well.

Chairman Dennis Johnson: Closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1390—Committee work
2/16/2017
Job #28452

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a limitation on county authority and subsurface drains on land that qualifies for prevented planting insurance coverage; relating to loans to farmers and subsurface drainage projects; and to provide for a legislative management study.

Minutes:

Attachment 1

Representative Headland: Handed out amendment #17.0868.02001. (Attachment 1) We had discussion with the Bank of North Dakota. They assured us they will change their policy. Section 1 is out of the bill.

Now the new Section 1 is the limitation of authority. We tried to clarify it. It may need more clarification. It is difficult to understand what is "dumping." We changed it to "discharging water." On Line 3 we need to further amend to say "discharging water from a subsurface outlet into a legal drain."

New Section 2, the overstruck language, the council attorney said that language is no longer relevant because that was addressing the first legislation to set up water resource districts. It referred to managers. What we are talking about today is board members. So we overstruck "managers" and replaced with "board members."

Section 3 in the other bill referenced managers and we are now calling them board members. Then we expanded the reasons you could request replacement of a board member. One would be nonattendance to board meetings or refusal to carry out duties.

Section 4, there is more language referring to managers changed to board members. Section 5, existing language still remains.

Section 6, we address the rural water lines. A water resource board doesn't have legal ability to expand an easement. Then we added a term that is in the Senate Bill. It is "technical evidence." A downstream property owner has to provide technical evidence in order to protest.

We were informed the case that went to the state engineer didn't get acted on in a timely fashion to allow the project to continue. This amendment says that if the State Engineer doesn't address it within 30, it is deemed approved. Downstream landowners would still have that opportunity to stop the project.

People are more reluctant to sign easements than they would be to sign an approval letter. So we replaced the easement language with the language of a notarized letter that approves the drainage system.

We removed prevented planting coverage language at the request of the state engineer.

(8:48)

Representative Schreiber-Beck: Would you be opposed to replacing "subsurface drainage projects" with "subsurface water management projects"?

Representative Headland: I would propose that to the attorney in Legislative Council.

Chairman Dennis Johnson: To be consistent with other legislation.

Representative Boschee: Page 3 of amendments, you are changing an "easement" to a "notarized letter." How does that impact long term?

Representative Headland: That is another question.

Representative McWilliams: Is there anything that addresses the Section 5 concern from the water companies about minimum distance?

Representative Headland: It is the problem of one company that has gone to the water resource district and asked them to expand their setbacks. They don't have legal ability to do it. If you have an easement, you can't have another group expand on that easement. That is taking away the property owner's right.

Chairman Dennis Johnson: closed the discussion.

2017 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1390—Committee work
2/17/2017
Job #28511

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a limitation on county authority and subsurface drains on land that qualifies for prevented planting insurance coverage; relating to loans to farmers and subsurface drainage projects; and to provide for a legislative management study.

Minutes:

Attachment 1

Representative Headland: Handed out amendment #17.0868.02002. (Attachment 1)

Representative Headland: There are two changes from yesterday. One is in the title and throughout the bill. It will replace “drains” with “water management.”

The other change is where we replaced the words on page 2, line 3 “dumping” with “discharge.”

Representative Headland: Moved the amendment

Representative Oliver: Seconded the motion.

Representative McWilliams: What are the implications of changing “dumping” with “discharge”?

Representative Headland: In the hearing there was concern the language was too vague. It is a subsurface drainage outlet that is dumping into the assessed drain.

Representative McWilliams: I got a call from a drain board member. One of the concerns with the language in a bill is a renter would be able to put in drain tile without the permission of a landowner.

Representative Headland: Anyone who would spend \$1,000 per acre to put drain tile onto land they don't own is a fool. It doesn't happen.

Representative Boschee: Yesterday we talked about changing flowage easement to the notarized letter. Did you receive any information about that?

Representative Headland: We only changed it in this bill to reflect the Senate bill. The reason for that is farmers are reluctant to sign easements because they are permanent and they lose their ability for the future to litigate.

Representative Boschee: Do you see that as a protection for the downstream landowner?

Representative Headland: Yes.

Representative Boschee: In real estate we know that an easement stays with the land. When changing ownership, the notarized letter may not go with it.

Representative Headland: The letter is to inform the water resource board that the downstream person has been notified.

Representative McWilliams: One of the other concerns is if the state engineer has not approved or denied the permit within 30 days, it is deemed approved. Currently how long does it take to approve?

Representative Headland: Only one time has it gone to the state engineer and they sat on it.

Representative Skroch: We were discussing another bill to provide more opportunity for people to appeal to the state engineer on a project they felt was assessed wrong or damaging to them. Objection was address by the water districts because it takes forever for the state engineer to make that reassessment. Often it was a year before an opinion was given.

I received communication from a manager about requiring training. Many of these people have been on boards and farmers and have a good understanding of tiling. The bad actors should be dealt with on a county level rather than place requirements into law for training.

Representative Headland: There are free seminars available. Technology changes are ongoing. We have unelected people making decisions that have economic impact on a property owner.

Representative Skroch: Who provides that training?

Representative Headland: NDSU provides a program across the state. We don't need to spell out where the training is coming from.

Representative McWilliams: Can training be an online course?

Representative Headland: It could be.

Representative Magrum: Page 2, lines 1-3, this bill is saying that a county may not require a resident 30 days' notice before discharging water into a legal drain. Would that be an assessment drain?

Representative Headland: We changed that. It would be any legal drain that naturally moves water.

Representative Magrum: If they put in drain tile and someone is flooded out downstream, who is responsible?

Representative Headland: That doesn't happen. A rain event that will cause flooding, it will flood regardless of whether subsurface drainage has been put in. Subsurface drainage empties out the soil profile. The soil absorbs more water with a huge rain event.

Representative Magrum: With a lot of new drain tile there will more water dumping?

Representative Headland: There are people that believe if we tile the Red River Valley we wouldn't need a bypass. We passed this law in the 2013 session and there are water resource districts that are not following the law.

Representative Magrum: Page 3, lines 6-9, before the start of an individual's term as a water resource board member the individual shall attend a course on water management and again every three years. Isn't this a big government move?

Representative Headland: It is not too much to ask of someone who makes a decision on a property owner. They need to understand how it works.

Representative Magrum: Don't you think the county commissioners could handle that?

Representative Headland: It hasn't been done. Once a water resource board member is appointed, the county walks away.

Representative Magrum: I would disagree. You should approach the county commissioners.

Chairman Dennis Johnson: The water board is making the decision. Not the county commissioners. We go through training to have this job. If you want to be a manager, you should know how to do it.

Representative Magrum: It is hard enough to get someone to serve on these committees. We usually try to find people that are already involved and know what is going on.

Chairman Dennis Johnson: The legislation we passed two sessions ago took it away from the state and gave it to local water management districts. That is why we have this bill before us.

Representative Magrum: Some counties probably don't need the education as much as other counties. We have one drain tile system in Emmons County.

Chairman Dennis Johnson: With even one project they need the knowledge.

Representative Magrum: Page 4, line 20, it talks about the water board making rules concerning the management, control, regulations, and conservation of water. The next sentence says they don't have the power for the subsurface drainage system. So that is a conflicting paragraph.

Representative Headland: Not at all

Representative Schreiber-Beck: On page 2, limitation on authority, wouldn't you already have the permit issued if you were going to use discharging water from a subsurface outlet into a legal drain?

Representative Headland: You would unless it is less than 80 acres.

Representative Schreiber-Beck: If we go back to testimony, they have an annual meeting every year. That would suffice to meet this requirement. It is offered through the State Water Commission.

Aaron Carranza, Regulatory Division of the State Water Commission: The annual meeting is the Water Resources District's Association. It is not tied to the Water Commission although it does receive funding for it. We do get a lot of participation from boards. There is a summer meeting as well.

Chairman Dennis Johnson: How long does a training session like that last?

Aaron Carranza: The summer session is a couple of days. There are key note speakers.

Representative McWilliams: Do you have a percentage of how many water resource board members attend the training?

Aaron Carranza: I don't have those numbers.

Voice Vote taken on amendments. Motion carried

Representative Oliver: Moved Do Pass as amended

Representative Howe: Seconded the motion.

A Roll Call vote was taken: Yes 11, No 3, Absent 0.

Do Pass as amended carries.

Representative Headland will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1390

- Page 1, line 3, replace "drains" with "water management"
- Page 1, line 4, replace "06-09.13-03 and" with "61-16-07,"
- Page 1, line 4, after the first comma insert "and 61-16-09 and"
- Page 1, line 4, remove ", and section 61-32-03.1"
- Page 1, line 5, replace "loans to farmers" with "water resource district board members"
- Page 1, line 5, replace "drainage" with "water management"
- Page 1, remove lines 8 through 20
- Page 2, line 1, replace "**Dumping**" with "**Discharging water**"
- Page 2, line 3, replace "dumping" with "discharging water from a subsurface outlet"
- Page 2, line 3, remove "subsurface"
- Page 2, after line 3, insert:

"**SECTION 2. AMENDMENT.** Section 61-16-07 of the North Dakota Century Code is amended and reenacted as follows:

61-16-07. Water resource board members - Appointment and number.

When a water resource district has been created, and the state water commission has filed notice with the county auditor of a county where the district or a part thereof is situated, a water resource board ~~shall~~must be appointed within ninety days, as provided herein. If the district's boundaries are confined to one county, the board of county commissioners shall appoint a water resource board consisting of three or five ~~managers~~board members. When a district includes two counties, the water resource board ~~shall~~must consist of five ~~managers~~board members, three appointed by the board of county commissioners of the county having the larger aggregate taxable valuation of property, and two appointed by the board of county commissioners of the other county. If a district includes three counties, the water resource board ~~shall~~must consist of five ~~managers~~board members, one appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district, and two appointed by the board of county commissioners of each of the other two counties. If a district includes four or six counties, the water resource board ~~shall~~must consist of two board members from the county having the largest aggregate taxable valuation of property in the district, and one ~~manager~~board member from each of the other counties. If a district includes five or seven counties, the water resource board ~~shall~~must consist of one ~~manager~~board member from each county. Appointments to the water resource board ~~shall~~must be made by the boards of county commissioners of the respective counties."

- Page 2, line 7, overstrike "**managers**" and insert immediately thereafter "**board members**"
- Page 2, line 27, overstrike "manager" and insert immediately thereafter "board member"

2/17/17
Ch
2 of 3

Page 2, line 29, overstrike "manager" and insert immediately thereafter "board member"

Page 2, line 30, overstrike "manager" and insert immediately thereafter "board member"

Page 2, line 31, overstrike "manager" and insert immediately thereafter "board member"

Page 3, line 1, after the fourth comma insert "nonattendance at board meetings, refusal to carry out duties required by law."

Page 3, after line 2, insert:

"SECTION 4. AMENDMENT. Section 61-16-09 of the North Dakota Century Code is amended and reenacted as follows:

61-16-09. Oath of office - Organization of water resource board - Appointment of employees - Meetings.

Upon receiving notice of appointment as member of the water resource board, such appointee shall take the oath of office prescribed for civil officers. Such oath ~~shall~~must be filed with the secretary of the board. Notice of the appointment of a member or members of a water resource board ~~shall~~must be mailed to the state water commission. Such notice shall state the name and post-office address of each appointee and the date of appointment.

A majority of the ~~managers shall constitute~~board members constitutes a quorum for the transaction of such business as may come before the board, but any number may adjourn a meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer and such other employees as needed for the efficient conduct of the district's business and shall fix their compensation. The offices of secretary and treasurer may be held by the same person. Officers and employees ~~shall~~ hold office at the pleasure of the board.

The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting ~~shall~~must be mailed to each member of the board at least five days before any such meeting provided, that a special meeting may be held whenever all members of the board are present or consent thereto in writing."

Page 3, line 8, replace "drainage" with "water management"

Page 3, line 13, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 15, overstrike "drainage of water" and insert immediately thereafter "water management"

Page 3, line 16, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 19, after "lines" insert "beyond an existing easement for the lines"

Page 3, line 20, after "determines" insert ", based on technical evidence."

Page 3, line 21, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 22, overstrike "drainage. Water"

UN
2/12/17
3 of 3

Page 3, line 23, overstrike "resource districts must forward copies of all approved permits to the state engineer" and insert immediately thereafter "water management system. For purposes of this section, "technical evidence" means written information regarding the proposed water management system prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydrological effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land downstream"

Page 3, line 24, overstrike "drainage" and insert immediately thereafter "subsurface water management"

Page 3, line 26, after the period insert "If the state engineer has not approved or denied the permit within thirty days after receipt of the permit application, the application must be deemed approved by the state engineer."

Page 3, line 28, overstrike "drainage" and insert immediately thereafter "water management system"

Page 3, line 29, overstrike "shows that" and insert immediately thereafter "proves, based on technical evidence."

Page 3, line 29, overstrike "drainage" and insert immediately thereafter "system"

Page 3, line 31, overstrike "flowage easements" and insert immediately thereafter "the applicant to obtain from the downstream landowners notarized letters approving the system"

Page 3, line 31, after the period insert "If all adversely affected landowners provide the notarized approval letters, the board may waive the thirty-day notice period for the meeting to approve or deny the permit."

Page 4, line 3, overstrike "drainage" and insert immediately thereafter "water management"

Page 4, line 3, overstrike "drain" and insert immediately thereafter "water management system"

Page 4, line 4, overstrike "flowage easement" and insert immediately thereafter "a notarized letter of approval"

Page 4, line 4, overstrike "Flowage easements must be filed for"

Page 4, line 5, overstrike "record in the office of the recorder of the county or counties in which the lands are situated."

Page 4, line 6, overstrike "drainage" and insert immediately thereafter "water management"

Page 4, line 8, overstrike "draining" and insert immediately thereafter "system"

Page 4, remove lines 9 through 14

Renumber accordingly

Date: 2/17/2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1390**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 17.0868.02002

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Headland Seconded By Rep. Oliver

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman Wayne Trottier			Rep. Kathy Hogan		
Rep. Jake Blum					
Rep. Craig Headland					
Rep. Michael Howe					
Rep. Dwight Kiefert					
Rep. Jeffery Magrum					
Rep. Aaron McWilliams					
Rep. Bill Oliver					
Rep. Bernie Satrom					
Rep. Cynthia Schreiber Beck					
Rep. Kathy Skroch					

Vote Passed

Total **Yes** _____ **No** _____

Absent _____

Floor Assignment Rep. _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1390: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1390 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "drains" with "water management"

Page 1, line 4, replace "06-09.13-03 and" with "61-16-07,"

Page 1, line 4, after the first comma insert "and 61-16-09 and"

Page 1, line 4, remove ", and section 61-32-03.1"

Page 1, line 5, replace "loans to farmers" with "water resource district board members"

Page 1, line 5, replace "drainage" with "water management"

Page 1, remove lines 8 through 20

Page 2, line 1, replace "**Dumping**" with "**Discharging water**"

Page 2, line 3, replace "dumping" with "discharging water from a subsurface outlet"

Page 2, line 3, remove "subsurface"

Page 2, after line 3, insert:

"SECTION 2. AMENDMENT. Section 61-16-07 of the North Dakota Century Code is amended and reenacted as follows:

61-16-07. Water resource board members - Appointment and number.

When a water resource district has been created, and the state water commission has filed notice with the county auditor of a county where the district or a part thereof is situated, a water resource board ~~shall~~must be appointed within ninety days, as provided herein. If the district's boundaries are confined to one county, the board of county commissioners shall appoint a water resource board consisting of three or five ~~managers~~board members. When a district includes two counties, the water resource board ~~shall~~must consist of five ~~managers~~board members, three appointed by the board of county commissioners of the county having the larger aggregate taxable valuation of property, and two appointed by the board of county commissioners of the other county. If a district includes three counties, the water resource board ~~shall~~must consist of five ~~managers~~board members, one appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district, and two appointed by the board of county commissioners of each of the other two counties. If a district includes four or six counties, the water resource board ~~shall~~must consist of two ~~board~~ members from the county having the largest aggregate taxable valuation of property in the district, and one ~~manager~~board member from each of the other counties. If a district includes five or seven counties, the water resource board ~~shall~~must consist of one ~~manager~~board member from each county. Appointments to the water resource board ~~shall~~must be made by the boards of county commissioners of the respective counties."

Page 2, line 7, overstrike "**managers**" and insert immediately thereafter "**board members**"

Page 2, line 27, overstrike "manager" and insert immediately thereafter "board member"

Page 2, line 29, overstrike "manager" and insert immediately thereafter "board member"

Page 2, line 30, overstrike "manager" and insert immediately thereafter "board member"

Page 2, line 31, overstrike "manager" and insert immediately thereafter "board member"

Page 3, line 1, after the fourth comma insert "nonattendance at board meetings, refusal to carry out duties required by law."

Page 3, after line 2, insert:

"SECTION 4. AMENDMENT. Section 61-16-09 of the North Dakota Century Code is amended and reenacted as follows:

61-16-09. Oath of office - Organization of water resource board - Appointment of employees - Meetings.

Upon receiving notice of appointment as member of the water resource board, such appointee shall take the oath of office prescribed for civil officers. Such oath ~~shall~~must be filed with the secretary of the board. Notice of the appointment of a member or members of a water resource board ~~shall~~must be mailed to the state water commission. Such notice shall state the name and post-office address of each appointee and the date of appointment.

A majority of the ~~managers shall constitute~~board members constitutes a quorum for the transaction of such business as may come before the board, but any number may adjourn a meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer and such other employees as needed for the efficient conduct of the district's business and shall fix their compensation. The offices of secretary and treasurer may be held by the same person. Officers and employees ~~shall~~ hold office at the pleasure of the board.

The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting ~~shall~~must be mailed to each member of the board at least five days before any such meeting provided, that a special meeting may be held whenever all members of the board are present or consent thereto in writing."

Page 3, line 8, replace "drainage" with "water management"

Page 3, line 13, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 15, overstrike "drainage of water" and insert immediately thereafter "water management"

Page 3, line 16, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 19, after "lines" insert "beyond an existing easement for the lines"

Page 3, line 20, after "determines" insert ", based on technical evidence."

Page 3, line 21, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 22, overstrike "drainage. Water"

Page 3, line 23, overstrike "resource districts must forward copies of all approved permits to the state engineer" and insert immediately thereafter "water management system. For purposes of this section, "technical evidence" means written information regarding the proposed water management system prepared after consideration of the design and physical aspects of the proposed system, and any adverse

hydrological effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land downstream"

Page 3, line 24, overstrike "drainage" and insert immediately thereafter "subsurface water management"

Page 3, line 26, after the period insert "If the state engineer has not approved or denied the permit within thirty days after receipt of the permit application, the application must be deemed approved by the state engineer."

Page 3, line 28, overstrike "drainage" and insert immediately thereafter "water management system"

Page 3, line 29, overstrike "shows that" and insert immediately thereafter "proves, based on technical evidence,"

Page 3, line 29, overstrike "drainage" and insert immediately thereafter "system"

Page 3, line 31, overstrike "flowage easements" and insert immediately thereafter "the applicant to obtain from the downstream landowners notarized letters approving the system"

Page 3, line 31, after the period insert "If all adversely affected landowners provide the notarized approval letters, the board may waive the thirty-day notice period for the meeting to approve or deny the permit."

Page 4, line 3, overstrike "drainage" and insert immediately thereafter "water management"

Page 4, line 3, overstrike "drain" and insert immediately thereafter "water management system"

Page 4, line 4, overstrike "flowage easement" and insert immediately thereafter "a notarized letter of approval"

Page 4, line 4, overstrike "Flowage easements must be filed for"

Page 4, line 5, overstrike "record in the office of the recorder of the county or counties in which the lands are situated."

Page 4, line 6, overstrike "drainage" and insert immediately thereafter "water management"

Page 4, line 8, overstrike "draining" and insert immediately thereafter "system"

Page 4, remove lines 9 through 14

Renumber accordingly

2017 SENATE AGRICULTURE

HB 1390

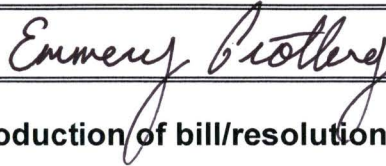
2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1390
3/10/2017
Job # 29037

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a limitation on county authority and subsurface drains on land that qualifies for prevented planting insurance coverage; relating to loans to farmers and subsurface drainage projects; and to provide for a legislative management study.

Minutes:

Attachments: #1 - 7

Chairman Luick: Opened the hearing on HB 1390.

(1:00 – 7:30) **Representative Headland, District 29:** Introduced HB 1390. Section 1 clarifies and provides for a limit on the authority of discharging water and it says if you have a tile outlet dumping into legal drain, a water board cannot require a thirty-day notice. Section 2 cleans up the language. In the original legislation that provided for water management committees, the word manager was used instead of board member. Today, we refer to them as water resource boards and board members and that overstrikes managers and clarifies board members. Section 3 of the bill, we had an education component to appointees and members of water resource boards simply because it is our belief. Discussion shows that not everyone understands how tiling works and how it moves water. Section 4 is regarding the appointment of the water resource boards and cleans up the language. Section 5 deals with the section of code that spells out the duties of water resource members and subsection 8 clarifies that water resource boards do not have any authority beyond what the duties that are spelled out currently in the century code. Section 6, we get into the permits and we added language because there is a specific area of the state where rural water boards have gone to water resource district boards and tried to get water boards to provide for setbacks away from their water lines. It's my contention that they don't have the right under law to expand an original easement given by a property owner to a rural water system. I wanted to clarify that and I know there may be consternation with that and I think it is something we can talk about. Further down in the section, we define what technical evidence is and we had the legislation drafted so the definition is very similar to the definition of technical evidence in the prior bill you heard in the session.

Further in the section we go over when statewide significance is applicable. We clarified that if a water board sends a project to the state engineer, they can't sit and stop the project. They have thirty-days to look at the project and if they do not make a decision one way or the other,

we deem it approved. Further down in the section, we added the language dealing with easements in the prior bill you heard and it moved away from requiring easements to requiring letters of notarized.

Section 7 asks for a legislative management study. It has come to our attention that the Department of Health is doing meetings around the state. They are studying nutrient management and I think most of you would agree that the legislature should have knowledge of what they are finding in case there is legislation needed in the future which is a very important component of this bill.

(7:50 – 12:15) **Senator Wanzek, District 29:** Testified in Support of HB 1390. There are some areas where there may be some conflict or discrepancies with what we dealt with in the SB 2263 and we will have to reconcile some of those. When done right, tiling is beneficial to us and it is an asset that will improve the productivity of our land and can manage our water issues more so than we are doing now. It is vitally important that we make this process as friendly as we can for farmers who want to get it done.

I want to highlight the area that addresses attending a course on water management trying to get information and education to water boards on how this system works. Until I started attending workshops, I had a limited idea of what subsurface draining is and I don't think all water resource districts completely understand tiling. It is important that people who are making these decisions have the same background and knowledge.

As a farmer, I don't want to put anymore fertilizer out there than is necessary and it should be included into a water management system and how we handle fertility and we want to make sure we are not sending that high cost resource downstream to the greatest extent possible. I want to work with the committee to clean up this bill and SB 2263. We don't have to put state money into this; farmers want to put in the investment and it would create economic benefits for both of us.

Senator Klein: Can you tell us how tiling actually works and if it drains a wetland?

Senator Wanzek: I may need to qualify myself. You can tile a wetland. It is through the farm program and regulations that makes it difficult to tile a wetland. The projects I've done we've had to present our plan where we are going around the wetland and depending on the soil type, you have to stay a certain distance away from the wetland with that tile. You can tile on a small wetland for a certain project where it makes sense to tile that whole area and take that wetland and mitigate it. The only way I can tile that wetland and stay in compliance with the federal farm program is to offset that wetland somewhere else; either plug a prior converted drain or create a new wetland. From my perspective, I am not looking to drain wetlands. I'm looking to improve the productivity of the land I already farm. The best description I have is that soil is a sponge and once you have an excessive amount of water, the water is running off the land anyway and when the soil is saturated to that point

Senator Klein: The definition of wetlands goes beyond water surrounded by cattails, we have depressions now that are categorized as wetlands. Can you explain the difference between a wetland and what is just classified as a wetland?

Senator Wanzek: I am not an expert but I know if they find any aquatic species. It is a difficult thing for farmers because there are many spots we farm through consistently with the

exception of a year or two. Sometimes the NRCS views wetlands differently than farmers do but it is their interpretation that matters.

Senator Klein: So an area of land that has never been a problem could be shown a problem?

Senator Wanzek: Yes, and their interpretation is what matters.

Chairman Luick: I know there are some distinctive qualifications of wetland

Senator Piepkorn: Who would provide the course on water management?

Senator Wanzek: I initially think of the researches at NDSU which is where I learned most of my information on how tiling works.

Senator Piepkorn: Specifically for this bill, have you decided who is going to conduct course?

Senator Wanzek: I would highly recommend NDSU.

Chairman Luick: Would you object if we came up with some language to give guidance to what type of a course or class they would have to attend?

Senator Wanzek: I wouldn't object. It makes common sense if we are going to ask these people to apply and regulate our law, they need to have some basic knowledge on what they are regulating and how subsurface tiling works and how it is different than surface drainage.

Senator Piepkorn: Are you in the tiling business?

Senator Wanzek: I am not in the tiling business. We have contracted with a contracted to do our first tiling project which was a year ago.

Senator Wanzek provided the committee with more information on tiling and hoped the committee could visit a tiling site.

(24:30 - 31:45) **Mike Dwyer, ND Water Resource Districts:** Testified in Support of HB 1390. (See Attachment #1). We appreciate the efforts to make the law more efficient. In 1973, the legislature decided there needed to be a water resource district in every county and primarily it was because there were many lawsuits at the time against surface drainage. We have no objections to having a class for water managers.

Mr. Dwyer provided information on what education programs the Water Resource Districts offered. He recommended replacing section 6 of this bill with the amendments from SB 2263. Mr. Dwyer asked that certain portions of the bill would be changed (See Attachment #1). He asked that the water board be given the authority to generate the technical evidence themselves.

Senator Osland: What is your opinion on the nutrient study?

Mike Dwyer: We would support that. Most water managers are farmers and we don't want to put anymore fertilizer down than necessary, so I have no objections to that.

Senator Larsen: What kind of water research is happening now?

Mike Dwyer: That is not in our portfolio in terms of nutrients and fertilizer application. In the tile drainage classes we presented to water managers, they have done analysis on the water that comes out of tile drains and have found that it has improved.

(34:40 – 38:50) **Aaron Carranza, Chief, Engineering and Permitting Section, Office of the State Engineer:** Testified in Support of HB 1390 (See Attachment #2a – 2c).

Chairman Luick: Would you define statewide significance and how you would deem it necessary?

Aaron Carranza: There are criteria outlined in ND Administrative Code regarding what could trigger statewide significance designation. The two primary vehicles in which a state-wide designation would be triggered are changing a noncontributing area that does not currently drain during the 24-hour storm events or into a contributing basin, so adding an outlet. The second would be drainage of wetlands or waterbodies designated to be of fish & wildlife significance.

(39:50 – 41:37) **Gary Thompson, Chairman, Red River Joint Board:** Testified in Support of HB 1390. We support the testimony of Mike Dwyer's proposed amendments to go along with SB 2263. We do a lot of permitting for tile drains and I don't think we have ever not accepted that permit. We do have to look out for entities like the ditches because they need a say as well as the landowners. We cannot deny legal assessed drain permits but we would like to be able to put conditions on them.

Senator Larsen: How does your permit cost?

Gary Thompson: We charge \$500.

Senator Larsen: Is this something that could be utilized to play a role in the flood protection of the counties?

Gary Thompson: As far as the flood control, it depends. I believe if the tile is full already you are not going to get much benefit but if there is soakability, it would help. We are pro tile and I do believe there is some a benefit to flood control. We had a study done through the Red River Retention Authority which is a joint powers agreement with MN and their study came out and said it depends on the situation and soakability.

Senator Klein: We have \$500 in SB 2263 but under current law, you have no ability to assess fees, correct?

Gary Thompson: As far as our legal side, we have been told we can charge for those permits. I don't believe it is in the statute but we need to cover the lawyers and engineers for the investigation for these permits and we don't feel it is fair that every tax payer within the county has to pay that price tag. A lot of counties don't have a lot of money and if we have all these permits coming through, it can drain our funds quickly.

Senator Klein: Is the basis \$500 or is it up to \$500?

Gary Thompson: Some are going to cost more than the \$500 but we have never charged higher than \$500. I believe other counties charge up to \$1,500 but they will return whatever money is unused. Certain permits take more time than others so to have one set amount is difficult because you don't know how much it will cost until you get that permit.

Senator Klein: It could certainly go the other way. A permit may only cost you \$100 but you charge \$500 to offset the cost of the higher permits, correct?

Gary Thompson: You are right; it could be less.

Chairman Luick: Do you have language in here that would require a \$200 fee across the board for the permits and any excess fees would be charged appropriately to the party that costs more than that?

Gary Thompson: That sounds reasonable. As far as the \$200 standard amount, it almost makes it sound like the water boards are making money but all we are trying to do is recapture the cost.

Chairman Luick: So what if we gave the water boards the authority to determine the appropriate charge?

Gary Thompson: It would be reasonable to be able to do those things through the board.

Chairman Luick: I have a problem with the fees but in my county the drain board was taking it upon themselves to gather that technical evidence and they were paying all of these. The \$1,500 other counties were charging was acting as a deterrent in some cases.

Senator Klein: When you talk about spreading the cost across the county, aren't you in essence improving the land with tiling which causes the property taxes to go up and the property owners will help to fund it anyway because you have improved the quality of the land?

Gary Thompson: If there is a tile going down in one part of the county, I have a problem with paying for a private individual's tile.

Senator Klein: Sometimes projects will ultimately benefit the greater good but we have to manage them in the meantime.

Gary Thompson: If we had more dollars in the smaller counties, I wouldn't have a problem with it at all.

(51:00 – 54:30) **Erik Volk, Executive Director, ND Rural Water Systems Association:** Testified in Support of HB 1390 (See Attachment #3).

Senator Klein: The language Mr. Dwyer mentioned that would go into SB 2263 would cover what you are suggesting?

Erik Volk: Yes.

Senator Piepkorn: What are the odds of replacing water lines that are causing problems?

Erik Volk: A lot of systems have the problems with leaks and if the tile is close, it does a good job of taking the water out. There is a lot of hassle involved if the tile is on top of the water lines when we are trying to make a repair.

Senator Piepkorn: It may be worth replacing, then?

Erik Volk: The water districts have no taxing authority so any repairs or maintenance goes onto to the people who are hooked up to the system.

(56:30 – 1:03:30) **Gordon Johnson, Manager of Northeast Water District:** Testified in Support of HB 1390 (See Attachment #4).
Mr. Johnson explained the application process.

Chairman Luick: If you have new construction going in in the vicinity of where you need to put this, how will your drain boards look at it?

Gordon Johnson: We would keep as far away as possible and may even decide not to go in there. But in the future, this is going to be a problem. On a new system, it makes it difficult.

Chairman Luick: Is there a difference in number of leakages in the old glued pipe?

Gordon Johnson: That varies from system to system.

Chairman Luick: The conditions of new gasketed pipe is there a difference in the leakage rates of the different sized pipes?

Gordon Johnson: They are all good. We keep lime lost statistics on both sides and the new gasketed pipe is a much better pipe.

Senator Klein: Currently you have no authority or ability to do anything under the current law and this bill if we provide this new language would give you something that the rural water systems can work on, correct? There is nothing in current law for rural water is there?

Gordon Johnson: Could you clarify?

Senator Klein: If we don't change anything today, what authority do you have to require tilers to stay away from your line?

Gordon Johnson: Nothing other than arguing the rights of our easement.

Senator Klein: So if we adopt that paragraph, you will finally have something in the code that will give you some sort of authority, correct?

Gordon Johnson: That is correct and I would appreciate something to protect the investment of our infrastructure.

Senator Myrdal: We are looking at blanket easement of 25 feet; on an 80-acre lot, how many acres is that compromise?

Chairman Luick: 1.5 acres.

Senator Piepkorn: Did this tile applicant submit this out of his good will?

Gordon Johnson: Yes. He would not have had to do that because it was under the 80-acre requirement and you'll notice that he listed the landowner but he would not have had to do that.

Chairman Luick: You are talking about 25 feet on each side of your line; would you be willing to consider future construction to go further into a field rather than hugging the right-way of a township road? I ask that because of the spacing of the laterals.

Gordon Johnson: We would work to do that but you run into what the landowner wants you do to and usually that is to stay close to the road but we absolutely work with the landowner.

Senator Larsen: If this information available prior to making a project?

Gordon Johnson: It's only a matter of a program.

Senator Piepkorn: What are the consequences of an undetected water leak?

Gordon Johnson: It can cost a lot of money.
Mr Johnson explained the process of fixing a water leak.

Senator Piepkorn: It seems that there may be some value in the long run for the Department of Health to help replace this old pipe.

Gordon Johnson: Actually, we have pushed that as priority criteria with the state water commission and I still believe it should be because it is a major deal.

Senator Klein: The consumer is in charge even though we could work on infrastructure for a long time. You are supposed to be notified of a project, correct?

Gordon Johnson: It is supposed to be 48 hours but often the project is in progress when we are notified

Senator Larsen: Isn't it good if the spacing is not too far away so they can capture it in a water monitoring system as it comes out of the end of the pipe?

Gordon Johnson: Are you talking about the landowner monitoring or us monitoring our loss?

Senator Larsen: The landowner because he has the system in place and he is watching that pipe. I am sure they have developed some history of what comes out of the pipe and if he notices a larger discharge, I would assume that would be a good thing on the spacing that it wouldn't be so far away so they could capture that leak and monitor it as it comes out the discharge pipe.

Gordon Johnson: I don't know if it would be that easy to pick it up especially when you are talking about a small line leaking.

(1:16:45 – 1:18:25) **Dan Wogsland, ND Grain Growers:** Testified in Support of HB 1390 (See Attachment #5).

Senator Klein: Would you agree that our university system provides good training in that area?

Dan Wogsland: You bring up a good point and I think a good place to start is NDSU and I think we can figure out an accredited system.

(1:20:38 -) **Levi Otis, Ellingson Companies:** Testified in Support of HB 1390. Water management is important to our members and we need to provide continuing education to our water board members and NDSU and their applicable departments may be good to identify in this bill as education sources.

To our company, it doesn't make a difference whether we are going put an additional line over an existing water line. Our systems soak up water and the issue I have is that you have easements so if we continue to allow further setbacks to be put on the easements, where does it stop?

Right now it is with rural water but will it extend to oil and gas pipelines? We go around and site all the areas where pipelines are going to go through and we do bids. If this ground isn't tiled, how are we going to get the easement for the pipeline? Now we have oil companies asking us to design tile systems around their pipelines and setbacks and helping these landowners get their property tiled and that is a great system of working together between oil and agriculture and I think rural water can get there too.

(1:25:10 – 1:27:34) **Rachel Gross, ND Farm Bureau:** Testified in Support of HB 1390. Our members have called for legislation like this and we support this bill and SB 2263 so far. Water management is important to our members and many of our members utilize these tools. Unfortunately, we have lacked some continuity and we have had members experience different permitting processes across counties. We would like to see some clarity and have our water boards have the opportunity to have the tools that they need. We would reiterate education is an important step and one of the reasons we like this bill. We would like to see uniformity from county to county and sometimes that is not the case. This bill seeks to codify the language we already have and bring some clarity to the water boards and give everyone that equal treatment in an expedited process. We would like to reduce the backlog some people are experiencing.

(1:28:00 – 1:33:50) **Carmen Miller, Ducks Unlimited:** Testified in Support (See Attachment #6). Between SB 2263 and HB 1390, we support this one but I have some suggestions and concerns.

Senator Larsen: Isn't it a good idea to take nitrates out of the ground before they go into the aquafer?

Carmen Miller: I think these are issues that need to be looked at more.

Chairman Luick: Is there a nitrate elevation of aquafer water?

(1:35:20 -1:26:20) **Dave Glatt, Environmental Health Section Chief, ND Department of Health:** Testified Neutral on HB 1390. There are certain areas in the state that have elevated nitrates and we typically see those in areas where there is high irrigation, sandy soils, and I will tell you nutrients in water is a problem whether it is in the ground water or the surface water. The good thing is that precision agriculture and better knowledge of soil types, the use of fertilizers is being more measured and there are problems and we need to be looking forward to how we can deal with our nutrient problems. We do have nitrate issues in some of our lakes and streams.

(1:35:40 – 1:38:30) **Scott Rising, Soybean Growers Association:** Testified in Support of HB 1390. We first looked at some of the issues as they relate to tile drainage in 2008 and NDSU is doing some additional research. I am also aware that we see elevated nitrates in some places across the state in the aquifers. We also have aquifers in ND that are self-cleansing and I think the jury is out on some of that but I think the important part in the end is that we learn from others, we tile appropriate for the topography and soil types, and it is ultimately about soil health.

(1:38:45 – 1:45:35) **Sean Fredricks, Attorney, Red River Joint Water Resource Districts:** Testified in Support of HB 1390. I want to provide some context to the process some of these water boards utilize to approve permits. We agree that we need some uniformity and we have to prevent water boards from preventing tiling projects. However, most water resource districts are doing their best to process these in a timely manner. Mr. Otis noted that some counties provide different answers in terms of what kind of culverts they provide. We find that too, and that is unfortunately because there are stream crossing standards in law they are supposed to follow.

Water boards are not making money off of permit fees. When Traill County receives a permitting application, they send it to me and the engineer. I will conduct a quick deed search on who owns the property the applicant intends to tile. If the applicant is not the owner, we want to ensure they have conferred with the landowner. I will also do a deed search on downstream properties to see where the discharge is going to make sure that landowner is notified and we want to notify tenant and landowner. I provide this information to the water board.

The engineers receive that permit application and conduct two reviews: 1. They will look to see if the applicant submitted a detailed project plan with their application. Some people will submit permit application with nothing to accompany it and the engineer will contact them for that plan. 2. They will also conduct the state-wide significance review.

We also see applicant submitting a plan and then changing the plan which requires another review. I wanted to provide you with context of where that permit fee goes.

Senator Larsen: Is that above and beyond the daily job you do? Aren't you doing that already for anything that is related to water in the counties?

Sean Fredricks: I think the vast majority of what the water resource districts are doing is managing their legal assessment projects. They have projects they own and operate which they are responsible for so the permitting is generally in addition to what they are doing on a daily basis. We have some minor modifications to SB 2263 but we support that and the \$500 fee cap and we think putting something in there is necessary because we want uniformity.

Chairman Luick: Do you think the \$500 fee will be abused?

Sean Fredricks: I hope not. The water boards do not have the legal authority to assess fees and then not conduct an investigation.

Chairman Luick: Perhaps we need to have language to better stipulate the purpose of the fees.

Sean Fredricks: To the extent that the committee wants to further identify what those fees would be used towards; we support that entirely.

Senator Myrdal: What Senator Larsen is commenting on is that in the beginning of your testimony you talked about finding the property owner. As a landowner, it appears pretty simple to identify that. Secondly, we are here today because those fees have been abused and if we put up to \$500, every water resource district is going to charge \$500. Why doesn't some of this already fall under the job description of the water resource boards?

Sean Fredricks: I appreciate your comment in terms of property review but generally speaking people will refer to their plat book to find the landowner. May times those plat books aren't completely accurate. It is more complicated and technical than just opening a plat book and it can be difficult to understand the deed.

Senator Myrdal: Wouldn't it be incumbent on the landowner to have that information and provide it to the committee?

Sean Fredricks: The application requires them to identify who owns the land but sometimes the owner is not properly identified.

(1:53:00 -1:55:30) **Karl Rockeman, Director, Division of Water Quality, ND Department of Health:** Testified Neutral on HB 1390 (See Attachment #7).

Senator Klein: So we have to take the lead because the clean water act mandates it and the stakeholders are involved and at the table?

Karl Rockeman: Yes, something has to be done and we would prefer it to be led by ND and our ND stakeholders rather than top down from a mandate from the federal government.

Senator Klein: This is a requirement and we are trying to take the lead, correct?

Karl Rockeman: Yes. The goal of the process is to get our stakeholders involved because this is a concern that covers everyone in agriculture.

Chairman Luick: Closed the hearing on HB 1390.

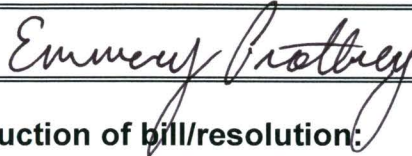
2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1390
3/16/2017
Job # 29311

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a limitation on county authority and subsurface drains on land that qualifies for prevented planting insurance coverage; relating to loans to farmers and subsurface drainage projects; and to provide for a legislative management study.

Minutes:

Chairman Luick: Opened the discussion on HB 1390.

Committee Discussion: The committee discussed who would be appointed to the subcommittee. Chairman Luick, Senator Myrdal, and Senator Piepkorn (pending) would be on the subcommittee.

Chairman Luick: Closed the discussion on HB 1390.

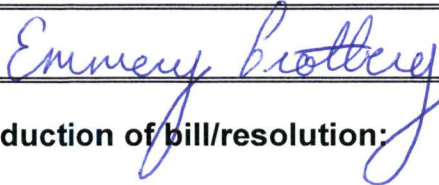
2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1390
3/23/2017
Job # 29655

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a limitation on county authority and subsurface drains on land that qualifies for prevented planting insurance coverage; relating to loans to farmers and subsurface drainage projects; and to provide for a legislative management study.

Minutes:

Attachments: #1 - 10

Chairman Luick: Opened the discussion for HB 1390.

Senator Klein: Legislative Council is recrafting the amendments for 1433 and they will be available tomorrow.

(1:30 – 10:30) **Chairman Luick:** Handed out amendments.

Chairman Luick: Look at amendment .03004, Page 2, Subsection 2.a, with whether water resource district should forward copies of all approved permits to the state engineer (See Attachment #1).

I have had conversations with the state engineer. They wanted statewide significance to stay in these bills and I said the amount of water that comes out of these systems is not worthy to think about statewide significance. It was asked if the drain board could send a copy of the applications in to the state engineer.

Committee Discussion: Senator Klein asked whether SB 2263 had been merged into HB 1390. Chairman Luick said he introduced all the changes as separate amendments so the committee could discuss them. Senator Myrdal said SB 2263 was addressed in the amendments but anything beyond that are new ideas.

Chairman Luick: How does the committee feel about sending applications to the state engineer?

Senator Piepkorn: So this is just to store them?

Chairman Luick: They are interested in keeping track of how many acres are tiled.

Committee Discussion: The committee discussed whether sending applications to the state engineer had been included in SB 2263.

(19:00) **Chairman Luick:** Is there any interest in including this amendment?

Senator Piepkorn: I don't see any problems with the resource districts forwarding a copy of the applications to the state engineer.

Senator Myrdal: To me, it is a redundancy because if the water resource districts have those records if statewide is a concern, they can contact the water resource districts and get those records. I question the reasoning as to why the state engineer should require that.

Senator Klein: I would support forwarding those copies because I thought we did that in the original bill.

Senator Piepkorn: I believe early in the testimony the state engineer had talked previously about having some regulatory say that we discounted and that would be gone but the depository of the records would remain with them.

Chairman Luick: We talked about that process but we didn't put that on the bill.

Senator Piepkorn: Do address Senator Myrdal, I don't think we have to worry about this leading to a slippery slope in state regulations. This is simply a library of a collection of data.

Senator Osland: What do we have in law today? Do we have to file these applications with the state?

Chairman Luick: I believe we still do have to file with the state.

Senator Klein: I believe we have to send a copy to the state.

Chairman Luick: The permitting is local.

Senator Osland: So it would simply be a courtesy.

(23:00 – 25:00) **Committee Discussion:** The committee discussed if the language was already in SB 2263.

Senator Piepkorn: Moved to Adopt Amendment 17.0868.03004

Senator Larsen: Seconded the motion.

Senator Larsen: I don't see the language in SB 2263.

Senator Piepkorn: This is just a central location and if there is a question, the state engineer doesn't have to go through the water district and all the information will be in one spot.

Senator Osland: Do we report surface drains to the state?

Chairman Luick: Yes.

A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent.

Motion carried.

Chairman Luick: Look at amendment .03005 Page 3, Subsection 3.a (See Attachment #2) which is including copies of certified mail receipts.

(29:00 – 34:30) **Committee Discussion:** The committee discussed the amendment. Chairman Luick clarified that the application is not complete until there is proof that the applicant sent the letter out. The committee put the amendment aside.

Chairman Luick: Look at amendment .03003 (See Attachment #3).

(35:00 – 39:00) **Committee Discussion:** The committee determined the language of the prepared amendments did not include the changes they wanted to make from SB 2263. Chairman Luick said the committee would proceed to discuss the ideas proposed by the amendments and take a straw poll and he would have legislative council draft a new amendment containing all of the changes the committee approved. Amendment .03003 would change 25 feet on each side to 20 feet. The committee agreed with the idea proposed in the amendment.

Senator Piepkorn: Moved to reconsider action taken on HB 1390.

Senator Larsen: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Chairman Luick: Look at amendment .03011 (See Attachment #4) Page 3, a. If the board has to procure technical evidence when considering an application, the board will not have to bear all the cost; it will be the cost of the applicant or, in some cases, the downstream landowner.

Senator Myrdal: I have a problem with that because it doesn't put a cap in whatsoever.

Senator Klein: I agree.

Committee Discussion: Senator Larsen shared a story about the cost a township incurred for technical evidence because of a landowner's resistance. Senator Larsen said because of that example, he could support the amendment. The committee discussed the language. Senator Myrdal expressed her concern that it would put landowners at the mercy of the boards.

Senator Osland: I think the operative word is that its cost. If a party or a landowner wants to do some tiling and it is going to cost a certain amount to engineer, he is doing it for his benefit. I can see cases where you get excessive but then the party that is doing the tiling has the opportunity to back out of it. The county is not for a benefit to landowner. The landowner probably should pay for whatever costs.

Senator Klein: Once again, the water district has revenue they assess and that is the responsibility we have given the water district. Their job is to use the revenue they have and determine whether or not these things cost more.

Senator Osland: I concur with the application fee. But I am talking about out of pocket costs to preform what needs to be done to perform the project. I am more familiar with open drainage laws and we all pay into those and the water resource boards don't pay into that; we the patrons pay for that.

Chairman Luick: If I am tiling and the drain board has a particular problem and I don't have the technical evidence, they would still have the right to not grant the permit they have the technical evidence.

Senator Myrdal: In this whole process I have asked and have not received a satisfactory answer about the money the counties give these resource boards. They have money and they are an entity we have allowed to asses. Every time it seems like they want to charge the landowners more money to improve their land. If a landowner wants to improve his land it is on his wallet but we are talking here is a governmental entity telling you that they don't agree with something and they will regulate you without definition in code and price that regulation on top of your expenses with no limitation. This can become a wide open checkbook when we are already levied for the services they do.

Senator Osland: I think what you are alluding to is the permitting process to pay for the right to do this and that should be a nominal fee. But if I have to go to a legal drain and the expense for doing a drop structure should be the burden of the person dropping the water. I agree that the water resource board shouldn't charge a fee to collect the fee; I am talking about out of pocket.

Senator Klein: What have you done in the last four years? How have these districts been able to function without adding this language?

Chairman Luick: An exorbitant \$1,500 fee is being charged by these drain boards for that permit. I am hearing that if they don't use those dollars up they will give it back but I fear it will never get returned. If think you should charge the person who is responsible for the cost: 1. If it is something that has to be done, it should be on the applicant. 2. If it is being used as a deterrent, it should be the downstream landowner. My county charges \$150 for their surface drain permits.

Senator Myrdal: We are not talking about the permit. We are talking about an uncapped and open ended expense incurred by the water district board being put on landowners.

Chairman Luick: Do we want to put a cap on here?

Senator Myrdal: My opinion is that I think it is so ambiguous you can't put a cap on it. I don't want landowners to be overcharged by an entity. I think the funding is there, I think it is rare that these cases come up and I think it is a scary thing to put in century code an open ended amount that resource boards can charge the landowner.

Senator Osland: What is in the code right now?

Chairman Luick: Nothing which is where the fee came from. They determined they can't do anything and they can't afford to go out and continue to collect technical evidence by themselves.

Senator Myrdal: I have not heard satisfactory answers from the resource boards as to the expenditure of the fee money.

Senator Osland: Would you suggest we suggest we leave the fees out?

Senator Myrdal: Yes. I will not vote for this because it is so ambiguous. But if I have to pass this bill out with a nominal fee that is acceptable but it is dangerous to take the fee out and say yes to this.

Senator Osland: I have no problems with no fees.

Senator Piepkorn: This proposed amendment has nothing to do with the fee, correct?

Chairman Luick: Correct.

Committee Discussion: Straw poll on whether to support the idea of amendment .03011: Chairman Luick, Senator Piepkorn, Senator Larsen supported the idea. Senator Klein, Senator Osland, Senator Myrdal opposed. Senator Larsen said he was considering opposing.

Chairman Luick: Go to amendment .03010 (See Attachment #5) Page 3, first line. A water resource board may charge a fee up to whatever number we decide. I put up to \$150 for the permit because that is what my county charges for a surface drain permit.

Senator Larsen: I don't want the fee.

Senator Piepkorn: It doesn't seem unreasonable to me; I think there should be a nominal fee.

(1:05:00) Committee Discussion: The committee discussed fees and the way the law currently reads. The committee was divided three to three on including a fee. Senator Klein suggested that the committee can consider the fee amounts at the conference committee.

Chairman Luick: Move to .03006 (See Attachment #6) Page 3, b. The change is to add in the word directly.

Senator Myrdal: Can you explain the purpose?

Chairman Luick: If an outlet is flowing into one of these outlets, they may not require a letter of approval.

Senator Larsen: So if I start my first 80-acre project and it is going into a pond, no letter will be required. And then right next to it, I start another 80-acres and link it to there, no letter. I can do my whole section into that pond and I don't need a letter, correct?

Chairman Luick: You can't link those systems up.

Senator Myrdal: That is the purpose of directly?

Chairman Luick: Yes. What is happening now is you could have 1,000 acres tapped into one system and the downstream impact could be severe.

Senator Larsen: That amendment would be less regulation, correct?

Chairman Luick: It would be more.

Senator Larsen: Then I am not in favor of it.

Senator Myrdal: It wasn't in the original we passed out of here so I have some concerns about it too. The reason we are dealing with this is because farmers started to do 79 acres.

Chairman Luick: The reason we are sitting here is because of abuses.

Senator Myrdal: The abuses are also from the other side. I think those abuses are already taken care of if we meld SB 2263 into here because it streamlines the 80-acre permit.

Committee Discussion: Senator Piepkorn, Senator Osland, and Chairman Luick said they would support the amendment and Senator Klein, Senator Larsen, and Senator Myrdal opposed the amendment.

Chairman Luick: Go to .03007 (See Attachment #7) Page 4, Subsection 3.e. We are looking at the concerns of property one mile after the outlet.

Senator Myrdal: In another part of the legislation, it talks about notification for the same landowners downstream within one mile, correct? So is this redundant or does it add something?

Chairman Luick: It just defines that person would be responsible for one mile downstream. After it gets beyond one mile, the applicant is not responsible.

Senator Myrdal: I read it the other way.

Chairman Luick: There has to be a limit to how far downstream someone can be held accountable. I think we should be limiting 1 mile. I see this as protection of the applicant.

Committee Discussion: The committee discussed the amendment. Senator Myrdal was concerned that the language was redundant. Chairman Luick said he wanted to ensure that the applicant would be protected. Straw poll: Senator Klein, Senator Osland, Senator Piepkorn, Chairman Luick supported the changes. Senator Myrdal and Senator Larsen were against the amendment.

Chairman Luick: Go to amendment .03008 (See Attachment #8) this was the consideration of that 60-day application.

Committee Discussion: The committee discussed the language in the amendment. The committee unanimously agreed with the amendment.

(1:28:45) **Chairman Luick:** Go to amendment .03009 (See Attachment #9). That refers to the definition of reasonable conditions. Go to .03002 (See Attachment #10) Page 2, Subsection 1.c.

Chairman Luick: The question here is whether we want the drain boards to have reasonable conditions put on systems that are under 80-acres. Some of these systems are put in without control structures so reasonable conditions as you read it would revert back that those reasonable conditions apply to systems under 80-acres.

Senator Myrdal: Absolutely not. This whole concept we have been dealing with this session is 80-acres and over. This is another way to circumvent the intent of the bill. Because reasonable, even if defined, is loosely defined and now I have a bureaucratic board over a landowner telling them how to take care of their land.

Chairman Luick: In cases where the outlet of water is not on private land, it is typically in township road ditches, county road ditches, assessed water ways, ponds, sloughs, etc. And that is what reasonable conditions is defining. It is whether we want to say someone has the right to outlet into a township ditch and not worry about maintaining that system. Also care of anything of that outlet after it is there. Whether the board has any authority to say to get something into condition.

Senator Piepkorn: I agree with Senator Myrdal that all discussions have been 80-acres and above. Also, what authority would the water board have?

Chairman Luick: I don't know. I'm sure that goes back to some civil law but if maintenance work has to be done, the expense goes back to the landowner.

Senator Myrdal: I think it is incumbent for us to remember we are dealing with subsurface water management and that other areas in the code the water resource board does have authority over all kinds of culverts but when it comes to this particular subsurface water

management, we are dealing with 80 acres and over. We put in three-eighths coefficient in here so it would be better. Under 80-acres is a slower flow. This is unnecessary.

Senator Piepkorn: Would these things that apply to ditches be already covered?

Chairman Luick: I really do not know that. I know if there is some regulation, I know it is not under the code we put in in 2011.

Committee Discussion: Straw poll: Senator Piepkorn and Chairman Luick agreed that 80 acres should apply. Senator Klein, Senator Osland, Senator Larsen, and Senator Myrdal opposed the amendment.

Chairman Luick: Go to .03009 (See Attachment #9) Page 4, Subsection 6. Language has been removed.

Committee Discussion: Senator Myrdal said .03009 makes the language confusing; SB 2263 makes the language clear. The committee unanimously opposed the amendment. The committee discussed how they were going to meld SB 2263 into HB 1390. Chairman Luick is taking the committee's preferences on the amendments to legislative council who is going to draft one amendment for the committee to consider.

1:50:15 Senator Klein: Didn't we want to change the 30-day notice to 60 days?

Chairman Luick: After discussing with Senator Wanzek, we decided we didn't want to put a minimum in here.

Senator Myrdal: On amendment .03003, Page 8 (See Attachment #3) that is addressed.

Committee Discussion: The committee discussed the timeline for action to be taken on an application. Senator Klein said that only the amendments that had unanimous support should be included in the final amendment.

Chairman Luick: Closed the discussion on HB 1390.

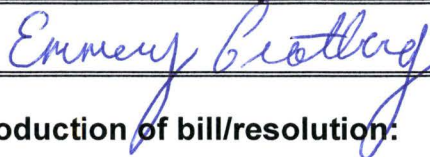
2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1390
3/24/2017
Job # 29675

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a limitation on county authority and subsurface drains on land that qualifies for prevented planting insurance coverage; relating to loans to farmers and subsurface drainage projects; and to provide for a legislative management study.

Minutes:

Attachments: # 1 - 3

Chairman Luick: Opened the discussion on HB 1390.

Harrison Weber, Intern, Legislative Council: The amendment is combining the committee's preference indicated by your straw polls. We were concerned with Page 3, Subsection 3.a working with the thirty-days and the automatic approval (See Attachment #1). I passed out a timeline from Claire Ness, Legislative Council, that explains that and she is comfortable with what it is trying to accomplish (See Attachment #2). Mr. Weber explained the timeline.

(4:00) **Chairman Luick:** On the last sentence of Subsection 3.a "unless notarized letters are received in which case they can meet immediately."

Harrison Weber: Correct. So if on day one, the person submits all the notarized letters and submits it, the board can meet the very next day. If all those letters are in there, then they shall approve the permit.

Chairman Luick: It is your understanding this is ok?

Harrison Weber: Yes. Miss Ness agrees that it is ok and does what you are trying to accomplish with the timeline.

Senator Larsen: At what point on Page 3, Subsection 3.a does it list the 60-day wording?

Harrison Weber: The 60-days are actually on Page 4, Subsection 3.f.

Committee Discussion: The committee discussed .03005 amendment (See Attachment #3) and decided to address it in conference committee.
Senator Klein thanked Chairman Luick for his work on the bill.

Senator Klein: Moved amendment 17.0868.03012.

Senator Osland: Seconded the motion.

Senator Klein: There is more work to be done in conference committee.

Senator Piepkorn: So these amendments do not include hand copies of certified mail receipts?

Chairman Luick: Correct. My amendment would have added that in.

Senator Larsen: Thanked the committee and Chairman Luick for the work on the bill.

Senator Myrdal: I want to echo that. I think you have spent an enormous amount of work.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Senator Klein: Moved Do Pass As Amended.

Senator Myrdal: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Chairman Luick will carry the bill to the floor.

2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1390
3/30/2017
Job # 29842

- Subcommittee
 Conference Committee

Committee Clerk Signature

Emmery Brothberg

Explanation or reason for introduction of bill/resolution:

Relating to a limitation on county authority and subsurface drains on land that qualifies for prevented planting insurance coverage; relating to loans to farmers and subsurface drainage projects; and to provide for a legislative management study.

Minutes:

Attachments: #1 - 3

Chairman Luick: Opened the discussion on HB 1390 and passed out amendment .03013 (See Attachments #1-2). The word "completed" was added to an application which means that as the water board receives the applications, there is a stipulation saying they can accept the application at that time or within the maximum of 60-days.

Senator Piepkorn: Where are you talking about?

Senator Myrdal: Top of Page 3, Subsection b.

Chairman Luick: The reason is because an individual could possibly come in with an application that is not completed and we want to make sure we are putting language in there that if after 60-days this is approved, it ensures everyone is doing their due diligence to make sure everything is ready to go.

If you look at your Christmas tree version, Page 7 (See Attachment #2) fourth line from the bottom changes the word "must" was changed to "shall" which means the water resource districts "shall" forward copies of these approved permits to the state engineer.

There was discussion on that same line on how we charge a fee for this work or if there is going to be a fee or if we were going to have the board determine who is responsible for cost. I think a good compromise is to charge a fee of \$150 maximum and the board then is responsible to send out notifications and certified letters to all of the participants of the project so it is not up to the applicant, it's not up to the downstream people, it is up to the board to do that project.

Senator Myrdal: I think that is a good idea for them to send that out. How does that fit within the timeframe of the resource board approving the application?

Chairman Luick: I don't have an exact answer because each case will be different.

Senator Klein: You are saying the application fee goes with the completed application at the time. When you sign up, you bring your completed application which we are requiring which is a good idea. Then the water board goes out and makes those contacts rather than the applicant, correct?

Chairman Luick: Correct. We added the word "completed" to wherever there was necessary application verbiage.

I have a few other additions. One of them is not on here but I think it needs to be considered and I have emailed. The concern I have is if we have the twenty-foot setback on each side of a rural water line with these perforated tiles, my suggestion is that any line that comes in that forty-foot space has to be either a gasketed pipe or a solid tile pipe either under the rural water system line or above it to transfer it from the field, across that line, and out. The reason being to make that area in that forty-foot space nonperforated pipe in there because you could have a leak in that area. Anything that comes across or around those water supply line pipes either needs to be a gasketed pipe or a solid nonperforated tile line.

Senator Klein: Is it your intent that we continue to tweak this or are these things you are going to use as discussion in the conference committee?

Chairman Luick: My hope is if we can tweak this now, we can get this to a point where the House would concur on our changes so we would not have to have a conference committee. It makes no difference to me but I would like to have the support of this committee if we go into conference committee on these ideas. I feel these things are important.

Senator Klein: I have spoken with the bill sponsor and a few other senators and we liked everything but now if we start adding things I am not sure I would approve of that without additional discussion.

Chairman Luick: In 2011, this came to us right out of the shoot and we spent a lot of time jawing about the language and a lot of the things put into the law came out prematurely. I want to reiterate that I want to get things more in line so the drain board, farmer, or applicant doesn't have to get legal advice on how to consider these projects. I think the little bit of effort we put in now is going to save us from headaches a long time from now.

Senator Piepkorn: What percentage of a project might that affect and how does that affect the overall project when you have solid pipe going along for a certain distance?

Committee Discussion: Chairman Luick explained how perforated pipes worked to Senator Piepkorn and asked for clarification on setback language. Chairman Luick and Senator Myrdal discussed how the language about easements should read. Senator Klein suggested the language remain in the bill.

(20:20) **Eric Volk, Executive Director, Rural Water:** Explained to the committee some of the issues with some of the easements and said that the language would help clarify the ones that had issues.

(22:00 – 30:00) **Committee Discussion:** Chairman Luick discussed with Mr. Volk the setbacks for rural water lines and easements. Mr. Volk said that he wanted to ensure that

water resource districts couldn't put a higher conditions on top of an easement. He said it would also help in cases where an easement was old and the landowner didn't have respect for the easement. In response to a question from Chairman Luick, Mr. Volk said that if there was a footage associated, they would have to visit with the rural water system because there are conditions on the easement. Mr. Volk said the most important thing was to have language honoring the existing easements. He said that the language requiring solid pipe was not their priority since the water resource districts could always communicate with the farmers.

Chairman Luick: We won't do anything with that amendment. Go to Page 10, Christmas tree version, Line 11 (See Attachment #2). I would like to include "of the systems outlet." The reason for that is because a system could be designed and if the systems outlet is on the top corner of that quarter, that means the affected property within one mile is still that same farmers owner so there is no need to contact anyone else. We are not going from one mile downstream of the property itself, we are going from the outlet. What can happen is that you could have problems with someone who doesn't want you to tile downstream but the reason why we have that one-mile downstream impact is so that the water has a chance to soak in or evaporate and this is self-inclusive of your own property.

Senator Myrdal: I think that makes common sense because you would alleviate some of the bad actors.

Senator Myrdal: Was the emergency clause on the last version?

Harrison Weber, Intern, Legislative Council: The emergency clause is new; it was not on the amendment we adopted last time.

Chairman Luick: I crafted that so we could get projects moving this spring. Page 10, Subsection 7, Lines 29 and 30. It is in code that it is an infraction if someone tiles a field of more than 80 acres and does not get a permit. The infraction is a fine, not a misdemeanor. If you go against the system you could suffer a fine consequence. When we are moving this around, that language of an infraction is pulled out of code and it was in my amendment in SB 2263 but it didn't get put on so legislative council said it has to be put back in here if we want that to happen.

Line 30 includes if you don't get that permit, the drain board can apply a fee of \$500. I believe as they work, if you don't resolve the issue the amount will go up to another level of severity.

Senator Piepkorn: If a person does install the system without obtaining the permit, do the fines keep mounting or is the penalty that they have to shut the system down?

Chairman Luick: I don't know. I don't know how much power the county has.

Senator Myrdal: I think we are entering an area that if we leave it open as an infraction I understand it needs to have teeth. The intent is good but I am concerned about who enforces it and how often. If we leave it an infraction, I need to know how often the infraction can be posed

Chairman Luick: If that infraction increases in construction that is the way those infractions work. You are fined until you fix the problem.

Senator Klein: Did you suggest that was in SB 2263?

Chairman Luick: It is already in code.

Senator Klein: Is this an issue that happens a lot?

Chairman Luick: I do not know. I know the FSA has some ways of controlling that where you get kicked out of the farm program.

Senator Klein: We certainly don't want to go to a misdemeanor. If infraction is current law, wouldn't we just leave it?

(40:00 – 50:00) **Committee Discussion:** The committee reviewed the classification of penalties (See Attachment #3). The committee discussed what language to include in the bill relating to infractions and right-of-ways. Senator Klein said the committee had not discussed the language on Page 9, Subsection c, Christmas tree version: "that directly outlet into legal assessment or public highway right-of-way." In response to a question from Senator Piepkorn, Senator Klein said that the language could provide additional power to the water district if the language doesn't specify where the drain is going to. Chairman Luick said it was unintentionally included when legislative council drafted the amendments. The committee continued to discuss redrafting the amendments.

Chairman Luick: asked Representative Headland if there were any further issues with the bill.

Representative Headland: We had talked the other day about the motorized letter and issuing for the permit. I'm on the .03012 version Page 9, Line 14 and we had discussed changing the language from "the board may" to "the board shall not require a letter of approval." I noticed that change did not get made on the .03013.

Committee Discussion: Chairman Luick explained the change to Senator Piepkorn. The committee discussed the amendment in context.

(54:30) **Mike Dwyer, ND Water Resource Districts:** I spoke with Senator Wanzek and my understanding is that he agreed to the removal of the words Senator Klein spoke about. If you look at the language, if the only time you can impose a reasonable condition is when it outlets into a roadway or a legal drain, then most of the time you would not be able to impose that condition for the rural water systems either. The only time you would be able to impose a condition is when it outleted into a road right away or an assessment drain. Again, I spoke with Senator Wanzek about that and my understanding was because reasonable conditions is defined, that is the limit to what they can do. We also hold workshops for water managers every spring. Water manager terms begin January 1st and your current language says that a water manager can't start his term until he has taken his water management course, if you would consider saying within three months that would be workable because we hold our workshops in March and April. The way you have it crafted, we would either have to our workshops on January 2nd.

(56:30 – 1:15:45) **Committee Discussion:** Chairman Luick asked about the language of “manager” and “member” on Page 6 of the .03013 version. In response to a question from Senator Piepkorn, Mr. Dwyer said that usually only one manager resigns their terms, so the other two or four water managers review applications until the new water manager takes the workshop. The committee agreed that including the three-month language was acceptable. In response to a question from Senator Larsen, Chairman Luick said that it was important to include the language in century code because the water districts write their own rules and there is such variance across the state. Senator Klein said the course was important because the training covers all issues of draining.

Senator Myrdal said the language on Page 9, Line 21-23 (See Attachment #2) needs to remain because it would be too open ended if removed.

Representative Headland agreed that the language should remain but was concerned that having the word “directly” may cause some issues.

(1:16:00) **Aaron Carranza, ND State Water Commission:** I wanted to ask a question on Page 10, Sections 4 and 5 has reference to the state engineer as far as applications being denied or liability. The state engineer’s office is now regulated due to the new language to development of an application so I question the purpose of that language as a necessity.

Chairman Luick: The state engineer has been pulled from this entirely so I don’t know why you are included in that.

Aaron Carranza: I wanted to let you know that could be clarified

Chairman Luick: The only way I could identify you would become involved is if there were some sort of an injunction out against a drain board that they could not operate as that board any longer and the state engineer’s office would come in and actually take care of these permits temporarily. The language in here identifies that the state engineer may not be liable for any of this if you had a make a call on any permit.

Senator Myrdal: Are we talking about getting rid of both or just taking the state engineer wording out because the state engineer doesn’t have authority over water resource boards so if a district gets sued, they don’t get authority over the county, correct?

Aaron Carranza: We don’t hold sway over the water resource boards.

Chairman Luick: We are talking about taking the words “state engineer’s office” out.

Aaron Carranza: On the same vein of water manager training, with deadline for technical evidence, what kind of information can you glean if the application is submitted in January and you have to collect technical evidence in February. What kind of site visit can you glean if you have snow pack, for instance?

Chairman Luick: To me, as an excavator and contractor, snow doesn’t stop me in any manner. If I find out what an elevation is in a ditch, I will find that. I don’t think that should be hindering these permits.

Aaron Carranza: We support the ability for water resource boards to develop technical evidence. In light of the fact that the fee had been largely removed/reduced the water resource board now being further educated on what the process is, they would have the expertise on their own to go out and look at a site and develop whether or not there is a concern and that should be part of the consideration when a permit should be approved; not just what an applicant or downstream landowner submitted.

Chairman Luick: We have had discussions about the fees and whether the technical evidence should be gathered by the upstream landowners, the downstream landowners, or the board. We talked about raising the fee to \$150 maximum so the board could be sending out these letters of inquiry but then the board I feel should be hired by the downstream or upstream landowner to get any technical evidence if they so choose. So that board is going to be taking it upon themselves whether they want to get into the mess. It is the responsibility of the landowners to work things out with the board themselves and any costs associated.

Aaron Carranza: The last point is about infractions and how those issues are resolved. A few years ago, the Attorney General issued an opinion that Section 61-32-07 and 08 apply to subsurface water management and has the complaint process outlined in century code so there is administrative remedy outside of the court system to address whether or not a system was put in without a permit.

Committee Discussion: Chairman Luick said he would bring the changes to legislative council to draft a new amendment.

Chairman Luick closed the discussion on HB 1390.

2017 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1390
3/31/2017
Job # 29869

- Subcommittee
 Conference Committee

Committee Clerk Signature

Emmey Protherg

Explanation or reason for introduction of bill/resolution:

Relating to a limitation on county authority and subsurface drains on land that qualifies for prevented planting insurance coverage; relating to loans to farmers and subsurface drainage projects; and to provide for a legislative management study.

Minutes:

Attachments: #1 - 5

Chairman Luick: Opened the discussion on HB 1390. Chairman Luick handed out .03014 amendment (See Attachments #1 and 2).

Senator Klein: Moved to reconsider action taken on HB 1390.

Senator Myrdal: Seconded the motion.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carries.

Senator Myrdal: Does this amendment include all the changes we spoke about yesterday?

Harrison Weber, Intern, Legislative Council: There were four of the six things we can make changes to. We have to leave in "may not" we have to leave in because that is our drafting language throughout the code and any reference to "shall not" is a mistake and should have been changed. The "member" and "manager" language, legislative council advised to not make that change as it is used throughout other areas and is used interchangeably.

Senator Myrdal: So we are looking at in .03014 is allowing three months for training, reinstated the language on Page 9, Line 22, we added "of the systems outlet" on Page 10, and we removed on Page 10 the reference to state engineer. Are those the four changes present in this amendment?

Chairman Luick: Correct.

Senator Myrdal: Moved to Adopt Amendment 17.0868.3014.

Senator Klein: Seconded the motion.

Senator Osland: I have concerns from my local board about language on Page 9, line 22. The “outlets directly into a legal assessment drain or public highway right-of-way.” I am not sure I understand it completely, but our local water board is opposed to that. Can we call Mr. Dwyer to explain that?

Mike Dwyer, ND Water Resource Districts: Our position is that there are probably one or two permits out of ten that actually directly outlet into a road right-of-way or an assessment drain, and I think that is included in your amendment .03015. Language in lines 23, 24, and 25 narrowly define reasonable conditions. I understand there is a difference of opinion on this; our opinion is that water boards should be able to attach those limited conditions on any permit because why shouldn't a landowner have those same protections as a road or an assessment drain but that is the reason your water board would like those words removed.

Senator Osland: So we have the language “outlets directly into a legal assessed drain or public highway right-of-way. If we have an outlet that goes into a highway ditch, what does this do or not do?

Mike Dwyer: In that instance, the water board could impose or attach one of those narrowly construed conditions that you defined: erosion control, riprap, and control sutures. If that outlet was twenty yards from that highway ditch, the water board would not have authority to attach any conditions, including rural water. Because the language says, the only time you can attach conditions, is when it directly outlets into the road or assessment drain. That is a smaller percentage of the projects of the systems.

Senator Osland: Every system I have seen is dumped into a ditch of some kind. I am having a hard time visualizing a case where the water doesn't go into a ditch.

Mike Dwyer: Many of them flow into a natural water course. There's assessment drains, road right-of-ways, natural water courses, ponds and sloughs and lakes, etc. There are ninety-five out of a hundred subsurface drain projects don't have any outflow. In Senator Wanzek's case, he showed pictures where there was some artificial construction from the outlet down to where it entered the state land and he was going to recede that and shape it and do the erosion control and it was good.

Senator Klein: The word Mr. Dwyer suggested was “any”. Currently under this language, it would only be directly into a legal assessment. When he said they would have authority over any, that would suggest to some that the water board could decide that they could stop any project. As suggested, the word “any” now becomes a boarder degree of authority that the water board has and this language we have somewhat limits that to directly into a legal assessment or public highway right-of-way. That is the difference; do we want to grant them more authority or do we want to somewhat limit that and that is where that language came from.

Senator Piepkorn: I would interpret that differently. Rather than the ability to shut the project down, the water resource boards may attach reasonable conditions as opposed to giving it free reign

Senator Myrdal: You mentioned in your testimony that you questioned shouldn't we afford to landowners protection themselves? My question is shouldn't the landowner decide that for themselves instead of micromanaging?

Mike Dwyer: This would not give the water board the ability to stop a project. The law is clear that water boards cannot deny permits. Page 10 is where it describes unreasonable harm and that description is very limited to which is the only situation that a water board could deny a permit. You have narrowly defined the kinds of conditions. You have said it is limited and it is limited so you can't do anything more than one mile downstream. This condition language does not afford any opportunity to stop a project. What it does for those narrowly defined conditions, including rural water, the water board can attach those conditions for a subsurface based on technical evidence that there is one of those conditions that need to be met.

Committee Discussion: The committee discussed which amendments to vote on. Senator Klein said the .03015 version is exactly like the .03014 version except a line was struck the line (See Attachments #3 and 4 and 5). Senator Larsen and Senator Myrdal said they did not like the fee.

A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent.

Motion carries.

Senator Osland: Moved to adopt amendment 17.0868.03015,

Senator Piepkorn: Seconded the motion.

Chairman Luick: My opinion is that there are counties that are doing a fine job and there are counties that are not. That is why we have changed some of the language earlier on because of that situation. I really believe that this is necessary because in an instance in the Red River Valley where there is a need for not only water control management but also nutrient management. There are damages that can happen and this gives a little more protection of downstream interests.

Senator Larsen: I am looking at the bill before we amended it and it doesn't have that language in here. We have the study in there for the nutrient management and we have the emergency clause. As I look through the other bills, that language was in there throughout the process but when we brought the bill back, this suddenly became an issue. The discussion about the language didn't happen until we brought the bill back. I am confused about that. It was my intention that it would come to conference committee and we would iron out that fee and this issue. I will not support this amendment.

Chairman Luick: I will take blame because I saw what we ended up in 2011 and the more time we spend on it now, the less of a headache it will be for everyone.

Senator Larsen: I think the issue on this whole bill that has come forward is the fee.

Chairman Luick: By capping that fee at \$150, and then putting in there that the boards need to take it upon themselves to send out the certified letters, that was the effort to resolve that. And to do away with the gathering of technical information from those boards if they wanted to do that on their own behalf by hiring out to the upstream or downstream interests, then let those parties pay for it themselves and keep the board out of that effort.

Senator Piepkorn: Referring to Senator Larsen remarks, the nutrient study is a separate issue, the fees are separate issue, the main thing is some local assessment of the project. There have been several concessions both ways and concerns about those who want their agricultural land tilled and people who do the tiling have made several concessions and the water boards have as well. I believe this will really ease the concerns of local input. It might come back in a couple of years where we are debating reasonable conditions but these people have also worked with farmers and deserve some consideration when it comes to attaching reasonable conditions. It seems to me that removal of the language allows some work arounds for some local oversight and control by allowing an outlet around and away from the public and I think the local boards deserve that consideration.

Senator Klein: The term Senator Wanzek used the other day was that he was osculating over one issue and then the next. I am not the expert. Generally, I go to the sponsor and I try to understand this. I am not sure where I am anymore but at this point to leave the language out and have you continue to listen and work this out through the process would be good but I will not support this amendment

Senator Myrdal: I think everyone knows I will not support this amendment. At the end of the day, I represent landowners and farmers and we need to leave it at their local control as much as possible and I think most landowners who are engaging in tiling are responsible and I air on the side of giving them more leeway in their authority over their lands so I will not support this amendment.

A Roll Call Vote Was Taken: 3 yeas, 3 nays, 0 absent.

Motion fails.

Senator Larsen: Moved Do Pass on Engrossed HB 1390 As Amended.

Senator Myrdal: Seconded the motion.

Senator Klein: The committee is split on that issue. That will be one you will have to keep considering and see where you wind up. I know there are still issues with fees in the House. I think we provided a reasonable fee and I also like the fact that we are providing that the water boards do some of that leg work and spend some of that fee money to get the job done. This committee is down to that one line and that is pretty close. I am recommending you continue to work on that and we would probably be acceptable to whatever you come out with in the end.

Senator Piepkorn: The fact is that if this bill doesn't pass, the tiling of agriculture land would not come to a grinding halt by any means. Several people who are in the business know that for the most part, it goes along well. There may be some significant obstacles here and there but it wouldn't stop the industry dead in its tracks.

Senator Klein: If we kill this bill, we will not have the managers receive training nor have the nutrient study. SB 2263 is over in the House and will get passed and it does not have that language in that we have been debating.

Chairman Luick: It does not.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carries.

Chairman Luick will carry the bill.

March 23, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits, and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
3.
 - a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
 - b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
 - c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other

ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

CS
3124-2
1 of 4

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

CJ
3/24/2017
2 of 4

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must shall forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

C-3
3/24-2017
2 of 4

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
- 3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
- b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
- c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other

CJ
3/24/20
4 of 4

ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; to provide for a legislative management study; to provide for a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Within three months after the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

On
3/31/17
2 of 5

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. ~~Installation of an artificial subsurface drainage~~ subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2.
 - a. ~~The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system~~ a subsurface water management system that requires a permit under this section must submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts must ~~shall~~ forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without

UN
3/31/17
3 of 5

~~first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

- 3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

- b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.

- c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseedling of disturbed areas, installation of riprap or other ditch

CR
3/31/17
4 of 5

stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
 - 7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

en
3/31/17
5 of 5

Renumber accordingly

March 31, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; to provide for a legislative management study; to provide for a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Within three months after the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. ~~Installation of an artificial subsurface drainage~~ subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2.
 - a. ~~The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system~~ subsurface water management system that requires a permit under this section must submit ~~an~~ a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. ~~Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts must~~ shall forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without

~~first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
 - b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
 - c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat

and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
- e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
- f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
- 5. A water resource district board may not be held liable to any person for issuing a permit under this section.
- 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
- 7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3/23
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1390

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 17.0868.03004

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Piepkorn Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal		✓			
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 5 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/23
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1390

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: Withdraw amendment 17.0868.03004

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Piepkorn Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/24
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1390

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 17.0868.03012 Title- 64000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Klein Seconded By Sen. Osland

Senators	Yes	No	Senators	Yes	No
Senator Luick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Piepkorn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Myrdal	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Klein	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Larsen	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Osland	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/24
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1390

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Klein Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Luick

If the vote is on an amendment, briefly indicate intent:

Date: 3/31
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1390

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Klein Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/31
 Roll Call Vote #: 2

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1390**

Senate Agriculture _____ Committee

Subcommittee

Amendment LC# or Description: 17.0868.03014

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Myrdal Seconded By Sen. Klein

Senators	Yes	No	Senators	Yes	No
Senator Luick		<input checked="" type="checkbox"/>	Senator Piepkorn	<input checked="" type="checkbox"/>	
Senator Myrdal	<input checked="" type="checkbox"/>				
Senator Klein	<input checked="" type="checkbox"/>				
Senator Larsen	<input checked="" type="checkbox"/>				
Senator Osland	<input checked="" type="checkbox"/>				

Total Yes 5 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1390**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 17.0868.03015

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Osland Seconded By Sen. Piepkorn

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal		✓			
Senator Klein		✓			
Senator Larsen		✓			
Senator Osland	✓				

Total Yes 3 No 3

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/31
Roll Call Vote #: 4

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1390

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Larsen Seconded By Sen. Myrdal

Senators	Yes	No	Senators	Yes	No
Senator Luick	✓		Senator Piepkorn	✓	
Senator Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Luick

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1390, as engrossed: Agriculture Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1390 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; to provide for a legislative management study; to provide for a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Within three months after the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts must shall forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.
 - b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest

assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
- b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
- c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.
- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.

- e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
- f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
- 5. A water resource district board may not be held liable to any person for issuing a permit under this section.
- 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
- 7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2017 TESTIMONY

HB 1390

House Ag Committee

HB 1390

Please support bill HB 1390.

Below is my exchange with attorney KaleVan Bruggen from Rinkee Noonan.

Chad Weckerly's Questions

I am getting ready to fill out this tile application. The Sheridan county water board seems hell bent on not allowing any tile application to go through. There is one board member pro drainage and one that is in the middle with the rest against any drainage.

I am writing you because this is the exact regulation they have passed in that county. Can they force permanent easement? ND doesn't even allow perpetual easements.

Do they have the right to the inspection of property as they laid out here?

Do they have the right to take the monies on the application if those dollars are not used for expense on the application?

Seems like their right to contact all landowners in an affected area is their attempt to stir up trouble. Why not certified mail notifications from the person filing the application?

Thanks,
Chad Weckerly

Office : 701-962-3343
Mobile: 701-793-7382
farmerchad@weckerlyfarms.com
www.weckerlyfarms.com

#1
2/10/17

1

Kale's response

Chad,

Here are some detailed answers to your questions below. I have received countless complaints that the Sheridan Water Resource District has told landowners in that county that they do not permit drainage tile in Sheridan County, period, because everyone is wet and there is nowhere for the water to go. That is not permissible. You are dealing with a very difficult Board in that county. The answers below provide the legal answers to your questions; unfortunately, the reality here might be that if the Board flat out refuses to grant your permit and it otherwise meets the legal requirements, you may need to appeal their decision to the Sheridan County District Court for review. This must be done within 30 days of the Board's decision.

I have had clients in North Dakota who have gone forward with major projects that, under the law, require permits because the Water Resource District has frustrated the process so greatly. To date, the Board has not done anything. I can't advise that route as the Board would have the authority to order the drain blocked until a permit is drained. But I think it shows just how frustrating the behavior of some of the County Water Resource Boards has been.

Call me if you have any questions.

Permanent Easements from Downstream Landowners

The Board cannot force a permanent easement. A water resource district may only require a flowage easement or written permission from the current downstream landowner where an investigation by the water resource district or a downstream landowner within one mile shows that the proposed drainage will flood or adversely affect lands of downstream landowners in violation of the reasonable use principles within one mile. This language is found in N.D.C.C. § 61-32-03.1.

By requiring an applicant to obtain written permission or an easement for a drainage project from a downstream landowner prior to submitting the application to the water resource board, the water resource district gives downstream landowners unfettered power to stop drainage that might otherwise comply with the principles of reasonable use. Giving downstream landowners this power violates the property right to drain excess waters under the doctrine of reasonable use and constitutes a "taking" of that property right. N.D.C.C. § 61-32-03.1 requires that the water resource district or the downstream landowner within one mile of the project demonstrate to the water resource district board that the proposed project will flood or adversely affect downstream lands. The standard for "flood or adversely affect downstream lands" must be an investigation that considers the project in light of the principles and standards under the doctrine of reasonable use. Any other construction would create a conflict between the statute and the constitutional "takings" clause.

Permanent Easements from Downstream Road Authorities (Counties, Townships)

A water resource district may only require that an applicant for installation of an artificial subsurface drainage system proposing to drain into a highway right-of-way obtain a permit from the road authority for such drainage if an investigation by the water resource district or the road authority demonstrates that the proposed subsurface drainage project will flood or adversely

affect the highway right-of-way. This is the same rule that applies to the question of getting easements from downstream landowners.

Road authorities do not receive special status under the law of drainage. It has been said by the Supreme Court of South Dakota, for example, that the right to drain over or onto lower property of another, without compensation for the privilege (or without paying damages) is the same whether the upper land is the farm of an individual or a public highway. *See La Fleur v. Kolda*, 22 N.W.2d 741, 743 (S.D. 1946). The principal here is that when a drainage permit application is being processed under N.D.C.C. ch. 61-32, the road authority is a downstream landowner in the same status as downstream landowner farms and individuals.

As a government entity or road authority, the road authority may be permitted to adopt regulations respecting the use of its right-of-ways. Such ordinances or resolutions may include regulations respecting the use of right-of-ways for drainage purposes. Again, however, regulations of highway right-of-ways must not go so far as to prohibit the right to drain property of excess waters within the doctrine of reasonable use.

If a road authority has adopted a permitting procedure within its authority, then an applicant for a subsurface drainage system may need to approach the road authority and apply for a permit. The permit, if obtained, may serve as the written permission needed to satisfy the water resource district. However, if an investigation by the road authority or the water resource district cannot demonstrate that the proposed project will flood or adversely impact the highway right-of-way, the water resource district cannot deny the drainage permit based on the applicant's failure to have first obtained a permit from the road authority.

Inspection Rights

In my opinion, a water resource district board does have the authority to inspect the property subject of the permit application. N.D.C.C. § 61-32-03.1 permits the water resource district to conduct an investigation; therefore, if the purpose of the inspection is limited to investigation of the property for evaluation of the permit application, my opinion is that the water resource district would have the authority to do so.

Permit Application Fees

There is no authority in the Century Code for the District to assess costs incurred in the course of investigating applications for subsurface drainage systems under N.D.C.C. § 61-32-03.1. In fact, Attorney General Letter Opinion 2012-L-01 dated January 10, 2012 expressly states "[t]here is no requirement in section 61-32-03.1 for an owner of land to pay for an investigation" and that "such a directive would not be authorized under section 61-32-03.1 if it is not expressly stated." See N.D. Att'y Gen. Op. 2012-L-01 (Jan. 10, 2012).

Notice to Downstream Landowners

N.D.C.C. § 61-32-03.1 requires notice to all landowners downstream of the project within one mile. The purpose of the notice requirement is to permit the downstream landowner, who has the burden here, to show that he or she will be adversely affected or flooded by the project. If the Board determines the downstream landowner has met that burden, then the statute permits the Board to attach a condition to the permit that you must obtain a flowage easement prior to

construction; however, the statute also states that if the project outlets directly into an assessment drain, natural watercourse, or pond,

slough, or lake, then the Board cannot require that you obtain an easement. In my opinion, nothing legally would prevent the Board from notifying other members of the public, but the Board cannot deny your permit application unless it determines the project is of statewide significance or that the project will flood or adversely affect landowners within one mile downstream.

Kale R. Van Bruggen
Attorney

RINKE NOONAN
Suite 300, US Bank Plaza
P.O. Box 1497
St. Cloud, MN 56302
(320) 656-3522 Direct
(320) 656-3500 Fax

Sheridan County Water Board Drainage Regulations

The Sheridan County Water Board has approved the following regulations for this county, on March 28, 2013.

The Sheridan County Water Board reserves the right to add the following regulations to the existing state and/or county regulations involving above ground or subsurface drains.

All landowners or persons who plan doing any drainage, must have written and signed permission from all parties downstream. This would include landowners, township boards and/or county commission boards. These signed documents will then be kept on file at the Sheridan County courthouse.

The Sheridan County water board wants all landowners or persons involved to be contacted in the drain area, three (3) miles downstream and/or until the drain would flow into a natural flow right away. This would be after it leaves the draining landowners property.

The Sheridan County waterboard reserves the right to inspect this property at anytime before, during and after an application form has been returned to the waterboard. The water board and/or NRCS reserve the right to inspect drain tile and/or pipe before, during and after installion. This tile or pipe must meet their approvable and conditions before being installed.

Anyone who applies for a drain application, unpond its return to the courthouse, must submit a check or cash in the amount of \$1000.00, this is not refunded. This money will be used to cover expenses involved in the drainage application.

Also all landowners or draining persons will be subject to cover any or all additional costs, that the waterboard, township boards and county commission boards deem necessary to protect property downstream.

#2



Your voice for wheat and barley. www.ndgga.com

**North Dakota Grain Growers Association
Testimony on HB 1390
House Agriculture Committee
February 10, 2017**

Chairman Johnson, members of the House Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). Through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council our Association engages in domestic policy issues on the state and federal levels on behalf of North Dakota barley and wheat farmers. NDGGA appears before you today in support of HB 1390.

Chairman Johnson, members of the House Agriculture Committee, the North Dakota Grain Growers Association supports orderly water management. For years we have advocated for sensible laws, rules and regulations that promote orderly water management for North Dakota agriculture and for the state as a whole. When properly instituted water management laws provide for orderly water management opportunities for those able to engage in those activities and at the same time protect downstream and the state's interests. However when water resource districts use their authority to thwart orderly water management legislation must be put in place; thus the genesis for HB 1390 and thus NDGGA's support for the legislation.

To begin with is it unreasonable to require a water manager to have knowledge about water management? Managing a resource so vital and at the same time so controversial in North Dakota should require knowledge and ongoing education of the subject matter; therefore the provisions in section 2 of the bill are a critical part of the legislation. Additionally elimination of excuses for water resource board inaction which are found in sections 4, 5 and 6 of the legislation are essential for institution into law. Too often water resource districts use ambiguities in the law as a crutch for their inaction. Finally section 7 of the bill is a critical component of the legislation. Any nutrient management plan contemplated by the North Dakota Department of Health must have legislative review; without legislative review allowing the North Dakota Department of Health to arbitrarily issue rules and regulations regarding nutrient management is a disservice to North Dakota agriculture and to North Dakota as a whole.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

Therefore, Chairman Johnson, members of the House Agriculture Committee, the North Dakota Grain Growers Association would respectfully request your favorable consideration of HB 1390 and would ask for your Do Pass recommendation.

3
2/10/17
HB 1390

**RICHLAND COUNTY
WATER RESOURCE DISTRICT**

MANAGERS:

Gary Friskop, Chr. (Wahpeton)
Arv Burvee, Vice Chr. (Fairmount)
James Haugen (McLeod)
Don Moffet (Barney)
Robert Rostad (Colfax)

SECRETARY /TREASURER:

Monica Zentgraf
(701)642-7773 (Phone)
(701)642-6332 (Fax)
mzentgraf@co.richland.nd.us (E-mail)

CIVIL TECHNICIAN:

Justin Johnson
(701)642-7835 (Phone)
(701)361-9780 (Cell)
justinj@co.richland.nd.us (E-mail)

DATE: February 10, 2017

FROM: Arv Burvee

RE: HB 1390 Testimony

The Richland County Water Resource Board [RCWRB] is opposed to the language in HB 1390 relating to water resource districts. I want to specifically address Section 61-32-03.2 Prevented Planting Coverage- Permit Exception.

Allowing landowners to install subsurface drainage systems [drain tile] which qualify for prevented planting coverage under the Federal Crop Insurance Act without permits is not in the best interest of rural residents and landowners. While the language in this bill would be great for those wishing to install drain tile because it gives them free reign, it would not protect the legal assessment drains, paid for by all landowners within the assessment districts, nor would it protect downstream residences or downstream landowners. It is the duty of Water Resource Boards to protect all citizens, not just a select group.

The RCWRB supports the use of drain tile, but feels strongly prevented plant land needs to go through the same permitting process as land which does not qualify for prevented planting coverage. The bill states the land only needs to "qualify" for prevented planting; therefore, this exception would apply to a huge amount of land. It is our understanding the sponsor has indicated the intent of the bill is that the exception applies only to land which actually obtains prevented planting coverage, but even if that it is the case, it still applies to a great deal of land.

Since prevented planting is climate related, it is very likely there would be multiple quarters of land in one section and multiple sections being tiled in the same timeframe. Potential impacts to downstream landowners would be greatly increased due to the number of acres involved. Under this bill, downstream landowners would be completely ignored. Those who want to install drain tile and know there are downstream concerns would use this permit

/

exception as a way to circumvent the downstream issues. Water Resource Boards would not be able to apply conditions to protect downstream landowners, residences, or the legal assessment drains.

Prevented planting is a spring related issue, so landowners would still have ample time to obtain their permits and get the tile installed. For these reasons we ask that the language pertaining to subsurface drainage of prevented plant land be removed from HB 1390.

Thank you for your time and your consideration.



4

Ducks Unlimited, Inc.

To: North Dakota House Agriculture Committee
From: Eric Lindstrom, National Mgr. of Agriculture Policy, Ducks Unlimited, Inc.
RE: Opposition Testimony on HB1390
Date: Friday, February 10, 2017

Good morning, Chairman Johnson, and distinguished members of the committee. For the record, I'm Eric Lindstrom, Ducks Unlimited's National Manager of Ag. Policy, from Bismarck. I appreciate the opportunity to testify today on behalf of our more than 6,000 grassroots members in North Dakota and more than 1 million supporters nationwide. As a science-based habitat conservation organization, we're focused on conserving wetlands for waterfowl, wildlife, and people.

Before I get into the specifics of the bill, I'd like to first provide a little background information or context for the basis of our concerns.

North Dakota's wetlands are a globally unique resource home to 900 different plant and animal species. Unfortunately, ND has already drained half of our original wetlands (4.9M acres) and we continue to lose the remaining ones (2.4M acres or only ~5% of our state's total land area) at an alarming rate (Dahl 1990, 2014). These wetlands are also a major driving force behind ND's \$1.4 billion hunting and fishing industry each year (Taylor et al. 2013).

But, this bill obviously effects much more than just wildlife.

These "natural assets" provide many ecological and societal benefits for our state and its residents. And, the detrimental effects of tile drainage on wetlands, wildlife habitat and downstream water quality are well-documented and supported by decades of independent peer-reviewed research (see Blann et al. 2009; Figure 1.).

ND's wetlands help absorb and purify chemicals and toxins from entering our water supplies, recharge aquifers and act as natural sponges to absorb and store flood waters to protect downstream residents, farmland, homes and other businesses. The science is clear extensive wetland drainage increases peak run off events, extends flood duration, and increases pollutant loads entering downstream surface water resources (Blann et al. 2009). We've experienced first-hand the devastating, costly and chronic effects that flooding has had on many of our communities and our downstream neighbors. Many communities like Fargo, Grand Forks and Minot have endured tens of millions of dollars of flood damage over recent years.

We're also seeing increased water quality and quantity concerns happening in places like the James River, Devils Lake Basin, Red River Valley, and at a much larger scale in places like Iowa and Gulf Hypoxia zone.

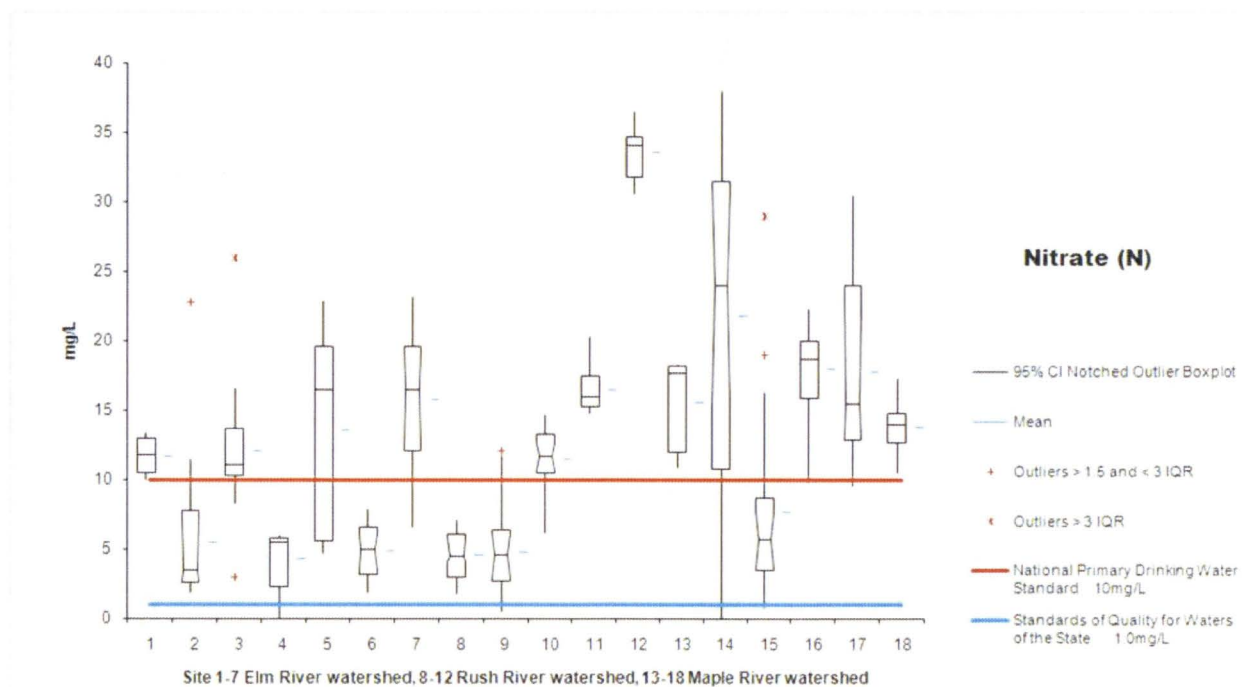
The Des Moines Water Works facility (Iowa), which treats and provides clean drinking water for 500,000 residents or nearly 1/5 of the entire state's population, has a federal lawsuit currently pending against three upstream counties with extensive drainage networks alleging subsurface drainage tiles have transported and concentrated high levels of nitrates into public water supplies (see Politico, "Iowa's Nasty Water War" January 21, 2016 <http://www.politico.com/magazine/story/2016/01/iowas-nasty-water-war-213551> - see Figure 2).

According to the Center of Disease Control (CDC), increased exposure to excess nitrates pose serious health risks to humans (e.g., higher risks of cancer, birth and reproductive defects, thyroid disruption, etc. <https://www.atsdr.cdc.gov/csem/csem.asp?csem=28&po=10>)

Unfortunately, contentious lawsuits like this have pitted neighbors against neighbors, rural vs. urban communities, and I think we can all agree that's not what we want for ND.

But, many of these issues are starting to hit much closer to home. A recent study by NDSU researchers who monitored 18 tile outlet sites in Cass and Trail Counties found that all sites (100%) exceeded state water quality standards for nitrate levels and 12 out of 18 sites (67%) exceeded federal drinking water standards in (see Figure 3 below). Researchers also found elevated levels of sulfates (13 of 18 sites; increased water treatment costs), arsenic (carcinogen; 7 of 18 sites), barium (all sites, may cause increased blood pressure) and selenium (all sites; may cause reproductive failures, birth defects or death in livestock, wildlife and fish; see Johnson 2010)

Figure 3. from NDSU's "Red River Valley Tile Drainage Water Quality Assessment Phase I Final Report"



"It is well known that nitrogen levels are higher in tile drain water than in surface water. Phase I confirmed higher than recommended levels of nitrate nitrogen were leaving the tile at levels higher than state standards of quality for waters of the state. Best management practices including split application of fertilizer can be suggested to the producers to reduce the amount of NO₃(N) leaving the fields. Drinking water standards were exceeded at twelve sites. Although this water is not used for drinking purposes it may be reflected in increased costs to remove it at water treatment facilities." (Johnson 2010)

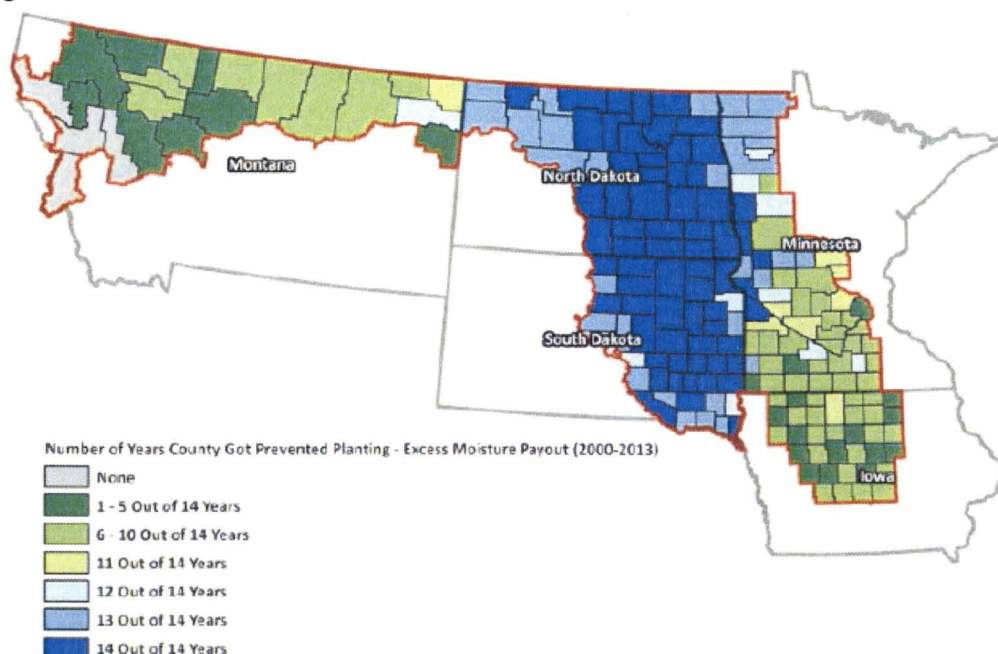
We're concerned about the potential negative impacts this bill poses for wetlands, wildlife, downstream residents and drinking water supplies. I'd like to highlight 3 specific aspects for the committee's consideration:

1. We share many of the other opponents concerns today regarding the lack of common sense oversight, local control, downstream neighbor safeguards, and standard permitting requirements (or lack thereof) outlined in the **"Dumping" section highlighted on Page No. 2; lines 1-3.**
2. **On Page 3; line 31 through Page 4; Lines 1-2,** it states "A landowner may not be required to provide a United States department of agriculture highly erodible land conservation and wetland conservation certification for the investigation". While it's unclear what this language is intended to do, it's important to note that state law doesn't trump federal law and this provision is part of long-standing federal policy (dating back to 1985), which requires the submission of an AD-1026 "self-certification" form (or HEL and wetland determination request) to remain eligible to receive federal farm program benefits. Failure to do so, in the case of non-compliance, could result in the loss of hundreds of thousands of dollars and benefits for ND landowners.
3. Lastly, and perhaps most importantly, on **Page 4; Lines 11-14 under the Prevented planting coverage - Permit exception,** it states: "...a person that wishes to install a subsurface drainage system comprising land that qualifies for prevented planting coverage under the Federal Crop Insurance Act of 1938 [7 U.S.C. 1508, 1508a] is not required to obtain a permit for the drain".

Prevented planting (PP) coverage provides ag. producers crop insurance protection if they are unable to plant an insured crop by a final planting date. In order to remain eligible for prevent plant coverage, a producer must plant a crop at least 1 out of 4 years.

And, PP coverage can vary significantly from county-to-county, year to year. For example, according to the U.S. Department of Agriculture, portions of every East River county in ND received prevent plant coverage in 13 out of 14 or 14 out of 14 years from 2000 to 2013 (Figure 4). And, this acreage can vary significantly from year-to-year (e.g. 5.6M acres in 2011, >4M acres in 2013, ~270,000 acres in 2015; see also Table 1 below). **So, what does this mean? It would effectively remove standard tile permitting requirements for millions of acres in ND.**

Figure 4.



Source: USDA Risk Management Agency, [Cause of Loss Historical Data Files](#)

Table 1. ND prevented planting acreage, 2001 to 2008 (Source: USDA-Farm Service Agency)

<u>Year</u>	<u>Total Acres</u>
2001	677,000 acres
2002	245,000 acres
2003	437,000 acres
2004	1,666,000 acres
2005	1,033,000 acres
2006	330,000 acres
2007	233,000 acres
2008	30,250 acres

In summary, we're concerned this bill will promote further destruction of critical wetland habitat, reduce downstream water quality, increase potential flood and public health risks, eliminate common sense oversight and local permitting requirements for millions of acres across the state, and potentially invite more contentious lawsuits, like we're seeing in places like Iowa.

For these reasons, we would respectfully urge this committee to give HB1390 a DO NOT PASS recommendation.

Thank you for your time and I'd be happy to answer any questions if time allows.

Literature Cited

- Blann, Kristen L., J. L. Anderson, James L., G. R. Sands, Gary R. and B. Vondracek. 2009. *Effects of Agricultural Drainage on Aquatic Ecosystems: A Review*, *Critical Reviews in Environmental Science and Technology*, 39:11, 909-1001. <http://dx.doi.org/10.1080/10643380801977966>
- Dahl, T.E. 1990. *Wetlands Losses in the United States 1780s to 1980s*. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. 13 p. <http://www.fws.gov/wetlands/Documents/Wetlands-Losses-in-the-United-States-1780s-to-1980s.pdf>.
- Dahl, T.E. 2014. *Status and trends of prairie wetlands in the United States 1997 to 2009*. U.S. Department of the Interior; Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/wetlands/Documents/Status-and-Trends-of-Prairie-Wetlands-in-the-United-States-1997-to-2009.pdf>
- Johnson, R., 2010. *Red River Valley Tile Drainage Water Quality Assessment Phase I - Final Report*. Ag and Biosystems Engineering Department, North Dakota State University, Fargo, ND. <https://www.ag.ndsu.edu/waterquality/tile-drainage-1>
- Taylor, R.D., D.A. Bangsund, and N. Hodur. 2013. *Hunter and Angler Expenditures, Characteristics, and Economic Effects, North Dakota, 2011-2012*, Agribusiness and Applied Economics Report No. 706-S, Department of Agribusiness and Applied Economics, Agricultural Experiment Station, North Dakota State University, Fargo. <http://ageconsearch.umn.edu/bitstream/145739/2/AAE706-S%20February%202013.pdf>

Figure 1. Aerial view of pattern tile drainage in the Dakotas.



Figure 2. "Iowa's Nasty Water War" *Politico* Jan. 21, 2016



#5

TESTIMONY ON HOUSE BILL NO. 1390

House Agriculture Committee

John Paczkowski, Assistant State Engineer
Office of the State Engineer/State Water Commission

February 10, 2017

Chairman Johnson and members of the House Agriculture Committee, my name is John Paczkowski. I am the Assistant State Engineer for the Office of the State Engineer/State Water Commission. I am here testifying on behalf of State Engineer Garland Erbele to present our testimony regarding House Bill 1390. The State Engineer has concerns with the proposed language in Section 6, to be codified as North Dakota Century Code § 61-32-03.2.

Specifically, the State Engineer is opposed to the exemption for subsurface drainage permitting if the land to be drained qualifies for prevented planting coverage under the Federal Crop Insurance Act of 1938. The proposed exemption has the potential to create an atmosphere of wide-spread unregulated drainage throughout the state. As can be seen on the attached graph (see attached Figure 1), there are a substantial number of subsurface drain projects permitted by water resource boards each year.

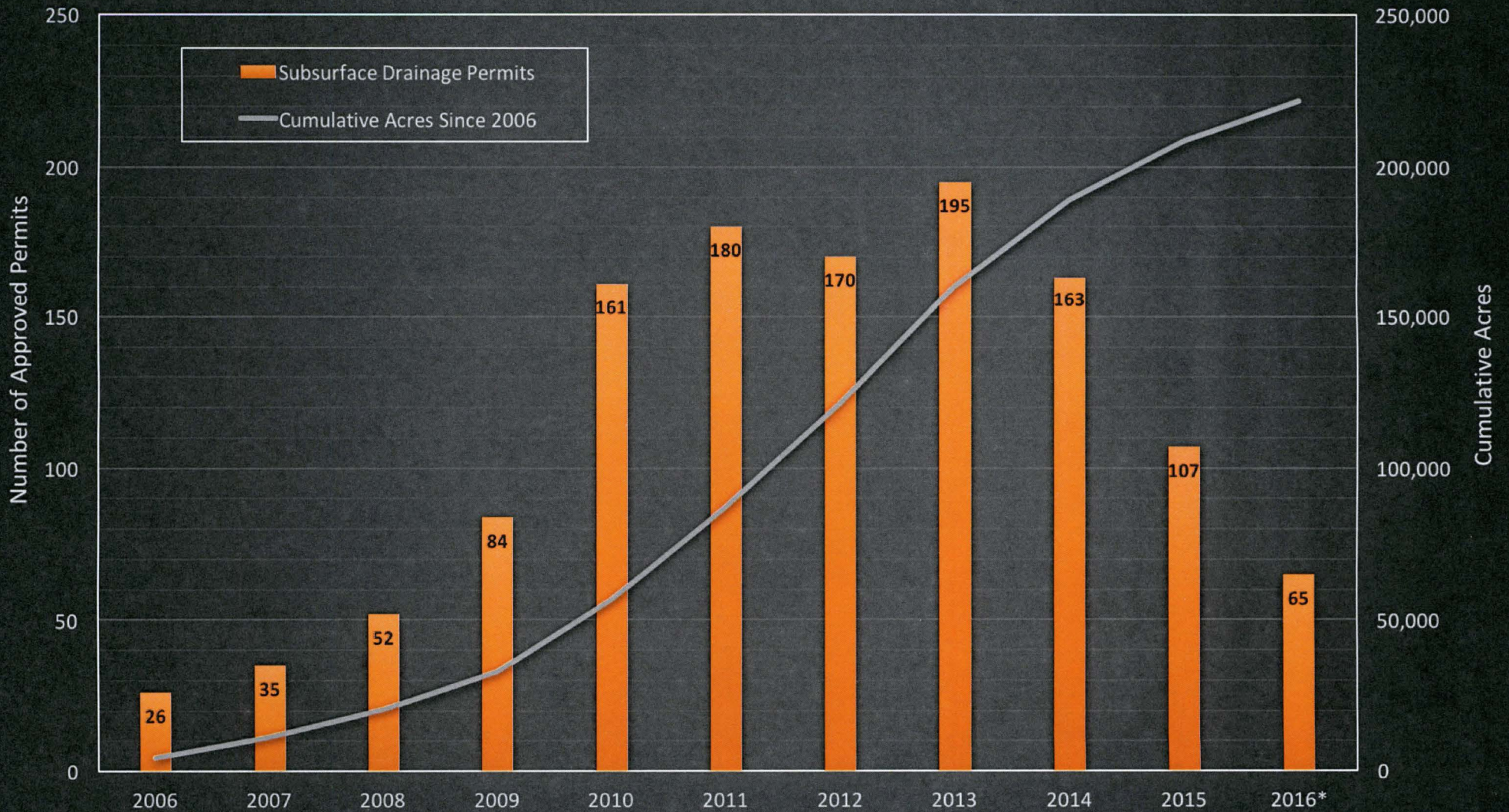
According to figures reported to USDA's Farm Service Agency, there were approximately 18 million cropland acres planted in North Dakota in 2016 (see attached Table 1), which equates to roughly 780 townships. Given the right circumstances, many of these acres could be eligible for prevented planting coverage. The proposed provision found in Section 6 of House Bill 1390 has the potential to severely reduce the ability of water resource boards to manage water resources within their district.

Again, the State Engineer is opposed to the amendment found on Page 4, Section 6, lines 11 – 14, and strongly supports the continued efforts of water resource boards to address water management through existing statutes and rules.

Thank you for the opportunity to comment. I would be happy to answer any questions you might have.

1

Figure 1 - Approved Subsurface Drainage Permits and Associated Acreage
as submitted by Water Resource Districts to the Office of the State Engineer



* OSE may not have a complete record of all subsurface drainage permits approved in 2016

Date Created: 02/08/2017

2

TABLE 1

4-Jan-17

2016 PLANTED ACRES (INCLUDING FAILED ACRES) REPORTED TO FARM SERVICE AGENCY

4-Jan-17

Planted and Failed

Column Labels

Row Labels	BARLEY	CORN	COTTON- ELS	COTTON- Upland	OATS	RICE	SORGHUM	SOYBEANS	SUGAR BEETS	SUGARCANE	WHEAT	Grand Total
ALABAMA	209	287,719		343,154	14,096		6,416	394,751			135,549	1,181,895
ALASKA	4,527	0			1,140						175	5,842
ARIZONA	16,030	87,204	14,448	112,600	18,850		15,820	2	956		106,513	372,423
ARKANSAS		753,823		374,513	3,105	1,537,968	44,469	3,113,026			187,267	6,014,171
CALIFORNIA	67,648	339,052	148,867	61,826	94,093	524,231	45,339	424	22,599	203	456,034	1,760,315
COLORADO	69,164	1,315,718			42,893		362,722	13,113	28,064		2,242,173	4,073,846
CONNECTICUT	14	24,634			69		59	359			122	25,257
DELAWARE	31,367	171,432			306		1,538	157,238			61,804	423,685
FLORIDA		56,345	26	100,976	14,817	20,023	3,787	29,256		414,432	6,453	646,114
GEORGIA	416	397,222		1,170,751	25,788		14,810	251,501		50	109,520	1,970,057
HAWAII		140										140
IDAHO	570,079	303,778			27,910		988	30	166,049		1,137,552	2,206,387
ILLINOIS	1,234	11,422,231		3	21,592	2,004	16,568	9,953,982			493,591	21,911,205
INDIANA	1,632	5,513,489			7,504		10,158	5,611,453			300,393	11,444,629
IOWA	2,966	13,590,276			111,133		3,038	9,391,678			22,095	23,121,186
KANSAS	17,063	5,014,230		31,032	104,557		2,780,008	4,004,077			8,333,993	20,284,960
KENTUCKY	3,324	1,443,420		1	2,356		4,412	1,746,776		6	446,378	3,646,673
LOUISIANA		607,424		137,690	3,202	432,814	49,929	1,213,356		431,393	18,439	2,894,246
MAINE	14,238	28,607			24,335		26	1,585			1,459	70,251
MARYLAND	46,853	405,602			5,457		9,076	502,391			349,973	1,319,352
MASACHUSETTS	18	16,953			156		1	552			6	17,687
MICHIGAN	7,915	2,236,628			34,218		2,374	1,999,678	151,093		569,732	5,001,640
MINNESOTA	85,364	8,402,230			147,778		1,927	7,459,383	436,362		1,266,639	17,799,681
MISSISSIPPI		721,732		426,288	1,368	191,357	11,015	2,022,279		3	57,241	3,431,282
MISSOURI	2,298	3,566,701		277,493	9,840	234,727	53,830	5,521,937		2	658,095	10,324,923
MONTANA	927,155	107,890			52,680		1,659	7,552	45,602		4,953,930	6,096,468
NEBRASKA	7,733	9,826,736			118,499		130,558	5,126,865	47,297		1,344,475	16,602,163
NEVADA	888	9,645			1,493		7				11,717	23,750
NEW HAMPSHIRE	17	13,487			39		14	51			49	13,656
NEW MEXICO	7,648	114,138	7,667	48,591	4,004		94,879				331,308	608,235
NEW YORK	7,861	975,661			56,764	2	1,068	314,682			99,129	1,455,166
NEW JERSEY	1,980	65,906			1,402		2,068	96,722	26		20,097	188,201
NORTH CAROLINA	14,446	960,805		276,070	12,641		39,415	1,668,402	2	2	387,164	3,358,947
NORTH DAKOTA	690,690	3,376,340			252,416		2,207	5,954,222	212,568		7,439,020	17,927,463
OHIO	3,321	3,464,626			14,443		1,126	4,767,657			512,679	8,763,853
OKLAHOMA	25,858	372,001		294,791	26,566	31	385,365	478,185			4,831,274	6,414,070
OREGON	36,171	83,676			16,814		50	875	11,500		734,833	883,920
PENNSYLVANIA	29,563	850,652			42,902		4,139	491,500			125,390	1,544,146
Puerto Rico		6										6
RHODE ISLAND		1,497			30		41	5				1,573
SOUTH CAROLINA	745	336,943		187,113	8,889	98	11,568	398,768		5	55,832	999,961
SOUTH DAKOTA	31,655	5,463,253			282,374		195,937	5,123,228			2,181,555	13,278,002
TENNESSEE	2,154	822,142		251,959	2,264	2,300	4,542	1,580,048			348,160	3,013,570
TEXAS	33,428	2,796,195	16,250	5,573,542	274,914	191,507	1,792,702	157,474	114	39,376	4,647,182	15,522,684
UTAH	22,064	59,760			8,817		934	26			118,130	209,730
VERMONT	145	82,590			306		105	2,145			754	86,045
VIRGINIA		3								1		4
VIRGINIA	22,947	392,489		71,540	4,580	0	15,778	589,252			182,613	1,279,199
WASHINGTON	98,425	159,608			8,023		154	68	539		2,197,072	2,463,888
WEST VIRGINIA	1,765	41,730			1,162		244	26,197			5,564	76,661
WISCONSIN	22,352	3,895,712			179,588		2,636	1,933,463	10		266,186	6,299,946
WYOMING	80,362	86,374			18,800		823	88	30,862		140,819	358,126
Grand Total	3,011,733	91,066,450	187,259	9,739,932	2,106,972	3,137,062	6,126,330	82,106,302	1,153,643	885,471	47,896,128	247,417,282

SOURCE: United States Department of Agriculture Farm Service Agency "Crop Acreage Data"
 (https://www.fsa.usda.gov/news-room/eofia/electronic-reading-room/frequently-requested-information/crop-acreage-data/index)

3

#6

Testimony of Eric Volk, Executive Director

ND Rural Water Systems Association

House Bill 1390

House Agriculture Committee – February 10, 2017

Chairman Johnson and members of the House Agriculture Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA) which serves a membership of more than 250 cities, 27 rural/regional water systems, and four tribal systems.

The NDRWSA is committed to ensuring all North Dakota's residents receive affordable drinking water of excellent quality and sufficient quantity. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today I am submitting testimony in opposition of HB 1390.

Rural Water Facts:

Serve 145,000 rural residents (50,000 connections)

Serve 100,000 city residents, that is 247 of the 357 Incorporated Cities

Provide service through nearly 40,000 miles of pipe

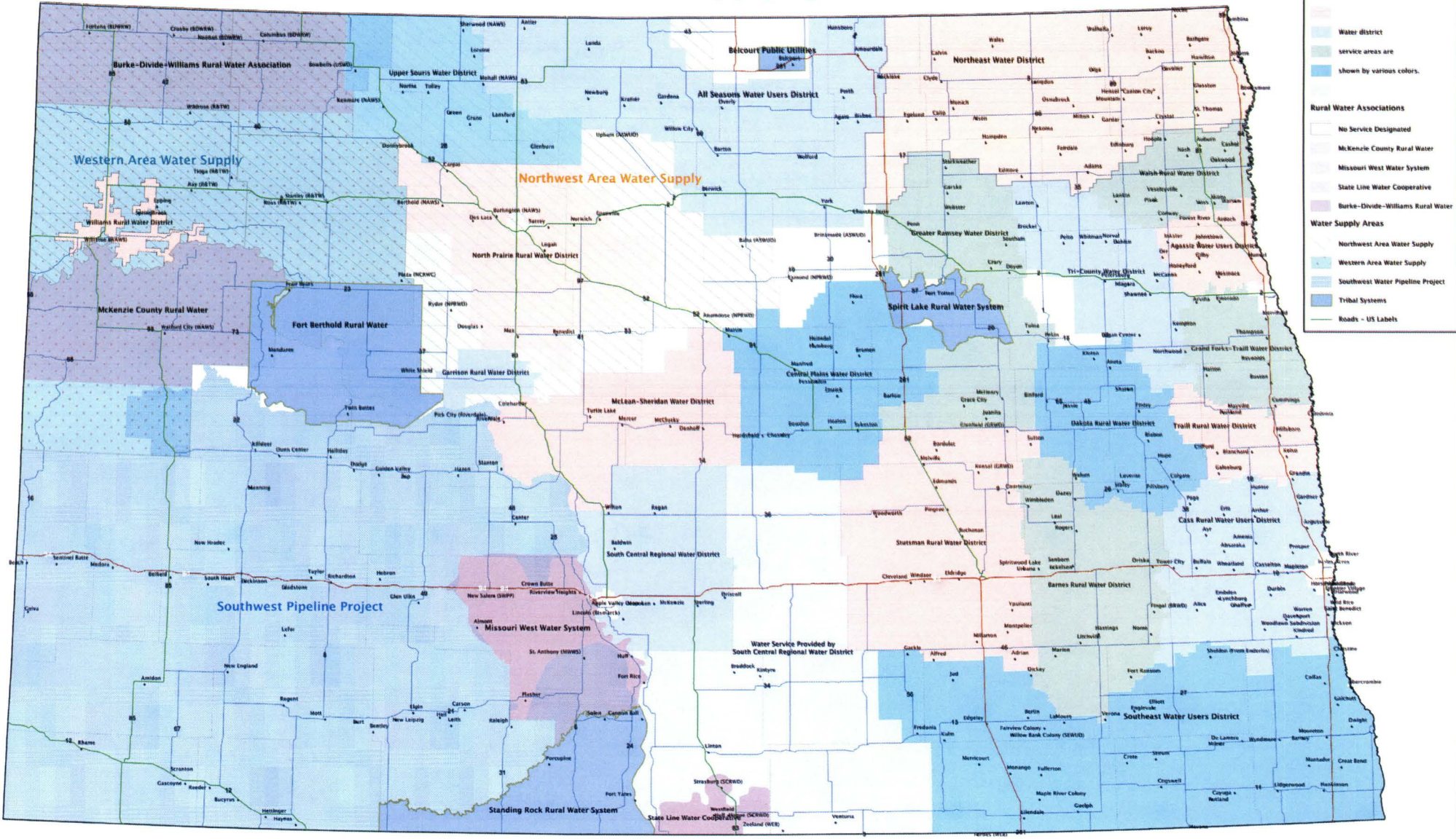
For the record, I want to say that we fully understand the importance of organized drain tiling in today's agricultural world. A large percentage of farmers who are drain tiling are served by a Rural Water System. I would like to draw your attention to page 3, lines 18 thru 19. The bill draft eliminates Water Resource District's ability to attach reasonable conditions to permits in regards to minimum distances from rural water supply lines. This will have adverse effects on rural water infrastructure and their membership. Below are some conditions that rural water systems seek when dealing with drain tiling within areas of potable water lines:

1

- Contractor will notify XYZ Rural Water System (System) prior to any excavation over or around water line paint or flag markings.
- Contractor will send out construction crew to expose water line to verify depth and location of the line prior to engineer design and layout of drain tile with a System employee present.
- All System water line crossings with drain tile will be seamless, solid, non-perforated pipe and will extend no less than X feet either side of the water line. Crossings shall be at least eighteen inches (18") above or below System lines. All crossings need a System employee to be present when excavation of crossing to ensure proper support and bedding of water line is to System standards.
- All drain tile lines that parallel System lines need to be a distance no closer than X feet from either side of said water line.

I will say it again, we are not against drain tiling. Systems want to work with landowners on this issue. There may be instances where the landowner needs to be close to the water line for short distances and systems understand that. At the same time, it will probably be that same landowner that won't have water service because a system cannot find a leak due to the drain tile that was installed on their land. Communication is the key. For the reasons listed above, we oppose HB 1390. I will stand for any questions. Thank You! EV, ericvolk@ndrw.org

North Dakota Water Supply Systems



Cities Served

Rural Water Districts

- Water district
- service areas are shown by various colors.

Rural Water Associations

- No Service Designated
- McKenzie County Rural Water
- Missouri West Water System
- State Line Water Cooperative
- Burke-Divide-Williams Rural Water

Water Supply Areas

- Western Area Water Supply
- Southwater Pipeline Project
- Tribal Systems

Roads - US Labels

6

#1
2/16/17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1390

- Page 1, line 4, replace "06-09.13-03 and" with "61-16-07,"
- Page 1, line 4, after the first comma insert "and 61-16-09 and"
- Page 1, line 4, remove ", and section 61-32-03.1"
- Page 1, line 5, replace "loans to farmers" with "water resource district board members"
- Page 1, remove lines 8 through 20
- Page 2, line 1, replace "Dumping" with "Discharging water"
- Page 2, line 3, replace "dumping" with "discharging water"
- Page 2, line 3, remove "subsurface"
- Page 2, after line 3, insert:

"SECTION 2. AMENDMENT. Section 61-16-07 of the North Dakota Century Code is amended and reenacted as follows:

61-16-07. Water resource board members - Appointment and number.

When a water resource district has been created, and the state water commission has filed notice with the county auditor of a county where the district or a part thereof is situated, a water resource board ~~shall~~must be appointed within ninety days, as provided herein. If the district's boundaries are confined to one county, the board of county commissioners shall appoint a water resource board consisting of three or five ~~managers~~board members. When a district includes two counties, the water resource board shall consist of five ~~managers~~board members, three appointed by the board of county commissioners of the county having the larger aggregate taxable valuation of property, and two appointed by the board of county commissioners of the other county. If a district includes three counties, the water resource board shall consist of five ~~managers~~board members, one appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district, and two appointed by the board of county commissioners of each of the other two counties. If a district includes four or six counties, the water resource board shall consist of two board members from the county having the largest aggregate taxable valuation of property in the district, and one ~~manager~~board member from each of the other counties. If a district includes five or seven counties, the water resource board shall consist of one ~~manager~~board member from each county. Appointments to the water resource board shall be made by the boards of county commissioners of the respective counties."

- Page 2, line 7, overstrike "**managers**" and insert immediately thereafter "board members"
- Page 2, line 27, overstrike "manager" and insert immediately thereafter "board member"
- Page 2, line 29, overstrike "manager" and insert immediately thereafter "board member"
- Page 2, line 30, overstrike "manager" and insert immediately thereafter "board member"

Page 2, line 31, overstrike "manager" and insert immediately thereafter "board member"

Page 3, line 1, after the fourth comma insert "nonattendance at board meetings, refusal to carry out duties required by law."

Page 3, after line 2, insert:

"SECTION 4. AMENDMENT. Section 61-16-09 of the North Dakota Century Code is amended and reenacted as follows:

61-16-09. Oath of office - Organization of water resource board - Appointment of employees - Meetings.

Upon receiving notice of appointment as member of the water resource board, such appointee shall take the oath of office prescribed for civil officers. Such oath shall be filed with the secretary of the board. Notice of the appointment of a member or members of a water resource board shall be mailed to the state water commission. Such notice shall state the name and post-office address of each appointee and the date of appointment.

A majority of the ~~managers shall constitute~~board members constitutes a quorum for the transaction of such business as may come before the board, but any number may adjourn a meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer and such other employees as needed for the efficient conduct of the district's business and shall fix their compensation. The offices of secretary and treasurer may be held by the same person. Officers and employees shall hold office at the pleasure of the board.

The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting ~~shall~~must be mailed to each member of the board at least five days before any such meeting provided, that a special meeting may be held whenever all members of the board are present or consent thereto in writing."

Page 3, line 19, after "lines" insert "beyond an existing easement for the lines"

Page 3, line 20, after "determines" insert ", based on technical evidence."

Page 3, line 22, overstrike "Water"

Page 3, line 23, overstrike "resource districts must forward copies of all approved permits to the state engineer." and insert immediately thereafter "For purposes of this section, "technical evidence" means written information regarding the proposed drainage system prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydrological effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land downstream."

Page 3, line 26, after the period insert "If the state engineer has not approved or denied the permit within thirty days after receipt of the permit application, the application must be deemed approved by the state engineer."

Page 3, line 29, overstrike "shows that" and insert immediately thereafter "proves, based on technical evidence."

Page 3, line 31, overstrike "flowage easements" and insert immediately thereafter "the applicant to obtain from the downstream landowners notarized letters approving the drainage system"

Page 3, line 31, after the period insert "If all adversely affected landowners provide the notarized approval letters, the board may waive the thirty-day notice period for the meeting to approve or deny the permit."

Page 4, line 4, overstrike "flowage easement" and insert immediately thereafter "a notarized letter of approval"

Page 4, line 4, overstrike "Flowage easements must be filed for"

Page 4, line 5, overstrike "record in the office of the recorder of the county or counties in which the lands are situated."

Page 4, remove lines 9 through 14

Renumber accordingly

Introduced by

Representatives Headland, Blum, Brandenburg, Kading

Senators Meyer, Rust, Wanzek

1 A BILL for an Act to create and enact a new section to chapter 11-11 and section 61-32-03.2 of
2 the North Dakota Century Code, relating to a limitation on county authority and subsurface
3 drains on land that qualifies for prevented planting insurance coverage; to amend and reenact
4 sections ~~06-09.13-03 and 61-16-07~~, 61-16-08, and 61-16-09 and subsection 8 of section
5 61-16.1-09, ~~and section 61-32-03.1~~ of the North Dakota Century Code, relating to ~~loans to~~
6 ~~farmers~~ water resource district board members and subsurface drainage projects; and to provide
7 for a legislative management study.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 ~~SECTION 1. AMENDMENT. Section 06-09.13-03 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~6-09.13-03. Loans to farmers - Purposes - Eligible uses.~~

12 ~~1. The loan moneys received by a farmer under this chapter must be used for a farm-~~
13 ~~business. Eligible uses are:~~

14 ~~1. a. Purchase of real property and equipment.~~

15 ~~2. b. Expansions.~~

16 ~~3. c. Working capital.~~

17 ~~4. d. Purchase of inventory.~~

18 ~~5. e. Subsurface field tiling projects.~~

19 ~~2. The moneys cannot may not be used to refinance any existing debt.~~

20 ~~3. There is no lifetime limit on the amount of loan moneys a farmer may receive~~
21 ~~under this chapter.~~

22 **SECTION 1.** A new section to chapter 11-11 of the North Dakota Century Code is created
23 and enacted as follows:

1 **Limitation on authority - ~~Dumping~~Discharging water.**

2 Notwithstanding any other provision of law, a county may not require a resident to provide
3 thirty days' notice before ~~dumping~~discharging water into a legal ~~subsurface~~ drain.

4 **SECTION 2. AMENDMENT.** Section 61-16-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16-07. Water resource board members - Appointment and number.**

7 When a water resource district has been created, and the state water commission has filed
8 notice with the county auditor of a county where the district or a part thereof is situated, a water
9 resource board ~~shall~~must be appointed within ninety days, as provided herein. If the district's
10 boundaries are confined to one county, the board of county commissioners shall appoint a water
11 resource board consisting of three or five ~~managers~~board members. When a district includes
12 two counties, the water resource board shall consist of five ~~managers~~board members, three
13 appointed by the board of county commissioners of the county having the larger aggregate
14 taxable valuation of property, and two appointed by the board of county commissioners of the
15 other county. If a district includes three counties, the water resource board shall consist of five
16 ~~managers~~board members, one appointed by the board of county commissioners having the
17 lowest aggregate taxable valuation of property in the district, and two appointed by the board of
18 county commissioners of each of the other two counties. If a district includes four or six
19 counties, the water resource board shall consist of two board members from the county having
20 the largest aggregate taxable valuation of property in the district, and one ~~manager~~board
21 member from each of the other counties. If a district includes five or seven counties, the water
22 resource board shall consist of one ~~manager~~board member from each county. Appointments to
23 the water resource board shall be made by the boards of county commissioners of the
24 respective counties.

25 **SECTION 3. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling**
28 **vacancies - Compensation of managersboard members.**

- 29 1. When a water resource district has been created, any resident landowner in the
30 district, except a county commissioner, is eligible, subject to the provisions of this
31 section, for appointment to the water resource board. ~~After June 30, 1985, when the~~

1 term of office of a district manager has expired, the manager's successor shall hold
2 office for three years from the first day of January next following the date of the
3 successor's appointment. The term of office of a manager does not terminate until the
4 successor in office is appointed and qualified. In case the office of any district
5 manager becomes vacant, the manager appointed to fill the vacancy shall serve the
6 unexpired term of the manager whose office became vacant. Before the start of an
7 individual's term as a water resource board member, the individual shall attend a
8 course on water management, and each board member shall attend a course on water
9 management once every three years during the member's term on the board.

10 2. Each member of a water resource board shall receive the sum of at least seventy-five
11 dollars but not more than one hundred thirty-five dollars per day while performing
12 duties as a member of the board, and an allowance for meals and lodging expenses at
13 the same rate and under the same conditions as provided for state officials and
14 employees. The allowance for travel expenses shall be at the same rate as provided
15 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
16 section 21-05-01.

17 3. A managerboard member may be removed from the board by the board of county
18 commissioners after it appears to the board of county commissioners by competent
19 evidence, and after a public hearing, if so requested by the managerboard member
20 subject to removal, at which hearing the managerboard member must be apprised of
21 and allowed ample opportunity to repudiate the evidence, that the managerboard
22 member has been guilty of misconduct, malfeasance, crime in office, neglect of duty in
23 office, habitual drunkenness, gross incompetency, nonattendance at board meetings,
24 refusal to carry out duties required by law, or inability to perform the duties of office for
25 reasons of health.

26 **SECTION 4. AMENDMENT.** Section 61-16-09 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16-09. Oath of office - Organization of water resource board - Appointment of**
29 **employees - Meetings.**

30 Upon receiving notice of appointment as member of the water resource board, such
31 appointee shall take the oath of office prescribed for civil officers. Such oath shall be filed with

1 the secretary of the board. Notice of the appointment of a member or members of a water
2 resource board shall be mailed to the state water commission. Such notice shall state the name
3 and post-office address of each appointee and the date of appointment.

4 A majority of the ~~managers shall constitute~~ board members constitutes a quorum for the
5 transaction of such business as may come before the board, but any number may adjourn a
6 meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer
7 and such other employees as needed for the efficient conduct of the district's business and shall
8 fix their compensation. The offices of secretary and treasurer may be held by the same person.
9 Officers and employees shall hold office at the pleasure of the board.

10 The board shall provide an office suitable for its use as a meeting place and for conducting
11 the affairs of the district. It shall adopt such rules for transacting the business of the district as it
12 may deem necessary, including the time and place of holding regular meetings of the board.
13 Special meetings may be called by the secretary on order of the chairman of the board or upon
14 written request of two members of the board. Notice of a special meeting ~~shall~~ must be mailed to
15 each member of the board at least five days before any such meeting provided, that a special
16 meeting may be held whenever all members of the board are present or consent thereto in
17 writing.

18 **SECTION 5. AMENDMENT.** Subsection 8 of section 61-16.1-09 of the North Dakota
19 Century Code is amended and reenacted as follows:

- 20 8. Make rules ~~and regulations~~ concerning the management, control, regulation, and
21 conservation of waters and prevent the pollution, contamination, or other misuse of the
22 water resources, streams, or bodies of water included within the district. However, the
23 board may not make a rule regarding subsurface drainage system permits unless
24 expressly required or allowed under this title.

25 **SECTION 6. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

28 Installation of an artificial subsurface drainage system comprising eighty acres
29 [32.37 hectares] of land area or more requires a permit. The state engineer shall develop an
30 application form for a permit for subsurface drainage of water. A person seeking to construct an
31 artificial subsurface drainage system must submit an application to the water resource district

1 within which is found a majority of the land area for consideration and approval. Water resource
2 districts may attach any necessary conditions, except a requirement to locate the project a
3 minimum distance from rural water supply lines beyond an existing easement for the lines, to an
4 approved permit, but may not deny an application unless the water resource district determines,
5 based on technical evidence, the application is of statewide significance or the proposed
6 drainage will flood or adversely affect lands of downstream landowners within one mile [1.61
7 kilometers] of the proposed subsurface drainage. ~~Water resource districts must forward copies~~
8 ~~of all approved permits to the state engineer.~~ For purposes of this section, "technical evidence"
9 means written information regarding the proposed drainage system prepared after
10 consideration of the design and physical aspects of the proposed system, and any adverse
11 hydrological effects, including erosion, flood duration, crop loss, and downstream water control
12 device operation impacts, which may occur to land downstream. Water resource districts shall
13 determine if the application proposes drainage of statewide significance. If so, the application
14 must be referred to the state engineer for consideration and approval, and the state engineer
15 shall make a determination within thirty days. If the state engineer has not approved or denied
16 the permit within thirty days after receipt of the permit application, the application must be
17 deemed approved by the state engineer. The permit applicant shall provide a thirty-day notice to
18 downstream property owners within one mile [1.61 kilometers] of the proposed subsurface
19 drainage. If an investigation by a water resource district or a downstream landowner within one
20 mile [1.61 kilometers] ~~shows that~~ proves, based on technical evidence, the proposed drainage
21 will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers],
22 the water resource district may require ~~flowage easements~~ the applicant to obtain from the
23 downstream landowners notarized letters approving the drainage system before issuing a
24 permit. If all adversely affected landowners provide the notarized approval letters, the board
25 may waive the thirty-day notice period for the meeting to approve or deny the permit. A
26 landowner may not be required to provide a United States department of agriculture highly
27 erodible land conservation and wetland conservation certification for the investigation. If an
28 artificial subsurface drainage system drains into an assessment drain, natural watercourse, or
29 pond, slough, or lake, a ~~flowage easement~~ a notarized letter of approval is not required. ~~Flowage~~
30 ~~easements must be filed for record in the office of the recorder of the county or counties in~~
31 ~~which the lands are situated.~~ A person that installs an artificial subsurface drainage system

1 without first securing a permit to do so, as provided in this section, is liable for all damage
2 sustained by a person caused by the draining, and is guilty of an infraction.

3 ~~— SECTION 7. Section 61-32-03.2 of the North Dakota Century Code is created and enacted~~
4 ~~as follows:~~

5 ~~— **61-32-03.2. Prevented planting coverage - Permit exception.**~~

6 ~~— Notwithstanding section 61-32-03.1, a person that wishes to install a subsurface drainage~~
7 ~~system comprising land that qualifies for prevented planting coverage under the Federal Crop~~
8 ~~Insurance Act of 1938 [7 U.S.C. 1508, 1508a] is not required to obtain a permit for the drain.~~

9 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.**

10 During the 2017-18 interim, the legislative management shall consider studying and monitoring
11 the nutrient management plan developed by the state department of health. The legislative
12 management shall report its findings and recommendations, together with any legislation
13 required to implement the recommendations, to the sixty-sixth legislative assembly.

February 17, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1390

Page 1, line 3, replace "drains" with "water management"

Page 1, line 4, replace "06-09.13-03 and" with "61-16-07,"

Page 1, line 4, after the first comma insert "and 61-16-09 and"

Page 1, line 4, remove ", and section 61-32-03.1"

Page 1, line 5, replace "loans to farmers" with "water resource district board members"

Page 1, line 5, replace "drainage" with "water management"

Page 1, remove lines 8 through 20

Page 2, line 1, replace "**Dumping**" with "**Discharging water**"

Page 2, line 3, replace "dumping" with "discharging water from a subsurface outlet"

Page 2, line 3, replace "subsurface drain" with "water management system"

Page 2, after line 3, insert:

"**SECTION 2. AMENDMENT.** Section 61-16-07 of the North Dakota Century Code is amended and reenacted as follows:

61-16-07. Water resource board members - Appointment and number.

When a water resource district has been created, and the state water commission has filed notice with the county auditor of a county where the district or a part thereof is situated, a water resource board ~~shall~~must be appointed within ninety days, as provided herein. If the district's boundaries are confined to one county, the board of county commissioners shall appoint a water resource board consisting of three or five ~~managers~~board members. When a district includes two counties, the water resource board shall consist of five ~~managers~~board members, three appointed by the board of county commissioners of the county having the larger aggregate taxable valuation of property, and two appointed by the board of county commissioners of the other county. If a district includes three counties, the water resource board shall consist of five ~~managers~~board members, one appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district, and two appointed by the board of county commissioners of each of the other two counties. If a district includes four or six counties, the water resource board shall consist of two board members from the county having the largest aggregate taxable valuation of property in the district, and one ~~manager~~board member from each of the other counties. If a district includes five or seven counties, the water resource board shall consist of one ~~manager~~board member from each county. Appointments to the water resource board shall be made by the boards of county commissioners of the respective counties."

Page 2, line 7, overstrike "**managers**" and insert immediately thereafter "**board members**"

Page 2, line 27, overstrike "manager" and insert immediately thereafter "board member"

Page 2, line 29, overstrike "manager" and insert immediately thereafter "board member"

Page 2, line 30, overstrike "manager" and insert immediately thereafter "board member"

Page 2, line 31, overstrike "manager" and insert immediately thereafter "board member"

Page 3, line 1, after the fourth comma insert "nonattendance at board meetings, refusal to carry out duties required by law,"

Page 3, after line 2, insert:

"SECTION 4. AMENDMENT. Section 61-16-09 of the North Dakota Century Code is amended and reenacted as follows:

61-16-09. Oath of office - Organization of water resource board - Appointment of employees - Meetings.

Upon receiving notice of appointment as member of the water resource board, such appointee shall take the oath of office prescribed for civil officers. Such oath shall be filed with the secretary of the board. Notice of the appointment of a member or members of a water resource board shall be mailed to the state water commission. Such notice shall state the name and post-office address of each appointee and the date of appointment.

A majority of the ~~managers shall constitute~~ board members constitutes a quorum for the transaction of such business as may come before the board, but any number may adjourn a meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer and such other employees as needed for the efficient conduct of the district's business and shall fix their compensation. The offices of secretary and treasurer may be held by the same person. Officers and employees shall hold office at the pleasure of the board.

The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting ~~shall~~ must be mailed to each member of the board at least five days before any such meeting provided, that a special meeting may be held whenever all members of the board are present or consent thereto in writing."

Page 3, line 8, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 13, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 15, overstrike "drainage of water" and insert immediately thereafter "water management"

Page 3, line 16, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 19, after "lines" insert "beyond an existing easement for the lines"

Page 3, line 20, after "determines" insert ", based on technical evidence,"

Page 3, line 21, overstrike "drainage" and insert immediately thereafter "water management"

Page 3, line 22, overstrike "drainage. Water"

Page 3, line 23, overstrike "resource districts must forward copies of all approved permits to the state engineer." and insert immediately thereafter "water management system. For purposes of this section, "technical evidence" means written information regarding the proposed water management system prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydrological effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land downstream."

Page 3, line 24, overstrike "drainage" and insert immediately thereafter "subsurface water management"

Page 3, line 26, after the period insert "If the state engineer has not approved or denied the permit within thirty days after receipt of the permit application, the application must be deemed approved by the state engineer."

Page 3, line 28, overstrike "drainage" and insert immediately thereafter "water management system"

Page 3, line 29, overstrike "shows that" and insert immediately thereafter "proves, based on technical evidence,"

Page 3, line 29, overstrike "drainage" and insert immediately thereafter "system"

Page 3, line 31, overstrike "flowage easements" and insert immediately thereafter "the applicant to obtain from the downstream landowners notarized letters approving the system"

Page 3, line 31, after the period insert "If all adversely affected landowners provide the notarized approval letters, the board may waive the thirty-day notice period for the meeting to approve or deny the permit."

Page 4, line 3, overstrike "drainage" and insert immediately thereafter "water management"

Page 4, line 3, overstrike "drain" and insert immediately thereafter "water management system"

Page 4, line 4, overstrike "flowage easement" and insert immediately thereafter "a notarized letter of approval"

Page 4, line 4, overstrike "Flowage easements must be filed for"

Page 4, line 5, overstrike "record in the office of the recorder of the county or counties in which the lands are situated."

Page 4, line 6, overstrike "drainage" and insert immediately thereafter "water management"

Page 4, line 8, overstrike "draining" and insert immediately thereafter "system"

Page 4, remove lines 9 through 14

Re-number accordingly

PROPOSED AMENDMENT TO SECTION 6 OF HB 1390
 CONCERNING SUBSURFACE DRAINAGE

4 **SECTION 6 AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
 5 amended and reenacted as follows:

6 **61-32-03.1. ~~Permit to drain subsurface waters~~ Permits for subsurface water**
 7 **management systems required - Permit form - Penalty.**

8 1. a. ~~Installation of an artificial subsurface drainage system comprising a subsurface~~
 9 ~~water management system that drains eighty acres [32.37 hectares] of land area~~
 10 ~~or more requires a permit. The watershed area drained by a subsurface water~~
 11 ~~management system may not be used to determine whether the system requires~~
 12 ~~a permit under this section.~~

13 b. Subsurface water management systems that use surface intakes must be
 14 permitted exclusively under this section if the system will have a drainage
 15 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface
 16 water management systems that use surface intakes must be permitted
 17 exclusively under section 61-32-03 if the system will have a drainage coefficient
 18 exceeding three-eighths of an inch [0.95 centimeters].

19 c. A person that installs a water management system that encompasses less than
 20 eighty acres [32.37 hectares] shall notify the water resource district within which
 21 is found a majority of the land comprising the water management system of the
 22 installation before it occurs, but no permit for the installation may be required.

23 2. a. ~~The state engineer shall develop an application form for a permit for subsurface~~
 24 ~~drainage of water required under this section. A person seeking to construct an~~
 1 ~~artificial a subsurface drainage water management system that requires a permit~~
 2 ~~under this section must submit an application to the water resource district board~~
 3 ~~within which is found a majority of the land area for consideration and approval.~~
 4 ~~Water resource districts may attach any necessary conditions to an approved~~
 5 ~~permit, but may not deny an application unless the water resource district~~
 6 ~~determines the application is of statewide significance or the proposed drainage~~
 7 ~~will flood or adversely affect lands of downstream landowners within one mile~~
 8 ~~[1.61 kilometers] of the proposed subsurface drainage. Water resource districts~~
 9 ~~must forward copies of all approved permits to the state engineer. Water resource~~
 10 ~~districts shall determine if the application proposes drainage of statewide~~

11 significance. If so, the application must be referred to the state engineer for
 12 consideration and approval, and the state engineer shall make a determination
 13 within thirty days. The permit applicant shall provide a thirty-day notice to
 14 downstream property owners within one mile [1.61 kilometers] of the proposed
 15 subsurface drainage. If an investigation by a water resource district or a
 16 downstream landowner within one mile [1.61 kilometers] shows that the proposed
 17 drainage will flood or adversely affect lands of downstream landowners within
 18 one mile [1.61 kilometers], the water resource district may require flowage
 19 easements before issuing a permit. If an artificial subsurface drainage system
 20 drains into an assessment drain, natural watercourse, or pond, slough, or lake, a
 21 flowage easement is not required. Flowage easements must be filed for record in
 22 the office of the recorder of the county or counties in which the lands are situated.
 23 A person that installs an artificial subsurface drainage system without first
 24 securing a permit to do so, as provided in this section, is liable for all damage
 25 sustained by a person caused by the draining, and is guilty of an infraction.

26 b. Upon submission of an application for a permit, the applicant immediately shall
 27 give notice and a copy of the submission via certified mail to each owner of land
 28 within one mile [1.61 kilometers] downstream of the proposed subsurface water
 29 management system outlet unless the distance to the nearest assessment drain,
 30 natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in
 31 which case notice and a copy of the submission must be given immediately to
 1 each owner of land between the outlet and the nearest assessment drain, natural
 2 watercourse, slough, or lake. The notice requirement in this section must be
 3 waived if the applicant presents signed, notarized letters of approval from all
 4 downstream landowners entitled to notice in this subsection.

5 3. a. The water resource district board shall review the application at its next meeting
 6 that is at least thirty days after receipt of the application and copies of the certified
 7 mail receipts. The board may charge
 8 the applicant a fee not to exceed five hundred dollars. Water resource districts shall
 9 determine if the application proposes subsurface water management of statewide
 10 significance. If so, the application must be referred to the state engineer for
 11 consideration and approval, and the state engineer shall make a determination within
 12 thirty days. If the state engineer has not approved or denied the permit within thirty days
 13 after receipt of the permit application, the application must be referred back to the water
 14 resource district and the water resource district will be the permitting authority. The
 15 board shall consider

16 any written, technical evidence generated by the board or provided by the applicant
 17 or a landowner notified

9 under subsection 2 addressing whether the land of a notified landowner will be
 10 flooded or unreasonably harmed by the proposed subsurface water management
 11 system. For purposes of this section "technical evidence" means written
 12 information regarding the proposed subsurface water management system,
 13 prepared after consideration of the design and physical aspects of the proposed
 14 system, and any adverse hydrologic hydraulic effects, including erosion, flood
 15 duration,
 16 crop loss, and downstream water control device operation impacts, which may
 17 occur to land owned by a landowner provided under subsection 2. Technical
 18 evidence must be submitted to the permit applicant, notified landowners, and the
 19 board within thirty days of the receipt of the permit application by the board.

20 b. If the board finds, based on technical evidence, the proposed subsurface water
 21 management system will flood or unreasonably harm lands of a landowner
 22 notified under subsection 2, the board may require the applicant to obtain a
 23 notarized letter of approval before issuing a permit for the system. The board may
 24 not require a letter of approval for any land downstream of a system that outlets
 25 into an assessment drain, natural watercourse, or pond, slough, or lake if notified
 26 landowners did not provide technical evidence to the district.

27 c. A water resource district may attach reasonable conditions to an approved permit
 28 for a subsurface water management system that outlets directly into a legal
 29 assessment drain or public highway right-of-way. For purposes of this subsection,
 30 "reasonable conditions" means conditions that address the outlet location and
 1 operation, proper
 2 erosion control, reseeding of disturbed areas, installation of riprap or other ditch
 3 stabilization, and conditions that require all work to be done in a neat and
 4 professional manner. Any condition to locate the project a minimum distance from
 5 rural water supply lines may not extend beyond an existing easement for the lines, or
 6 no greater than twenty-five feet either side of the waterline if the rural waterline was
 7 installed under a blanket easement.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
- e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydrological hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
- f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
- 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
- 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

TESTIMONY ON ENGROSSED HOUSE BILL NO. 1390**Senate Agriculture Committee****Aaron Carranza, Chief – Engineering and Permitting Section
Office of the State Engineer****March 10, 2017**

Chairman Luick and members of the Senate Agriculture Committee, my name is Aaron Carranza. I am the Chief of the Engineering and Permitting Section for the Office of the State Engineer. I am here testifying on behalf of State Engineer Garland Erbele regarding Engrossed House Bill 1390. The State Engineer is in favor of Engrossed House Bill 1390 but has a few concerns, specifically with portions of the proposed language found in Section 6.

The State Engineer has the following concerns with the proposed language:

- (Page 4, lines 25-26) The proposed language removes the requirement that all approved permits be forwarded to the State Engineer. This will greatly reduce the ability of producers, water resource districts, the State, and others to adequately plan and review projects without knowledge of existing drainage and water management systems.
- (Page 4, line 29) The word “hydrological” should be replaced with the word “hydraulic.” While hydrology generally involves the study of the hydrologic cycle and water movement (rainfall), hydraulics (in this context) involves analyzing how water flows through a system (river, stream, ditch, etc.) from one point to another. (Hydrology will quantify the rate of water

entering into a system while hydraulics quantifies how the system reacts after the water enters.)

- (Page 5, line 4) The proposed language would automate a state engineer action if the state engineer does not approve or deny an application a water resource district has determined to be of statewide significance within 30 days. The legality of this language, in light of the ability for any person to appeal an action of the state engineer under N.D.C.C. § 61-03-22, is questionable. Therefore, the State Engineer proposes that instead the statewide application be sent back to the water resource board and the water resource board would act as the final permitting authority.
- (Page 5, line 12) The proposed language is unspecific as to at what point in the application process the notarized letters are to be received to allow the water resource district the ability to waive the 30-day notice period.

The State Engineer has no issues with the proposal to adopt Engrossed Senate Bill 2263 language in place of Section 6 of Engrossed House Bill 1390. However, as with Engrossed House Bill 1390, the State Engineer has concerns with the current language of Engrossed Senate Bill 2263, which are as follows:

- (Page 3, lines 5-6) The proposed language is unclear as to when the application is to be considered complete as it relates to the certified mail receipts.
- (Page 3, line 7) The proposed language does not provide water resource districts the tool of a statewide significance designation. Generally speaking, the statewide process allows for water resource boards to

engage in a more comprehensive public comment period, as well as a public hearing, to fully explore the potential issues and benefits of a proposed project. As stated in previous testimony, only 1.2% of the roughly 770 subsurface water management projects permitted in ND since the 2011 law went into effect were designated as being of statewide significance.

- (Page 3, line 8) The proposed language does not allow for a water resource board to consider technical evidence that is generated by the board. This has the potential to reduce the ability of a water resource board to effectively review and consider a proposed project.
- (Page 3, line 14) As stated previously, the word “hydraulic” is more appropriate in this context.
- (Page 3, lines 27-28) Limiting water resource boards to only condition a project that outlets directly into a legal assessment drain or public highway right-of-way could reduce the ability of a water resource board to properly manage water resources within their district.
- (Page 4, line 12) As stated previously, the word “hydraulic” is more appropriate in this context.
- (Page 4, line 14) Generally speaking, roadways are not the only features downstream of a subsurface water management system that are susceptible to unreasonable harm.

Attached to this testimony, for your convenience, are marked-up versions of Engrossed House Bill 1390 and Engrossed Senate Bill 2263, which provide some potential modifications that could reduce or eliminate the State Engineer's concerns.

The State Engineer is neutral on the remaining sections of Engrossed House Bill 1390 and fully supports the sound management of water resources through ongoing cooperation and education between producers, water resource districts, and the state.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.

17.0868.03000

FIRST ENGROSSMENT

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1390

Introduced by

Representatives Headland, Blum, Brandenburg, Kading

Senators Meyer, Rust, Wanzek

1 A BILL for an Act to create and enact a new section to chapter 11-11 and section 61-32-03.2 of
2 the North Dakota Century Code, relating to a limitation on county authority and subsurface
3 water management on land that qualifies for prevented planting insurance coverage; to amend
4 and reenact sections 61-16-07, 61-16-08, and 61-16-09 and subsection 8 of section 61-16.1-09
5 of the North Dakota Century Code, relating to water resource district board members and
6 subsurface water management projects; and to provide for a legislative management study.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** A new section to chapter 11-11 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Limitation on authority - Discharging water.**

11 Notwithstanding any other provision of law, a county may not require a resident to provide
12 thirty days' notice before discharging water from a subsurface outlet into a legal drain.

13 **SECTION 2. AMENDMENT.** Section 61-16-07 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16-07. Water resource board members - Appointment and number.**

16 When a water resource district has been created, and the state water commission has filed
17 notice with the county auditor of a county where the district or a part thereof is situated, a water
18 resource board ~~shall~~must be appointed within ninety days, as provided herein. If the district's
19 boundaries are confined to one county, the board of county commissioners shall appoint a water
20 resource board consisting of three or five ~~managers~~board members. When a district includes
21 two counties, the water resource board ~~shall~~must consist of five ~~managers~~board members,
22 three appointed by the board of county commissioners of the county having the larger
23 aggregate taxable valuation of property, and two appointed by the board of county
24 commissioners of the other county. If a district includes three counties, the water resource board

1 shall ~~must~~ consist of five ~~managers~~ board members, one appointed by the board of county
2 commissioners having the lowest aggregate taxable valuation of property in the district, and two
3 appointed by the board of county commissioners of each of the other two counties. If a district
4 includes four or six counties, the water resource board shall ~~must~~ consist of two board members
5 from the county having the largest aggregate taxable valuation of property in the district, and
6 one ~~manager~~ board member from each of the other counties. If a district includes five or seven
7 counties, the water resource board shall ~~must~~ consist of one ~~manager~~ board member from each
8 county. Appointments to the water resource board shall ~~must~~ be made by the boards of county
9 commissioners of the respective counties.

10 **SECTION 3. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling**
13 **vacancies - Compensation of managers board members.**

- 14 1. When a water resource district has been created, any resident landowner in the
15 district, except a county commissioner, is eligible, subject to the provisions of this
16 section, for appointment to the water resource board. ~~After June 30, 1985, when the~~
17 ~~term of office of a district manager has expired, the manager's successor shall hold~~
18 ~~office for three years from the first day of January next following the date of the~~
19 ~~successor's appointment. The term of office of a manager does not terminate until the~~
20 ~~successor in office is appointed and qualified. In case the office of any district~~
21 ~~manager becomes vacant, the manager appointed to fill the vacancy shall serve the~~
22 ~~unexpired term of the manager whose office became vacant~~ Before the start of an
23 individual's term as a water resource board member, the individual shall attend a
24 course on water management, and each board member shall attend a course on water
25 management once every three years during the member's term on the board.
- 26 2. Each member of a water resource board shall receive the sum of at least seventy-five
27 dollars but not more than one hundred thirty-five dollars per day while performing
28 duties as a member of the board, and an allowance for meals and lodging expenses at
29 the same rate and under the same conditions as provided for state officials and
30 employees. The allowance for travel expenses shall be at the same rate as provided

1 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
2 section 21-05-01.

3 3. A managerboard member may be removed from the board by the board of county
4 commissioners after it appears to the board of county commissioners by competent
5 evidence, and after a public hearing, if so requested by the managerboard member
6 subject to removal, at which hearing the managerboard member must be apprised of
7 and allowed ample opportunity to repudiate the evidence, that the managerboard
8 member has been guilty of misconduct, malfeasance, crime in office, neglect of duty in
9 office, habitual drunkenness, gross incompetency, nonattendance at board meetings,
10 refusal to carry out duties required by law, or inability to perform the duties of office for
11 reasons of health.

12 **SECTION 4. AMENDMENT.** Section 61-16-09 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-16-09. Oath of office - Organization of water resource board - Appointment of**
15 **employees - Meetings.**

16 Upon receiving notice of appointment as member of the water resource board, such
17 appointee shall take the oath of office prescribed for civil officers. Such oath ~~shall~~must be filed
18 with the secretary of the board. Notice of the appointment of a member or members of a water
19 resource board ~~shall~~must be mailed to the state water commission. Such notice shall state the
20 name and post-office address of each appointee and the date of appointment.

21 A majority of the ~~managers shall constitute~~board members constitutes a quorum for the
22 transaction of such business as may come before the board, but any number may adjourn a
23 meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer
24 and such other employees as needed for the efficient conduct of the district's business and shall
25 fix their compensation. The offices of secretary and treasurer may be held by the same person.
26 Officers and employees ~~shall~~ hold office at the pleasure of the board.

27 The board shall provide an office suitable for its use as a meeting place and for conducting
28 the affairs of the district. It shall adopt such rules for transacting the business of the district as it
29 may deem necessary, including the time and place of holding regular meetings of the board.

30 Special meetings may be called by the secretary on order of the chairman of the board or upon
31 written request of two members of the board. Notice of a special meeting ~~shall~~must be mailed to

1 each member of the board at least five days before any such meeting provided, that a special
2 meeting may be held whenever all members of the board are present or consent thereto in
3 writing.

4 **SECTION 5. AMENDMENT.** Subsection 8 of section 61-16.1-09 of the North Dakota
5 Century Code is amended and reenacted as follows:

- 6 8. Make rules ~~and regulations~~ concerning the management, control, regulation, and
7 conservation of waters and prevent the pollution, contamination, or other misuse of the
8 water resources, streams, or bodies of water included within the district. However, the
9 board may not make a rule regarding subsurface water management system permits
10 unless expressly required or allowed under this title.

11 **SECTION 6. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

14 Installation of an artificial subsurface ~~drainage~~water management system comprising eighty
15 acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop
16 an application form for a permit for subsurface ~~drainage of water~~water management. A person
17 seeking to construct an artificial subsurface ~~drainage~~water management system must submit an
18 application to the water resource district within which is found a majority of the land area for
19 consideration and approval. Water resource districts may attach any necessary conditions,
20 except a requirement to locate the project a minimum distance from rural water supply lines
21 beyond an existing easement for the lines, or no greater than twenty-five feet either side of the
waterline if the rural waterline was installed under a blanket easement to an approved permit, but
may not deny an

22 application unless the water resource district determines, based on technical evidence, the
23 application is of statewide significance or the proposed ~~drainage~~water management system will
24 flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of
25 the proposed subsurface ~~drainage~~ water management system. Water resource districts must
forward copies of all approved permits to the state engineer.

26 For purposes of this section, "technical
27 evidence" means written information regarding the proposed water management system
28 prepared after consideration of the design and physical aspects of the proposed system, and
29 any adverse hydrological hydraulic effects, including erosion, flood duration, crop loss, and
downstream

30 water control device operation impacts, which may occur to land downstream. Water resource

Sixty-fifth
Legislative Assembly
31 districts shall determine if the application proposes ~~drainage~~subsurface water management of

1 statewide significance. If so, the application must be referred to the state engineer for
2 consideration and approval, and the state engineer shall make a determination within thirty
3 days. If the state engineer has not approved or denied the permit within thirty days after receipt
4 of the permit application, the application must be deemed approved by the state engineer referred
back to the water resource district and the water resource district will be the permitting authority.
The
5 permit applicant shall provide a thirty-day notice to downstream property owners within one mile
6 [1.61 kilometers] of the proposed subsurface ~~drainage~~water management system. If an
7 investigation by a water resource district or a downstream landowner within one mile [1.61
8 kilometers] shows that ~~proves~~ demonstrates, based on technical evidence, the proposed
~~drainage~~system will
9 flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the
10 water resource district may require ~~flowage easements~~the applicant to obtain from the
11 downstream landowners notarized letters approving the system before issuing a permit. If all
12 adversely affected landowners provide the notarized approval letters at the time of application, the
board may waive the
13 thirty-day notice period for the meeting to approve or deny the permit. A landowner may not be
14 required to provide a United States department of agriculture highly erodible land conservation
15 and wetland conservation certification for the investigation. If an artificial subsurface
16 ~~drainage~~water management system drains into an assessment ~~drain~~water management
17 system, natural watercourse, or pond, slough, or lake, a ~~flowage easement~~a notarized letter of
18 approval is not required. ~~Flowage easements must be filed for record in the office of the~~
19 ~~recorder of the county or counties in which the lands are situated.~~ A person that installs an
20 artificial subsurface ~~drainage~~water management system without first securing a permit to do so,
21 as provided in this section, is liable for all damage sustained by a person caused by the
22 ~~drainage~~system, and is guilty of an infraction.

23 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.**

24 During the 2017-18 interim, the legislative management shall consider studying and monitoring
25 the nutrient management plan developed by the state department of health. The legislative
26 management shall report its findings and recommendations, together with any legislation
27 required to implement the recommendations, to the sixty-sixth legislative assembly.

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2263

Introduced by

Senators Wanzek, Luick, Dotzenrod

Representatives D. Johnson, Kading, Pyle

1 A BILL for an Act to amend and reenact section 61-32-03.1 of the North Dakota Century Code,
2 relating to subsurface water management system permits.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-32-03.1. ~~Permit to drain subsurface waters~~Permits for subsurface water**
7 **management systems required - Permit form - Penalty.**

8 1. a. Installation of an artificial subsurface drainage system comprising a subsurface
9 water management system that drains eighty acres [32.37 hectares] of land area
10 or more requires a permit. The watershed area drained by a subsurface water
11 management system may not be used to determine whether the system requires
12 a permit under this section.

13 b. Subsurface water management systems that use surface intakes must be
14 permitted exclusively under this section if the system will have a drainage
15 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface
16 water management systems that use surface intakes must be permitted
17 exclusively under section 61-32-03 if the system will have a drainage coefficient
18 exceeding three-eighths of an inch [0.95 centimeters].

19 c. A person that installs a water management system that encompasses less than
20 eighty acres [32.37 hectares] shall notify the water resource district within which
21 is found a majority of the land comprising the water management system of the
22 installation before it occurs, but no permit for the installation may be required.

23 2. a. The state engineer shall develop an application form for a permit for subsurface
24 drainage of water required under this section. A person seeking to construct an

1 ~~artificial~~a subsurface drainage~~water management~~ system that requires a permit
2 under this section must submit an application to the water resource district board
3 within which is found a majority of the land area for consideration and approval.
4 ~~Water resource districts may attach any necessary conditions to an approved~~
5 ~~permit, but may not deny an application unless the water resource district~~
6 ~~determines the application is of statewide significance or the proposed drainage~~
7 ~~will flood or adversely affect lands of downstream landowners within one mile~~
8 ~~[1.61 kilometers] of the proposed subsurface drainage. Water resource districts~~
9 ~~must forward copies of all approved permits to the state engineer. Water resource~~
10 ~~districts shall determine if the application proposes drainage of statewide~~
11 ~~significance. If so, the application must be referred to the state engineer for~~
12 ~~consideration and approval, and the state engineer shall make a determination~~
13 ~~within thirty days. The permit applicant shall provide a thirty day notice to~~
14 ~~downstream property owners within one mile [1.61 kilometers] of the proposed~~
15 ~~subsurface drainage. If an investigation by a water resource district or a~~
16 ~~downstream landowner within one mile [1.61 kilometers] shows that the proposed~~
17 ~~drainage will flood or adversely affect lands of downstream landowners within~~
18 ~~one mile [1.61 kilometers], the water resource district may require flowage~~
19 ~~easements before issuing a permit. If an artificial subsurface drainage system~~
20 ~~drains into an assessment drain, natural watercourse, or pond, slough, or lake, a~~
21 ~~flowage easement is not required. Flowage easements must be filed for record in~~
22 ~~the office of the recorder of the county or counties in which the lands are situated.~~
23 ~~A person that installs an artificial subsurface drainage system without first~~
24 ~~securing a permit to do so, as provided in this section, is liable for all damage~~
25 ~~sustained by a person caused by the draining, and is guilty of an infraction.~~
26 b. Upon submission of an application for a permit, the applicant immediately shall
27 give notice and a copy of the submission via certified mail to each owner of land
28 within one mile [1.61 kilometers] downstream of the proposed subsurface water
29 management system outlet unless the distance to the nearest assessment drain,
30 natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in
31 which case notice and a copy of the submission must be given immediately to

1 each owner of land between the outlet and the nearest assessment drain, natural
2 watercourse, slough, or lake. The notice requirement in this section must be
3 waived if the applicant presents signed, notarized letters of approval from all
4 downstream landowners entitled to notice in this subsection.

- 5 3. a. The water resource district board shall review the application at its next meeting
6 that is at least thirty days after receipt of the application and copies of the certified
7 mail receipts. The board may charge
8 the applicant a fee not to exceed five hundred dollars. Water resource districts shall
9 determine if the application proposes subsurface water management of statewide
10 significance. If so, the application must be referred to the state engineer for
11 consideration and approval, and the state engineer shall make a determination within
12 thirty days. If the state engineer has not approved or denied the permit within thirty days
13 after receipt of the permit application, the application must be referred back to the water
14 resource district and the water resource district will be the permitting authority. The
15 board shall consider
16 any written, technical evidence generated by the board or provided by the applicant
17 or a landowner notified
18 under subsection 2 addressing whether the land of a notified landowner will be
19 flooded or unreasonably harmed by the proposed subsurface water management
20 system. For purposes of this section "technical evidence" means written
21 information regarding the proposed subsurface water management system,
22 prepared after consideration of the design and physical aspects of the proposed
23 system, and any adverse hydrologic hydraulic effects, including erosion, flood
24 duration,
25 crop loss, and downstream water control device operation impacts, which may
26 occur to land owned by a landowner provided under subsection 2. Technical
evidence must be submitted to the permit applicant, notified landowners, and the
board within thirty days of the receipt of the permit application by the board.
- b. If the board finds, based on technical evidence, the proposed subsurface water
management system will flood or unreasonably harm lands of a landowner
notified under subsection 2, the board may require the applicant to obtain a
notarized letter of approval before issuing a permit for the system. The board may
not require a letter of approval for any land downstream of a system that outlets
into an assessment drain, natural watercourse, or pond, slough, or lake if notified
landowners did not provide technical evidence to the district.
- c. A water resource district may attach reasonable conditions to an approved permit

27 for a subsurface water management system that outlets directly into a legal
28 assessment drain or public highway right of way. For purposes of this subsection,
29 "reasonable conditions" means conditions that address the outlet location and
operation, proper
30 erosion control, reseeding of disturbed areas, installation of riprap or other ditch

1 stabilization, and conditions that require all work to be done in a neat and
2 professional manner. Any condition to locate the project a minimum distance from
 rural water supply lines may not extend beyond an existing easement for the lines, or
 no greater than twenty-five feet either side of the waterline if the rural waterline was
 installed under a blanket easement.

3 d. A water resource district may require a subsurface water management system
4 granted a permit under this section to incorporate a control structure at the outlet
5 into the design of the system and may require the control structure be closed
6 during critical flood periods.

7 e. A water resources district board may not deny a permit application under this
8 section unless the board determines, based on technical evidence submitted by a
9 landowner notified under subsection 2, the proposed water management system
10 will flood or unreasonably harm land of a notified landowner, and a notarized
11 letter of approval required by the board has not been obtained by the applicant.
12 For purposes of this section, "unreasonable harm" is limited to hydrological
 hydraulic

13 impacts, including erosion or other adverse impacts that degrade the physical
14 integrity of a roadway land within one mile [1.61 kilometers] downstream of the
 proposed subsurface water management system outlet. The board shall include a
 written explanation of the

15 reasons for a denial of an application and notify, by certified mail, the applicant
16 and all landowners notified under subsection 2 of the approval or denial.

17 f. The board may not deny a permit more than sixty days after receipt of the
18 application for the permit. If the board fails to deny the permit application within
19 sixty days of receipt, the permit application is deemed approved.

20 4. A denial of a permit application by a water resource district board or the state engineer
21 may be appealed, under section 28-34-01, to the district court of the county in which
22 the permit application was filed. The court may approve a permit application denied by
23 a water resource district board or the state engineer if the application meets the
24 requirements of this section.

25 5. A water resource district board or the state engineer may not be held liable to any
26 person for issuing a permit under this section.

27 6. A person that installs a subsurface water management system requiring a permit
28 under this section without first securing the permit is liable for all damages sustained
29 by a person caused by the subsurface water management system.

Testimony of Eric Volk, Executive Director

ND Rural Water Systems Association

House Bill 1390

Senate Agriculture Committee – March 10, 2017

Chairman Luick and members of the Senate Agriculture Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA) which serves a membership of more than 250 cities, 27 rural/regional water systems, and four tribal systems.

The NDRWSA is committed to ensuring all North Dakota's residents receive affordable drinking water of excellent quality and sufficient quantity. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today I am submitting testimony in support of HB 1390 with amendments.

Rural Water Facts:

Serve 145,000 rural residents (50,000 connections)

Serve 100,000 city residents, that is 247 of the 357 Incorporated Cities

Provide service through nearly 40,000 miles of pipe

For the record, I want to say that we fully understand the importance of organized drain tiling in today's agricultural world. A large percentage of farmers who are drain tiling are served by a Rural Water System. I would like to draw your attention to page 4, lines 20 and 21, *except a requirement to locate the project a minimum distance from rural water supply lines beyond an existing easement for the line*. The rural water group is fine with the language as it would ensure easement language is followed. One problem is, some older easements do not have a footage associated with them, e.g., 25 feet on either side of the centerline of the waterline as laid. A

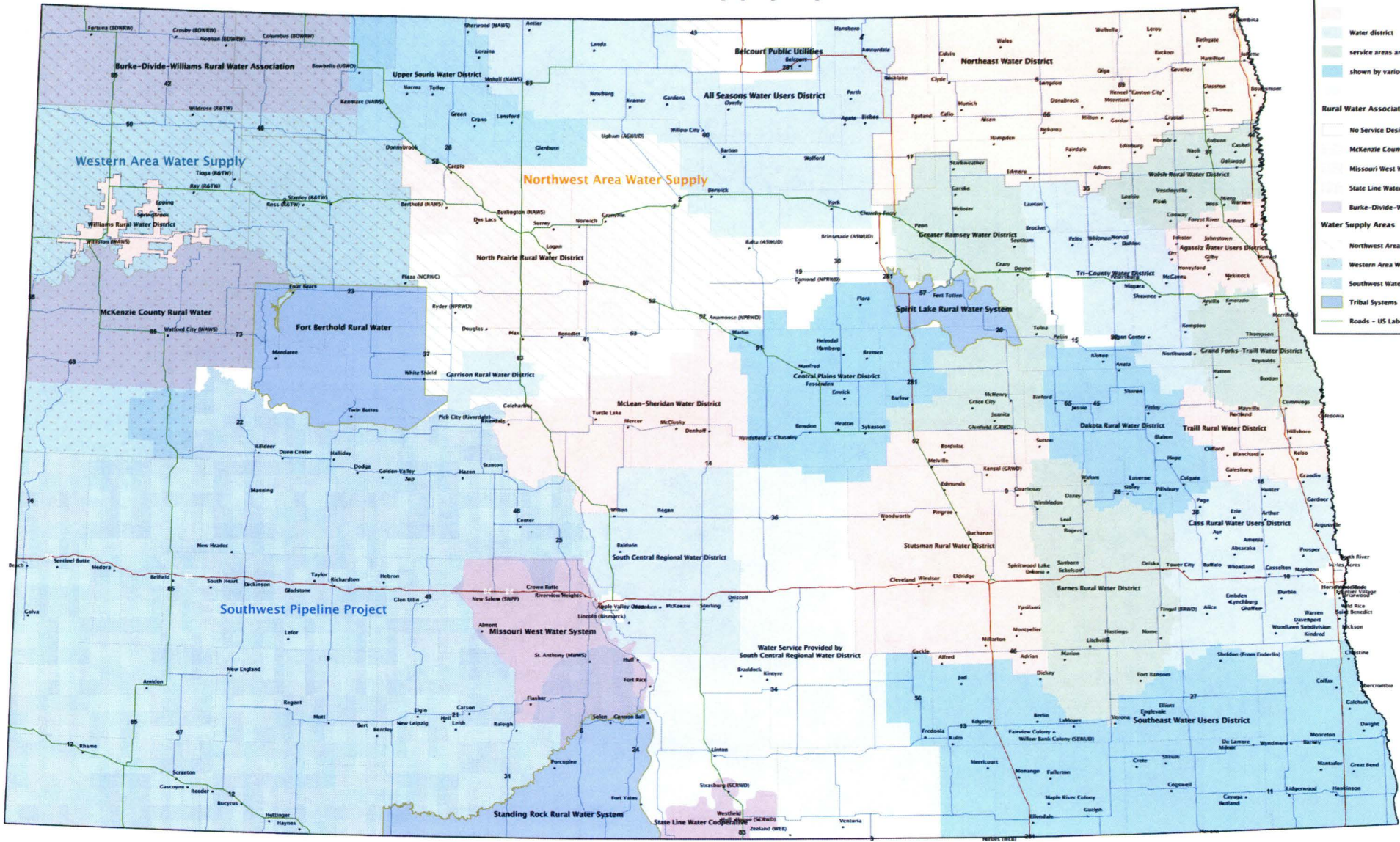
blanket easement for the ¼ section or 80 acres or other was secured for the placement of the waterline. This is what drain tilers do not like. We will have problems if this is not addressed properly. The rural water group came up with a suggestion of 25 feet on either side of the centerline as a minimum distance for those easements without a footage associated with them. We would suggest the following: Water resource districts may attach any necessary conditions, except a requirement to locate the project a minimum distance from rural water supply lines beyond an existing easement for the lines; or no greater than 25 feet either side of the waterline if the rural waterline was installed under a blanket easement, to an approved permit,...

Below are some conditions that rural water systems seek when dealing with drain tiling within areas of potable water lines:

- Contractor will notify XYZ Rural Water System (System) prior to any excavation over or around water line paint or flag markings.
- Contractor will send out construction crew to expose water line to verify depth and location of the line prior to engineer design and layout of drain tile with a System employee present.
- All System water line crossings with drain tile will be seamless, solid, non-perforated pipe and will extend no less than X feet either side of the water line. Crossings shall be at least eighteen inches (18") above or below System lines. All crossings need a System employee to be present when excavation of crossing to ensure proper support and bedding of water line is to System standards.
- All drain tile lines that parallel System lines need to be a distance no closer than X feet from either side of said water line.

I will say it again, we are not against drain tiling. Systems want to work with landowners on this issue. There may be instances where the landowner needs to be close to the water line for short distances and systems understand that. At the same time, it will probably be that same landowner that won't have water service because a system cannot find a leak due to the drain tile that was installed on their land. Communication is the key. For the reasons listed above, we support HB 1390 with amendments. I will stand for any questions. Thank You! EV,
ericvolk@ndrw.org

North Dakota Water Supply Systems



Cities Served

Rural Water Districts

- Water district service areas are shown by various colors.

Rural Water Associations

- No Service Designated
- McKenzie County Rural Water
- Missouri West Water System
- State Line Water Cooperative
- Burke-Divide-Williams Rural Water

Water Supply Areas

- Northwest Area Water Supply
- Western Area Water Supply
- Southwest Water Pipeline Project
- Tribal Systems

Roads - US Labels

January 2016

DRAIN TILING

In the past few years, there has been a lot of drain tiling on farmland throughout the NRWD service area. Normally, the only notice we receive of a planned tiling project is when we receive a one-call notice just ahead of the installer.

As much advance notice as possible **FROM THE LAND OWNER** would be greatly appreciated. We will gladly work with the landowner to insure an adequate distance from existing rural water pipeline is maintained, not only for the protection and maintenance of the rural water pipe, but also the landowner's investment in his drain tile.

A big concern particularly on the North Valley Branch, which has a lot of the 1970's glued PVC pipe more prone to leakage, is that drain tile close to the pipe is likely to capture any pipe leakage. Leaks would then not surface, making it difficult to maintain.

YOUR COOPERATION WOULD BE GREATLY APPRECIATED!

APPLICATION TO INSTALL A SUBSURFACE DRAIN

Version 4/11

I, the undersigned, am applying for a permit to install a subsurface drain system on an area comprising 80 acres or more as required under MOCC 61-32

(OSE USE ONLY) No. _____

(WRD USE ONLY) No. _____

This application must be accompanied by FSA aerial photo or equivalent showing the location of the proposed drain tile.

(1) Water Resource District in which project is located: Pemrose County

(2) Legal description of land to be tiled: 1/4 Section 1 Township 1 Range 1

Legal description /location outlet: 1/4 Section 1 Township 1 Range 1

(3) Design Data:

(a) Type of outlet (gravity, pump, other): Pump

(b) Design capacity of tile system (inches/day): 3/8" / 24hrs Outlet flow capacity: 427 cfs gpm

Land area to be tiled (acres): 61

(c) Where does tile system discharge: road ditch , private drain , assessment drain , natural waterway

Other : _____

(d) If discharging into road ditch include approval document from appropriate Federal, State, County, or Township road authority.

(4) Do you own land to be tiled? Yes No If "No", give name and address of landowner: _____

(5) Do you own location where tile system outlets? Yes No

(6) Have downstream landowners been notified Yes No Date of notice: 3/1/2017

Before the Water Resource District will process a tile drain application, all downstream landowners for a distance of 1/2 mile from project outlet must have received 30 days notice by certified mail.

(7) Contractor if known: Agassiz Drain Tile

(8) Anticipated construction start date: Sept 12 2017 Completion date: Sept 13 2017

APPLICANT'S CERTIFICATION

I understand that I must undertake and agree to pay the expense incurred in making an investigation. If the investigation discloses that the quantity of water to be drained will flood or adversely affect downstream lands, I may be required to obtain flowage easements and must file the easements in the office of the county recorder before a permit may be issued. My signature below acknowledges that I have read and agree to these statements, and will adhere to the conditions given on the back of this application.

Land Owner (Print): _____

Address: _____

Phone: _____

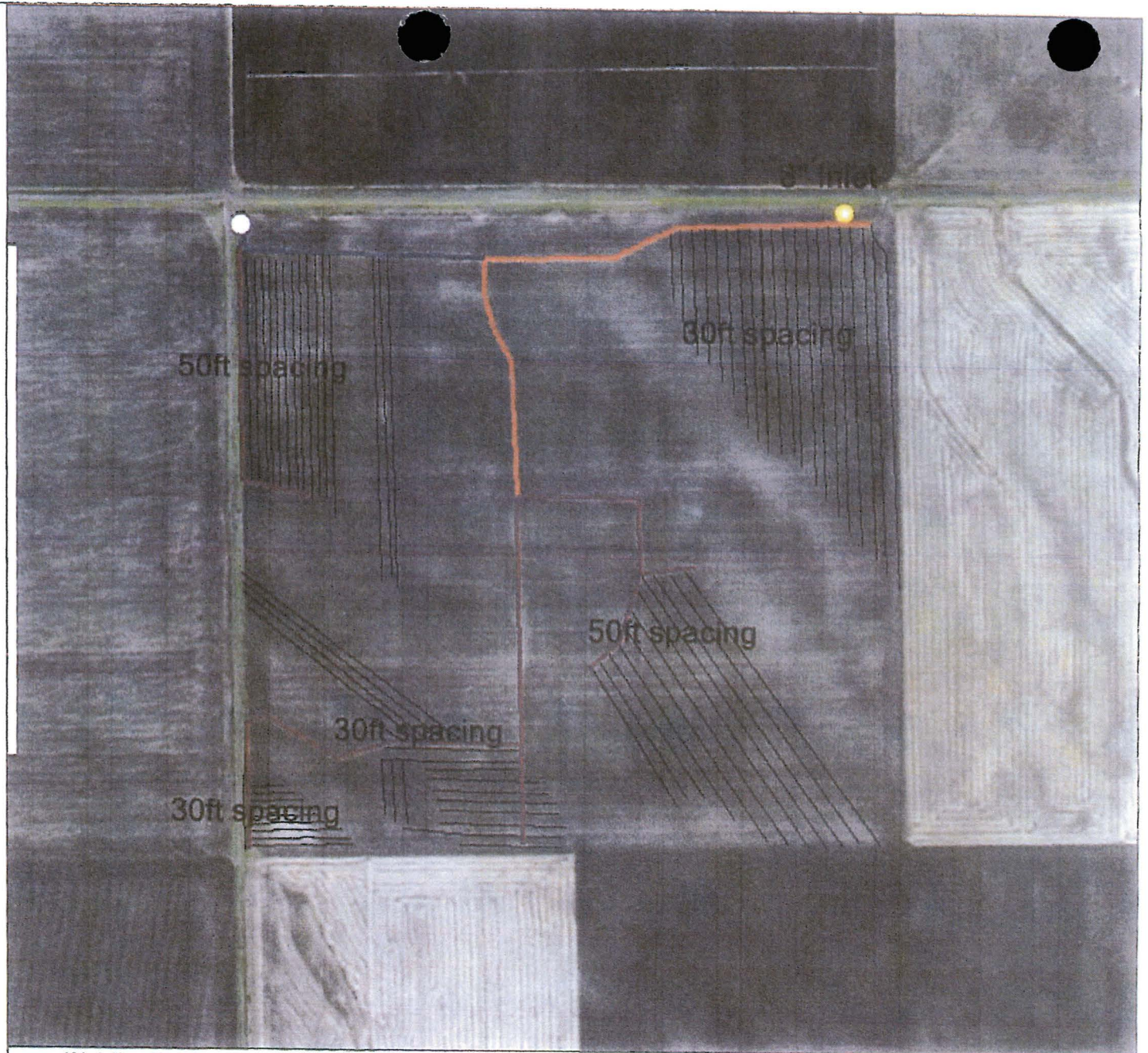
Signature: _____

Date: 3/1/2017

The filing of this application and its approval does not relieve the applicant and/or landowner(s) from any responsibility or liability for damages resulting from the construction, operation or failure of this drain.

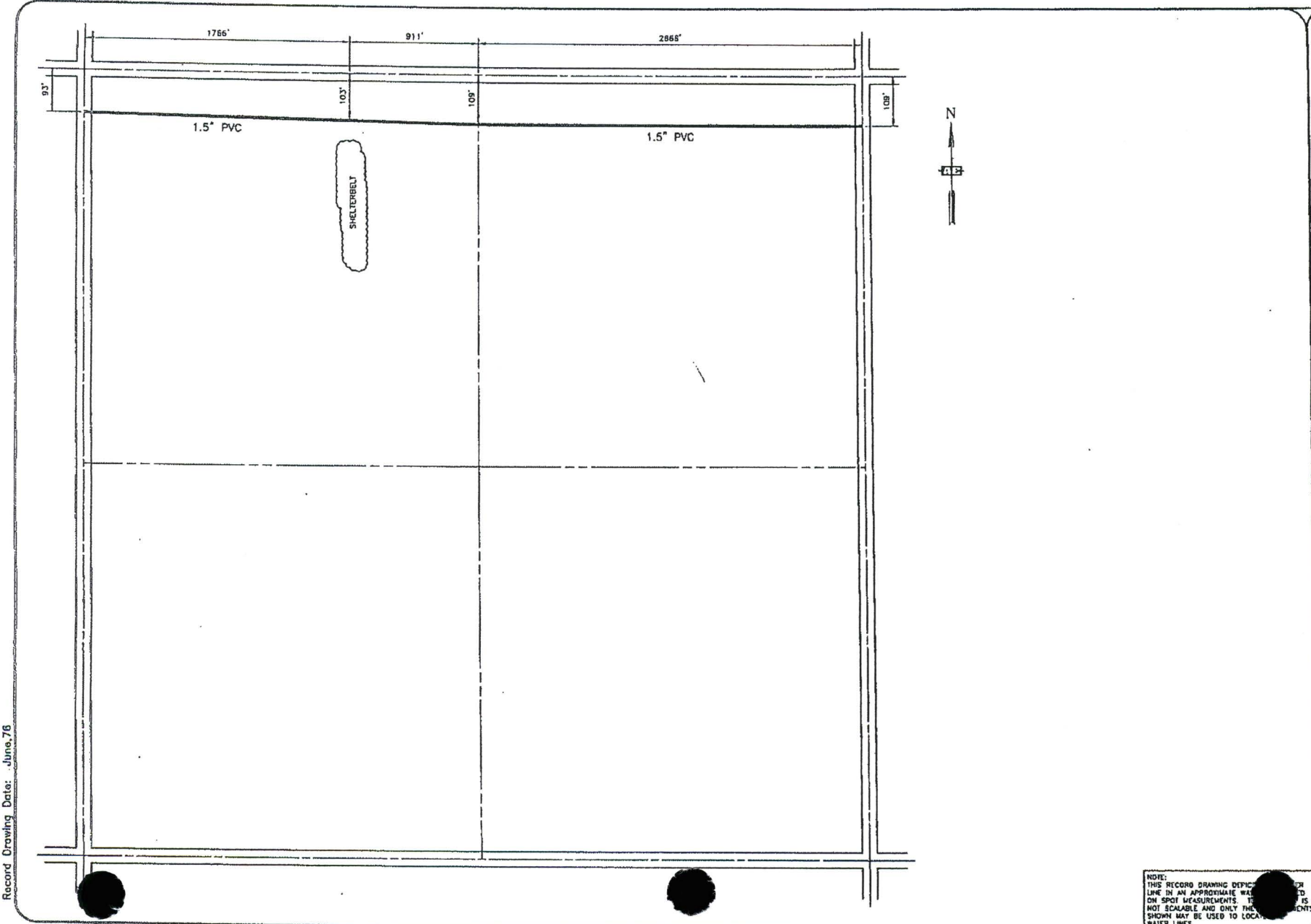
Agassiz Drain Tile
Kemp Farms
S Carlsile 23

LidarImport



- 03 inch Pipe - 58945 ft
- 06 inch Pipe - 5751 ft
- 08 inch Pipe - 2677 ft
- 10 inch Pipe - 1076 ft

● Notes



Record Drawing Date: June, 76



NORTH VALLEY
WATER ASSOCIATION, INC.
 CAVALIER, NORTH DAKOTA



FILE NAME
 D:\NorthValley
 1615223.dwg

DRAWN BY
 CL

DATE
 08-11-98

JOB NO.
 P139-03.0

TWP - RGE
 161-52

TWP. NO.
39

TWP. NAME
 SOUTH
 CARLISLE

SECTION NO.
23

NOTE:
 THIS RECORD DRAWING DEPICTS THE LOCATION OF WATER LINES IN AN APPROXIMATE MANNER BASED ON SPOT MEASUREMENTS. THIS DRAWING IS NOT SCALEABLE AND ONLY THE DIMENSIONS SHOWN MAY BE USED TO LOCATE THE WATER LINES.



Your voice for wheat and barley. www.ndgga.com

**North Dakota Grain Growers Association
Testimony on HB 1390
Senate Agriculture Committee
March 10, 2017**

Chairman Luick, members of the Senate Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). Through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council our Association engages in domestic policy issues on behalf of North Dakota wheat and barley farmers on the state and federal levels. Today I appear before you in support of HB 1390.

To NDGGA there are two critical components of this legislation; one is the education/continuing education requirements contained in the bill. Orderly water management, as you are all aware, is a critical component of North Dakota agriculture. It is also the most controversial, as you have witnessed during the 65th Legislative Assembly. Orderly water management can only truly be obtained if the water managers involved are educated in the process. That is why Section 3 of HB 1390 is so important; this section requires that water managers in North Dakota attend a water management course upon appointment and thereafter attend a course on water management every three years. It is the opinion of NDGGA that some level of expertise should be a requirement for the management of one of North Dakota's most valuable resources. This requirement should also bring about more professionalism in water resource district's water management decisions.

Second, any nutrient management plan developed by the state ought to have legislative oversight before adoption. Thus the need for Section 7 of the bill. Proper nutrient management is a key component of environmental health; that said legislative input on a nutrient management proposal deserves legislative scrutiny. The adoption of a statewide nutrient management plan is of statewide significance; with this in mind it is only proper that the North Dakota Legislature review the plan before its implementation.

Therefore, Chairman Luick, members of the Senate Agriculture Committee, the North Dakota Grain Growers Association supports HB 1390 and would ask for your Do Pass recommendation on the legislation.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.



Ducks Unlimited

To: ND Senate Agriculture Committee

From: Carmen Miller, Director of Public Policy, Ducks Unlimited

RE: Testimony on Senate Bill 1390

Date: March 10, 2017

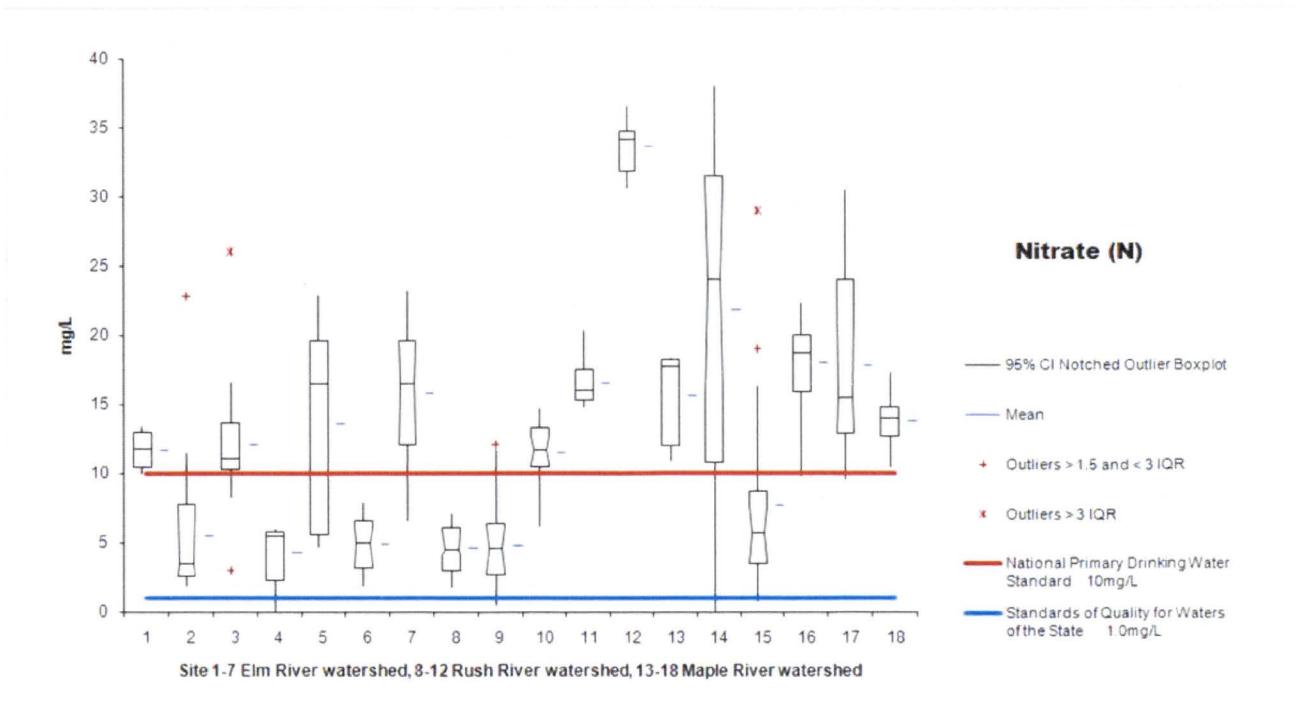
Good morning, Chairman Luick, and distinguished members of the committee. My name is Carmen Miller and I live in Bismarck. I'm here today representing Ducks Unlimited, and our more than 6,000 members across North Dakota. Ducks Unlimited was founded in 1937 and is now the world's largest private waterfowl and wetlands conservation organization, with 80 years of experience restoring and protecting wetlands and other aquatic habitat. DU has been working in North Dakota for over 30 years, and employs a staff of over 40 in an office here in Bismarck which serves as a regional headquarters for 7 states.

We appreciate the time and effort the committee has taken on both this bill and SB 2263 during this legislative session, and in particular, we appreciate the efforts of Chairman Luick to gather input from a wide range of constituencies on the issues relating to tile drainage. As the world's largest private wetlands organization, Ducks Unlimited is concerned about the impacts of subsurface tile drainage on North Dakota's wetlands, a globally unique resource and home to 900 different plant and animal species. Unfortunately, ND has already drained half of our original wetlands (4.9M acres) and we continue to lose the remaining ones (2.4M acres or only ~5% of our state's total land area) at an alarming rate (Dahl 1990, 2014). These wetlands are also a major driving force behind ND's \$1.4 billion hunting and fishing industry each year (Taylor et al. 2013).

These "natural assets" provide many ecological and societal benefits for our state and its residents. The detrimental effects of tile drainage on wetlands, wildlife habitat and downstream water quality are well-documented and supported by decades of independent peer-reviewed research (see Blann et al. 2009; Figure 1.).

A recent study by NDSU researchers who monitored 18 tile outlet sites in Cass and Trail Counties found that all sites (100%) exceeded state water quality standards for nitrate levels and 12 out of 18 sites (67%) exceeded federal drinking water standards in (see Figure 3 below). According to the Center of Disease Control (CDC), increased exposure to excess nitrates pose serious health risks to humans (e.g., higher risks of cancer, birth and reproductive defects, thyroid disruption, etc. <https://www.atsdr.cdc.gov/csem/csem.asp?csem=28&po=10>) Researchers also found elevated levels of sulfates (13 of 18 sites; increased water treatment costs), arsenic (carcinogen; 7 of 18 sites), barium (all sites, may cause increased blood pressure) and selenium (all sites; may cause reproductive failures, birth defects or death in livestock, wildlife and fish; see Johnson 2010).

Figure 3. from NDSU's "Red River Valley Tile Drainage Water Quality Assessment Phase I Final Report"



"It is well known that nitrogen levels are higher in tile drain water than in surface water. Phase I confirmed higher than recommended levels of nitrate nitrogen were leaving the tile at levels higher than state standards of quality for waters of the state. Best management practices including split application of fertilizer can be suggested to the producers to reduce the amount of NO₃(N) leaving the fields. Drinking water standards were exceeded at twelve sites. Although this water is not used for drinking purposes it may be reflected in increased costs to remove it at water treatment facilities." (Johnson 2010)

We have followed both HB 1390 and SB 2263 closely throughout this legislative session, and acknowledge that this committee and the House Agriculture Committee have much work left to do on these bills. HB 1390 has already been amended considerably, and in our opinion, improved, but the following provisions continue to be concerning:

- Page 4, Section 5, lines 8-10, prohibiting local water resource district boards from making rules regarding subsurface drainage permits. This provision seriously undermines the authority of local boards, and is inconsistent with the language immediately preceding this clause, which gives those boards broad rulemaking authority.
- Page 5, lines 3-4, stating that if the state engineer has not acted within 30 days on a referred determination of statewide significance, the permit will be deemed approved. The existing statute already requires the state engineer to act within 30 days – this provision is, frankly, overkill.
- Both HB 1390 and SB 2263 replace flowage easement requirements with “notarized letters of approval.” It is unclear whether these documents will provide the same type of notice to subsequent landowners as would be accomplished with a recorded flowage easement.

Thank you for your time, consideration and service to the people of ND. I'd be happy to entertain any questions if time allows.

Literature Cited

- Blann, Kristen L., J. L. Anderson, James L., G. R. Sands, Gary R. and B. Vondracek. 2009. *Effects of Agricultural Drainage on Aquatic Ecosystems: A Review*, *Critical Reviews in Environmental Science and Technology*, 39:11, 909-1001. <http://dx.doi.org/10.1080/10643380801977966>
- Dahl, T.E. 1990. *Wetlands Losses in the United States 1780s to 1980s*. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. 13 p. <http://www.fws.gov/wetlands/Documents/Wetlands-Losses-in-the-United-States-1780s-to-1980s.pdf>.
- Dahl, T.E. 2014. *Status and trends of prairie wetlands in the United States 1997 to 2009*. U.S. Department of the Interior; Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/wetlands/Documents/Status-and-Trends-of-Prairie-Wetlands-in-the-United-States-1997-to-2009.pdf>
- Johnson, R., 2010. *Red River Valley Tile Drainage Water Quality Assessment Phase I - Final Report*. Ag and Biosystems Engineering Department, North Dakota State University, Fargo, ND. <https://www.ag.ndsu.edu/waterquality/tile-drainage-1>
- Taylor, R.D., D.A. Bangsund, and N. Hodur. 2013. *Hunter and Angler Expenditures, Characteristics, and Economic Effects, North Dakota, 2011-2012*, Agribusiness and Applied Economics Report No. 706-S, Department of Agribusiness and Applied Economics, Agricultural Experiment Station, North Dakota State University, Fargo. <http://ageconsearch.umn.edu/bitstream/145739/2/AAE706-S%20February%202013.pdf>

Testimony
House Bill 1390
Senate Agriculture Committee
March 10, 2017, 9:00 a.m.
North Dakota Department of Health

Good morning Chairman Luick and members of the Senate Agriculture Committee. My name is Karl Rockeman, and I am the director of the Division of Water Quality within the North Dakota Department of Health's Environmental Health Section. The Division of Water Quality protects and monitors our water resources to ensure the quality of surface and ground water for the public's use.

The Division of Water Quality does not object to the Legislative Management Study of the state's Nutrient Reduction Strategy included in Section 7 of this bill. Excessive nutrients adversely affect surface waters locally, regionally and nationally, and a majority of states are taking positive actions to limit nutrient impacts. In North Dakota:

- Excessive nutrients lead to excessive algae growth and possibly harmful algal blooms (HABs) which can make surface waters unusable for recreation, fishing, or domestic and agricultural use.
- Control of nutrient pollution is a requirement of the federal Clean Water Act. Failure to address it in some fashion could result in legal action or federally imposed numeric nutrient criteria. A solution developed by our state's stakeholders to suit our unique conditions is preferred.
- Work on the Nutrient Reduction Strategy started in 2012 with a 24-member planning team representing a variety of stakeholder sectors, including industry and agriculture. The planning team met twice during the winter and spring of 2012-2013. In December 2013, a larger group of stakeholders was convened and included over 80 attendees from a diverse group. The stakeholders were also asked to participate in one of five different workgroups representing agriculture, industry and municipalities. The mission of these workgroups is to find solutions related to their areas of interest. Summaries of these meetings and the meeting materials are available on our website ndhealth.gov.
- The Department is currently drafting a document that will undergo additional public and stakeholder review. Additional details will need to be

provided by the various stakeholders, including innovative solutions to reduce nutrient pollution to our surface waters from a variety of sources.

- Actions have been implemented or are now being proposed by Montana, South Dakota, Minnesota and Manitoba to address excess nutrients in surface water supplies that impact agricultural, municipal, recreational and industrial uses.

This concludes my testimony. I am happy to answer any questions you may have.

March 23, 2017

#1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits, and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainagea subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage systema subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.

c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other

ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

#2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
- 3.
- a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application and copies of certified mail receipts. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
 - b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
 - c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion

control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

#3

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
 - b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
 - c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other

ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the waterline if the rural waterline was installed under a blanket easement.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

#4

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. Expenses incurred by a water resource district board for the purpose of gathering necessary technical evidence must be charged to the appropriate party, or parties, as determined by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.

c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway

right-of-way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

#5

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~ A water resource district board may charge a fee of up to one hundred fifty dollars for a permit for a subsurface water management system of eighty acres [32.37 hectares] or more.

b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.

c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions"

means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

#6

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1. a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.

b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].

c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2. a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

#8

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
- e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
- 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
- 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

#9

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.

c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other

ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system might be liable for damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

#10

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required. Reasonable conditions, as defined in subdivision c of subsection 3, apply to water management systems of eighty acres [32.37 hectares] or less.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage

~~easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.

c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions"

means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

Claire Messer, Legislative Council HB 1390 3/24

#1

3.a.

Day 1
applic submitted

3.a.

Day 30

Board can meet to review application if

notarized letters haven't been received

- Board can meet anytime between 30 + 60 days after application is received, unless notarized letters are received in which case they can meet immediately.

3.f.

Day 60

Board can no longer deny application

meet to approve anytime if notarized letters are received

otherwise, allow parties to gather technical evidence



17.0868.03012
Title.

Prepared by the Legislative Council staff for
Senator Luick

March 23, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must shall forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
3.
 - a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
 - b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
 - c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other

ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 23, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. A person that installs a water management system that encompasses less than eighty acres [32.37 hectares] shall notify the water resource district within which is found a majority of the land comprising the water management system of the installation before it occurs, but no permit for the installation may be required.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit an application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that

~~installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

b. Upon submission of an application for a permit, the applicant immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the application at its next meeting that is at least thirty days after receipt of the application and copies of certified mail receipts. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.

c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right-of-way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion

control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resources district board may not deny a permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway. The board shall include a written explanation of the reasons for a denial of an application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

March 29, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; to provide for a legislative management study; to provide for a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Before the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts must shall forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without

and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a completed permit application by a water resource district board or the state engineer may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board or the state engineer may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
 - 7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

3/29/17 #2
4:55 pm

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1390

Sixty-fifth
Legislative Assembly
of North Dakota

Introduced by

Representatives Headland, Blum, Brandenburg, Kading

Senators Meyer, Rust, Wanzek

1 ~~A BILL for an Act to create and enact a new section to chapter 11-11 and section 61-32-03.2 of~~
 2 ~~the North Dakota Century Code, relating to a limitation on county authority and subsurface~~
 3 ~~water management on land that qualifies for prevented planting insurance coverage; to amend~~
 4 ~~and reenact sections 61-16-07, 61-16-08, and 61-16-09 and subsection 8 of section 61-16.1-09~~
 5 ~~of the North Dakota Century Code, relating to water resource district board members and~~
 6 ~~subsurface water management projects; and to provide for a legislative management study; for~~
 7 an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century
 8 Code, relating to water resource board members and subsurface water management system
 9 permits; to provide for a legislative management study; to provide for a penalty; and to declare
 10 an emergency.

11 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

12 ~~— SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is created~~
 13 ~~and enacted as follows:~~

14 ~~— Limitation on authority - Discharging water.~~

15 ~~— Notwithstanding any other provision of law, a county may not require a resident to provide~~
 16 ~~thirty days' notice before discharging water from a subsurface outlet into a legal drain.~~

17 ~~— SECTION 2. AMENDMENT. Section 61-16-07 of the North Dakota Century Code is~~
 18 ~~amended and reenacted as follows:~~

19 ~~— 61-16-07. Water resource board members - Appointment and number.~~

20 ~~— When a water resource district has been created, and the state water commission has filed~~
 21 ~~notice with the county auditor of a county where the district or a part thereof is situated, a water~~
 22 ~~resource board shall must be appointed within ninety days, as provided herein. If the district's~~
 23 ~~boundaries are confined to one county, the board of county commissioners shall appoint a water~~
 24 ~~resource board consisting of three or five managers board members. When a district includes~~

1 ~~two counties, the water resource board shall~~must ~~consist of five managers~~board members,
2 ~~three appointed by the board of county commissioners of the county having the larger~~
3 ~~aggregate taxable valuation of property, and two appointed by the board of county~~
4 ~~commissioners of the other county. If a district includes three counties, the water resource board~~
5 ~~shall~~must ~~consist of five managers~~board members, one appointed by the board of county
6 ~~commissioners having the lowest aggregate taxable valuation of property in the district, and two~~
7 ~~appointed by the board of county commissioners of each of the other two counties. If a district~~
8 ~~includes four or six counties, the water resource board shall~~must ~~consist of two~~ board members
9 ~~from the county having the largest aggregate taxable valuation of property in the district, and~~
10 ~~one manager~~board member ~~from each of the other counties. If a district includes five or seven~~
11 ~~counties, the water resource board shall~~must ~~consist of one manager~~board member ~~from each~~
12 ~~county. Appointments to the water resource board shall~~must ~~be made by the boards of county~~
13 ~~commissioners of the respective counties.~~

14 ~~—~~ **SECTION 3. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is
15 ~~amended and reenacted as follows:~~

16 ~~—~~ **61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling**
17 **vacancies - Compensation of managers**board members.

18 ~~—~~ 1. ~~When a water resource district has been created, any resident landowner in the~~
19 ~~district, except a county commissioner, is eligible, subject to the provisions of this~~
20 ~~section, for appointment to the water resource board. After June 30, 1985, when the~~
21 ~~term of office of a district manager has expired, the manager's successor shall hold~~
22 ~~office for three years from the first day of January next following the date of the~~
23 ~~successor's appointment. The term of office of a manager does not terminate until the~~
24 ~~successor in office is appointed and qualified. In case the office of any district~~
25 ~~manager becomes vacant, the manager appointed to fill the vacancy shall serve the~~
26 ~~unexpired term of the manager whose office became vacant~~Before the start of an
27 individual's term as a water resource board member, the individual shall attend a
28 course on water management, and each board member shall attend a course on water
29 management once every three years during the member's term on the board.

30 ~~—~~ 2. ~~Each member of a water resource board shall receive the sum of at least seventy-five~~
31 ~~dollars but not more than one hundred thirty-five dollars per day while performing~~

1 duties as a member of the board, and an allowance for meals and lodging expenses at
2 the same rate and under the same conditions as provided for state officials and
3 employees. The allowance for travel expenses shall be at the same rate as provided
4 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
5 section 21-05-01.

6 ~~3. A managerboard member may be removed from the board by the board of county~~
7 ~~commissioners after it appears to the board of county commissioners by competent~~
8 ~~evidence, and after a public hearing, if so requested by the managerboard member~~
9 ~~subject to removal, at which hearing the managerboard member must be apprised of~~
10 ~~and allowed ample opportunity to repudiate the evidence, that the managerboard~~
11 ~~member has been guilty of misconduct, malfeasance, crime in office, neglect of duty in~~
12 ~~office, habitual drunkenness, gross incompetency, nonattendance at board meetings,~~
13 ~~refusal to carry out duties required by law, or inability to perform the duties of office for~~
14 ~~reasons of health.~~

15 ~~SECTION 4. AMENDMENT.~~ Section 61-16-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 ~~61-16-09. Oath of office - Organization of water resource board - Appointment of~~
18 ~~employees - Meetings.~~

19 ~~Upon receiving notice of appointment as member of the water resource board, such~~
20 ~~appointee shall take the oath of office prescribed for civil officers. Such oath shall~~must ~~be filed~~
21 ~~with the secretary of the board. Notice of the appointment of a member or members of a water~~
22 ~~resource board shallmust ~~be mailed to the state water commission. Such notice shall state the~~
23 ~~name and post office address of each appointee and the date of appointment.~~~~

24 ~~A majority of the managers shall constitute~~board members constitutes ~~a quorum for the~~
25 ~~transaction of such business as may come before the board, but any number may adjourn a~~
26 ~~meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer~~
27 ~~and such other employees as needed for the efficient conduct of the district's business and shall~~
28 ~~fix their compensation. The offices of secretary and treasurer may be held by the same person.~~
29 ~~Officers and employees shall hold office at the pleasure of the board.~~

30 ~~The board shall provide an office suitable for its use as a meeting place and for conducting~~
31 ~~the affairs of the district. It shall adopt such rules for transacting the business of the district as it~~

1 may deem necessary, including the time and place of holding regular meetings of the board.
2 Special meetings may be called by the secretary on order of the chairman of the board or upon
3 written request of two members of the board. Notice of a special meeting shall must be mailed to
4 each member of the board at least five days before any such meeting provided, that a special
5 meeting may be held whenever all members of the board are present or consent thereto in
6 writing.

7 ~~— SECTION 5. AMENDMENT.~~ Subsection 8 of section 61-16.1-09 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 ~~— 8. — Make rules and regulations concerning the management, control, regulation, and~~
10 ~~conservation of waters and prevent the pollution, contamination, or other misuse of the~~
11 ~~water resources, streams, or bodies of water included within the district. However, the~~
12 ~~board may not make a rule regarding subsurface water management system permits~~
13 ~~unless expressly required or allowed under this title.~~

14 ~~— SECTION 6. AMENDMENT.~~ Section 61-32-03.1 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 ~~— 61-32-03.1. Permit to drain subsurface waters required – Permit form – Penalty.~~

17 ~~— Installation of an artificial subsurface drainagewater management system comprising eighty~~
18 ~~acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop~~
19 ~~an application form for a permit for subsurface drainage of waterwater management. A person~~
20 ~~seeking to construct an artificial subsurface drainagewater management system must submit an~~
21 ~~application to the water resource district within which is found a majority of the land area for~~
22 ~~consideration and approval. Water resource districts may attach any necessary conditions,~~
23 ~~except a requirement to locate the project a minimum distance from rural water supply lines~~
24 ~~beyond an existing easement for the lines, to an approved permit, but may not deny an~~
25 ~~application unless the water resource district determines, based on technical evidence, the~~
26 ~~application is of statewide significance or the proposed drainagewater management system will~~
27 ~~flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of~~
28 ~~the proposed subsurface drainage. Water resource districts must forward copies of all approved~~
29 ~~permits to the state engineerwater management system. For purposes of this section, "technical~~
30 ~~evidence" means written information regarding the proposed water management system~~
31 ~~prepared after consideration of the design and physical aspects of the proposed system, and~~

1 ~~any adverse hydrological effects, including erosion, flood duration, crop loss, and downstream~~
2 ~~water control device operation impacts, which may occur to land downstream. Water resource~~
3 ~~districts shall determine if the application proposes drainage~~~~subsurface water management~~~~of~~
4 ~~statewide significance. If so, the application must be referred to the state engineer for~~
5 ~~consideration and approval, and the state engineer shall make a determination within thirty~~
6 ~~days. If the state engineer has not approved or denied the permit within thirty days after receipt~~
7 ~~of the permit application, the application must be deemed approved by the state engineer. The~~
8 ~~permit applicant shall provide a thirty-day notice to downstream property owners within one mile~~
9 ~~[1.61 kilometers] of the proposed subsurface drainage~~~~water management system. If an~~
10 ~~investigation by a water resource district or a downstream landowner within one mile [1.61~~
11 ~~kilometers] shows that~~~~proves, based on technical evidence, the proposed drainage~~~~system will~~
12 ~~flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the~~
13 ~~water resource district may require flowage easements~~~~the applicant to obtain from the~~
14 ~~downstream landowners notarized letters approving the system before issuing a permit. If all~~
15 ~~adversely affected landowners provide the notarized approval letters, the board may waive the~~
16 ~~thirty-day notice period for the meeting to approve or deny the permit. A landowner may not be~~
17 ~~required to provide a United States department of agriculture highly erodible land conservation~~
18 ~~and wetland conservation certification for the investigation. If an artificial subsurface~~
19 ~~drainage~~~~water management system drains into an assessment drain~~~~water management~~
20 ~~system, natural watercourse, or pond, slough, or lake, a flowage easement~~~~a notarized letter of~~
21 ~~approval is not required. Flowage easements must be filed for record in the office of the~~
22 ~~recorder of the county or counties in which the lands are situated. A person that installs an~~
23 ~~artificial subsurface drainage~~~~water management system without first securing a permit to do so,~~
24 ~~as provided in this section, is liable for all damage sustained by a person caused by the~~
25 ~~drainage~~~~system, and is guilty of an infraction.~~

26 ~~— SECTION 7. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.~~

27 ~~During the 2017-18 interim, the legislative management shall consider studying and monitoring~~
28 ~~the nutrient management plan developed by the state department of health. The legislative~~
29 ~~management shall report its findings and recommendations, together with any legislation~~
30 ~~required to implement the recommendations, to the sixty-sixth legislative assembly.~~

1 **SECTION 1. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling**
4 **vacancies - Compensation of managers.**

5 1. When a water resource district has been created, any resident landowner in the
6 district, except a county commissioner, is eligible, subject to the provisions of this
7 section, for appointment to the water resource board. After June 30, 1985, when the
8 term of office of a district manager has expired, the manager's successor shall hold
9 office for three years from the first day of January next following the date of the
10 successor's appointment. The term of office of a manager does not terminate until the
11 successor in office is appointed and qualified. In case the office of any district
12 manager becomes vacant, the manager appointed to fill the vacancy shall serve the
13 unexpired term of the manager whose office became vacant. Before the start of an
14 individual's term as a district manager, the individual shall attend a course on water
15 management, and each district manager shall attend a course on water management
16 every three years during the manager's term.

17 2. Each member of a water resource board shall receive the sum of at least seventy-five
18 dollars but not more than one hundred thirty-five dollars per day while performing
19 duties as a member of the board, and an allowance for meals and lodging expenses at
20 the same rate and under the same conditions as provided for state officials and
21 employees. The allowance for travel expenses shall be at the same rate as provided
22 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
23 section 21-05-01.

24 3. A manager may be removed from the board by the board of county commissioners
25 after it appears to the board of county commissioners by competent evidence, and
26 after a public hearing, if so requested by the manager subject to removal, at which
27 hearing the manager must be apprised of and allowed ample opportunity to repudiate
28 the evidence, that the manager has been guilty of misconduct, malfeasance, crime in
29 office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability
30 to perform the duties of office for reasons of health.

1 **SECTION 2. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

4 1. a. Installation of ~~an artificial subsurface drainage~~ a subsurface water management
5 system comprising eighty acres [32.37 hectares] of land area or more requires a
6 permit. The watershed area drained by a subsurface water management system
7 may not be used to determine whether the system requires a permit under this
8 section.

9 b. Subsurface water management systems that use surface intakes must be
10 permitted exclusively under this section if the system will have a drainage
11 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface
12 water management systems that use surface intakes must be permitted
13 exclusively under section 61-32-03 if the system will have a drainage coefficient
14 exceeding three-eighths of an inch [0.95 centimeters].

15 c. Installation of a subsurface water management system comprising less than
16 eighty acres [32.37 hectares] of land area does not require a permit.

17 2. a. The state engineer shall develop an application form for a permit ~~for subsurface~~
18 ~~drainage of water~~ required under this section. A person seeking to construct ~~an~~
19 ~~artificial subsurface drainage system~~ a subsurface water management system
20 that requires a permit under this section must submit a completed application
21 to the water resource district board within which is found a majority of the land
22 area for consideration and approval. ~~Water resource districts may attach any~~
23 ~~necessary conditions to an approved permit, but may not deny an application~~
24 ~~unless the water resource district determines the application is of statewide~~
25 ~~significance or the proposed drainage will flood or adversely affect lands of~~
26 ~~downstream landowners within one mile [1.61 kilometers] of the proposed~~
27 ~~subsurface drainage.~~ The water resource district board may charge permit
28 applicants a fee up to one hundred fifty dollars. ~~Water resource districts must~~ shall
29 forward copies of all approved permits to the state engineer. ~~Water resource~~
30 ~~districts shall determine if the application proposes drainage of statewide~~
31 ~~significance. If so, the application must be referred to the state engineer for~~

1 ~~consideration and approval, and the state engineer shall make a determination~~
2 ~~within thirty days. The permit applicant shall provide a thirty-day notice to~~
3 ~~downstream property owners within one mile [1.61 kilometers] of the proposed~~
4 ~~subsurface drainage. If an investigation by a water resource district or a~~
5 ~~downstream landowner within one mile [1.61 kilometers] shows that the proposed~~
6 ~~drainage will flood or adversely affect lands of downstream landowners within~~
7 ~~one mile [1.61 kilometers], the water resource district may require flowage~~
8 ~~easements before issuing a permit. If an artificial subsurface drainage system~~
9 ~~drains into an assessment drain, natural watercourse, or pond, slough, or lake, a~~
10 ~~flowage easement is not required. Flowage easements must be filed for record in~~
11 ~~the office of the recorder of the county or counties in which the lands are situated.~~
12 ~~A person that installs an artificial subsurface drainage system without first~~
13 ~~securing a permit to do so, as provided in this section, is liable for all damage~~
14 ~~sustained by a person caused by the draining, and is guilty of an infraction.~~

15 b. Upon submission of a completed application for a permit, the water resource
16 district board immediately shall give notice and a copy of the submission via
17 certified mail to each owner of land within one mile [1.61 kilometers] downstream
18 of the proposed subsurface water management system outlet unless the distance
19 to the nearest assessment drain, natural watercourse, slough, or lake is less than
20 one mile [1.61 kilometers], in which case notice and a copy of the submission
21 must be given immediately to each owner of land between the outlet and the
22 nearest assessment drain, natural watercourse, slough, or lake. The notice
23 requirement in this section must be waived if the applicant presents signed,
24 notarized letters of approval from all downstream landowners entitled to notice in
25 this subsection.

26 3. a. If the water resource board receives notarized letters of approval from all
27 downstream landowners entitled to notice, the board shall approve the completed
28 permit application as soon as practicable but no later than thirty days after receipt
29 of the last letter. Otherwise, the water resource board shall review the completed
30 application at its next meeting that is at least thirty days after receipt of the
31 application. The board shall consider any written, technical evidence provided by

1 the applicant or a landowner notified under subsection 2 addressing whether the
2 land of a notified landowner will be flooded or unreasonably harmed by the
3 proposed subsurface water management system. For purposes of this section
4 "technical evidence" means written information regarding the proposed
5 subsurface water management system, prepared after consideration of the
6 design and physical aspects of the proposed system, and any adverse hydraulic
7 effects, including erosion, flood duration, crop loss, and downstream water
8 control device operation impacts, which may occur to land owned by a landowner
9 provided under subsection 2. Technical evidence must be submitted to the permit
10 applicant, notified landowners, and the board within thirty days of the receipt of
11 the completed permit application by the board. A notified landowner may not
12 object to the proposed system unless the landowner presents technical evidence
13 under this subsection.

14 b. If the board finds, based on technical evidence, the proposed subsurface water
15 management system will flood or unreasonably harm lands of a landowner
16 notified under subsection 2, the board may require the applicant to obtain a
17 notarized letter of approval before issuing a permit for the system. The board may
18 not require a letter of approval for any land downstream of a system that outlets
19 into an assessment drain, natural watercourse, or pond, slough, or lake if notified
20 landowners did not provide technical evidence to the district.

21 c. A water resource district may attach reasonable conditions to an approved permit
22 for a subsurface water management system. For purposes of this subsection,
23 "reasonable conditions" means conditions that address the outlet location, proper
24 erosion control, reseeding of disturbed areas, installation of riprap or other ditch
25 stabilization, and conditions that require all work to be done in a neat and
26 professional manner. Any condition to locate the project a minimum distance from
27 rural water supply lines may not extend beyond an existing easement for lines, or
28 no greater than twenty feet [6.1 meters] from either side of the water line if the
29 rural water line was installed under a blanket easement.

30 d. A water resource district may require a subsurface water management system
31 granted a permit under this section to incorporate a control structure at the outlet

1 into the design of the system and may require the control structure be closed
2 during critical flood periods.

3 e. A water resource district board may not deny a completed permit application
4 under this section unless the board determines, based on technical evidence
5 submitted by a landowner notified under subsection 2, the proposed water
6 management system will flood or unreasonably harm land of a notified
7 landowner, and a notarized letter of approval required by the board has not been
8 obtained by the applicant. For purposes of this section, "unreasonable harm" is
9 limited to hydraulic impacts, including erosion or other adverse impacts that
10 degrade the physical integrity of a roadway or real property within one mile [1.61
11 kilometers] downstream. The board shall include a written explanation of the
12 reasons for a denial of a completed application and notify, by certified mail, the
13 applicant and all landowners notified under subsection 2 of the approval or
14 denial.

15 f. The board may not deny a permit more than sixty days after receipt of the
16 completed application for the permit. If the board fails to deny the permit
17 application within sixty days of receipt, the permit application is deemed
18 approved.

19 4. A denial of a completed permit application by a water resource district board or the
20 state engineer may be appealed, under section 28-34-01, to the district court of the
21 county in which the permit application was filed. The court may approve a completed
22 permit application denied by a water resource district board or the state engineer if the
23 application meets the requirements of this section.

24 5. A water resource district board or the state engineer may not be held liable to any
25 person for issuing a permit under this section.

26 6. A person that installs a subsurface water management system requiring a permit
27 under this section without first securing the permit is liable for all damages sustained
28 by a person caused by the subsurface water management system.

29 7. A person that installs a subsurface water management system requiring a permit
30 under this section without first securing the permit is guilty of an infraction.

1 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.**

2 During the 2017-18 interim, the legislative management shall consider studying and monitoring
3 the nutrient management plan developed by the state department of health. The legislative
4 management shall report its findings and recommendations, together with any legislation
5 required to implement the recommendations, to the sixty-sixth legislative assembly.

6 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

CHAPTER 12.1-32
PENALTIES AND SENTENCING

12.1-32-01. Classification of offenses - Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

12.1-32-01.1. Organizational fines.

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of one hundred thousand dollars.
2. For a class B felony, a maximum fine of seventy thousand dollars.
3. For a class C felony, a maximum fine of fifty thousand dollars.
4. For a class A misdemeanor, a maximum fine of thirty thousand dollars.
5. For a class B misdemeanor, a maximum fine of twenty thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.

17.0868.03014
Title.

Prepared by the Legislative Council staff for
Senate Agriculture Committee
March 30, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; to provide for a legislative management study; to provide for a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Within three months after the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1. a. Installation of an artificial subsurface drainage system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.

b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].

c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2. a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts must shall forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without

~~first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

- b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.

c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch

stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
 - 7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

17.0868.03014

FIRST ENGROSSMENT

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1390

Introduced by

Representatives Headland, Blum, Brandenburg, Kading

Senators Meyer, Rust, Wanzek

1 A BILL ~~for an Act to create and enact a new section to chapter 11-11 and section 61-32-03.2 of~~
 2 ~~the North Dakota Century Code, relating to a limitation on county authority and subsurface~~
 3 ~~water management on land that qualifies for prevented planting insurance coverage; to amend~~
 4 ~~and reenact sections 61-16-07, 61-16-08, and 61-16-09 and subsection 8 of section 61-16.1-09~~
 5 ~~of the North Dakota Century Code, relating to water resource district board members and~~
 6 ~~subsurface water management projects; and to provide for a legislative management study.~~
 7 an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century
 8 Code, relating to water resource board members and subsurface water management system
 9 permits; to provide for a legislative management study; to provide for a penalty; and to declare
 10 an emergency.

11 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

12 ~~SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is created~~
 13 ~~and enacted as follows:~~

14 ~~Limitation on authority - Discharging water.~~

15 ~~Notwithstanding any other provision of law, a county may not require a resident to provide~~
 16 ~~thirty days' notice before discharging water from a subsurface outlet into a legal drain.~~

17 ~~SECTION 2. AMENDMENT. Section 61-16-07 of the North Dakota Century Code is~~
 18 ~~amended and reenacted as follows:~~

19 ~~61-16-07. Water resource board members - Appointment and number.~~

20 ~~When a water resource district has been created, and the state water commission has filed~~
 21 ~~notice with the county auditor of a county where the district or a part thereof is situated, a water~~
 22 ~~resource board shall must be appointed within ninety days, as provided herein. If the district's~~
 23 ~~boundaries are confined to one county, the board of county commissioners shall appoint a water~~
 24 ~~resource board consisting of three or five managers board members. When a district includes~~

1 ~~two counties, the water resource board shall must consist of five managersboard members,~~
2 ~~three appointed by the board of county commissioners of the county having the larger~~
3 ~~aggregate taxable valuation of property, and two appointed by the board of county~~
4 ~~commissioners of the other county. If a district includes three counties, the water resource board~~
5 ~~shall must consist of five managersboard members, one appointed by the board of county~~
6 ~~commissioners having the lowest aggregate taxable valuation of property in the district, and two~~
7 ~~appointed by the board of county commissioners of each of the other two counties. If a district~~
8 ~~includes four or six counties, the water resource board shall must consist of two board members~~
9 ~~from the county having the largest aggregate taxable valuation of property in the district, and~~
10 ~~one managerboard member from each of the other counties. If a district includes five or seven~~
11 ~~counties, the water resource board shall must consist of one managerboard member from each~~
12 ~~county. Appointments to the water resource board shall must be made by the boards of county~~
13 ~~commissioners of the respective counties.~~

14 ~~— **SECTION 3. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is~~
15 ~~amended and reenacted as follows:~~

16 ~~— **61-16-08. Eligibility for appointment to board – Term of office – Removal – Filling**~~
17 ~~**vacancies – Compensation of managersboard members.**~~

18 ~~— 1. When a water resource district has been created, any resident landowner in the~~
19 ~~district, except a county commissioner, is eligible, subject to the provisions of this~~
20 ~~section, for appointment to the water resource board. After June 30, 1985, when the~~
21 ~~term of office of a district manager has expired, the manager's successor shall hold~~
22 ~~office for three years from the first day of January next following the date of the~~
23 ~~successor's appointment. The term of office of a manager does not terminate until the~~
24 ~~successor in office is appointed and qualified. In case the office of any district~~
25 ~~manager becomes vacant, the manager appointed to fill the vacancy shall serve the~~
26 ~~unexpired term of the manager whose office became vacant~~
27 ~~Before the start of an~~
28 ~~individual's term as a water resource board member, the individual shall attend a~~
29 ~~course on water management, and each board member shall attend a course on water~~
30 ~~management once every three years during the member's term on the board.~~

31 ~~— 2. Each member of a water resource board shall receive the sum of at least seventy five~~
dollars but not more than one hundred thirty five dollars per day while performing

1 duties as a member of the board, and an allowance for meals and lodging expenses at
2 the same rate and under the same conditions as provided for state officials and
3 employees. The allowance for travel expenses shall be at the same rate as provided
4 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
5 section 21-05-01.

6 ~~3.~~ A managerboard member may be removed from the board by the board of county
7 commissioners after it appears to the board of county commissioners by competent
8 evidence, and after a public hearing, if so requested by the managerboard member
9 subject to removal, at which hearing the managerboard member must be apprised of
10 and allowed ample opportunity to repudiate the evidence, that the managerboard
11 member has been guilty of misconduct, malfeasance, crime in office, neglect of duty in
12 office, habitual drunkenness, gross incompetency, nonattendance at board meetings,
13 refusal to carry out duties required by law, or inability to perform the duties of office for
14 reasons of health.

15 ~~SECTION 4. AMENDMENT.~~ Section 61-16-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 ~~61-16-09. Oath of office - Organization of water resource board - Appointment of~~
18 ~~employees - Meetings.~~

19 ~~Upon receiving notice of appointment as member of the water resource board, such~~
20 ~~appointee shall take the oath of office prescribed for civil officers. Such oath shall~~must ~~be filed~~
21 ~~with the secretary of the board. Notice of the appointment of a member or members of a water~~
22 ~~resource board shall~~must ~~be mailed to the state water commission. Such notice shall state the~~
23 ~~name and post office address of each appointee and the date of appointment.~~

24 ~~A majority of the managers shall constitute~~board members constitutes ~~a quorum for the~~
25 ~~transaction of such business as may come before the board, but any number may adjourn a~~
26 ~~meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer~~
27 ~~and such other employees as needed for the efficient conduct of the district's business and shall~~
28 ~~fix their compensation. The offices of secretary and treasurer may be held by the same person.~~
29 ~~Officers and employees shall hold office at the pleasure of the board.~~

30 ~~The board shall provide an office suitable for its use as a meeting place and for conducting~~
31 ~~the affairs of the district. It shall adopt such rules for transacting the business of the district as it~~

1 ~~may deem necessary, including the time and place of holding regular meetings of the board.~~
2 ~~Special meetings may be called by the secretary on order of the chairman of the board or upon~~
3 ~~written request of two members of the board. Notice of a special meeting shall must be mailed to~~
4 ~~each member of the board at least five days before any such meeting provided, that a special~~
5 ~~meeting may be held whenever all members of the board are present or consent thereto in~~
6 ~~writing.~~

7 ~~— **SECTION 5. AMENDMENT.** Subsection 8 of section 61-16.1-09 of the North Dakota~~
8 ~~Century Code is amended and reenacted as follows:~~

9 ~~— 8. — Make rules and regulations concerning the management, control, regulation, and~~
10 ~~conservation of waters and prevent the pollution, contamination, or other misuse of the~~
11 ~~water resources, streams, or bodies of water included within the district. However, the~~
12 ~~board may not make a rule regarding subsurface water management system permits~~
13 ~~unless expressly required or allowed under this title.~~

14 ~~— **SECTION 6. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is~~
15 ~~amended and reenacted as follows:~~

16 ~~— **61-32-03.1. Permit to drain subsurface waters required – Permit form – Penalty.**~~

17 ~~— Installation of an artificial subsurface drainage water management system comprising eighty~~
18 ~~acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop~~
19 ~~an application form for a permit for subsurface drainage of waterwater management. A person~~
20 ~~seeking to construct an artificial subsurface drainage water management system must submit an~~
21 ~~application to the water resource district within which is found a majority of the land area for~~
22 ~~consideration and approval. Water resource districts may attach any necessary conditions,~~
23 ~~except a requirement to locate the project a minimum distance from rural water supply lines~~
24 ~~beyond an existing easement for the lines, to an approved permit, but may not deny an~~
25 ~~application unless the water resource district determines, based on technical evidence, the~~
26 ~~application is of statewide significance or the proposed drainage water management system will~~
27 ~~flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of~~
28 ~~the proposed subsurface drainage. Water resource districts must forward copies of all approved~~
29 ~~permits to the state engineer water management system. For purposes of this section, "technical~~
30 ~~evidence" means written information regarding the proposed water management system~~
31 ~~prepared after consideration of the design and physical aspects of the proposed system, and~~

1 ~~any adverse hydrological effects, including erosion, flood duration, crop loss, and downstream~~
2 ~~water control device operation impacts, which may occur to land downstream. Water resource~~
3 ~~districts shall determine if the application proposes drainage subsurface water management of~~
4 ~~statewide significance. If so, the application must be referred to the state engineer for~~
5 ~~consideration and approval, and the state engineer shall make a determination within thirty~~
6 ~~days. If the state engineer has not approved or denied the permit within thirty days after receipt~~
7 ~~of the permit application, the application must be deemed approved by the state engineer. The~~
8 ~~permit applicant shall provide a thirty-day notice to downstream property owners within one mile~~
9 ~~[1.61 kilometers] of the proposed subsurface drainage water management system. If an~~
10 ~~investigation by a water resource district or a downstream landowner within one mile [1.61~~
11 ~~kilometers] shows that proves, based on technical evidence, the proposed drainage system will~~
12 ~~flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the~~
13 ~~water resource district may require flowage easements the applicant to obtain from the~~
14 ~~downstream landowners notarized letters approving the system before issuing a permit. If all~~
15 ~~adversely affected landowners provide the notarized approval letters, the board may waive the~~
16 ~~thirty-day notice period for the meeting to approve or deny the permit. A landowner may not be~~
17 ~~required to provide a United States department of agriculture highly erodible land conservation~~
18 ~~and wetland conservation certification for the investigation. If an artificial subsurface~~
19 ~~drainage water management system drains into an assessment drain water management~~
20 ~~system, natural watercourse, or pond, slough, or lake, a flowage easement a notarized letter of~~
21 ~~approval is not required. Flowage easements must be filed for record in the office of the~~
22 ~~recorder of the county or counties in which the lands are situated. A person that installs an~~
23 ~~artificial subsurface drainage water management system without first securing a permit to do so,~~
24 ~~as provided in this section, is liable for all damage sustained by a person caused by the~~
25 ~~drainage system, and is guilty of an infraction.~~

26 ~~—SECTION 7. LEGISLATIVE MANAGEMENT STUDY – NUTRIENT MANAGEMENT PLAN.~~

27 ~~During the 2017-18 interim, the legislative management shall consider studying and monitoring~~
28 ~~the nutrient management plan developed by the state department of health. The legislative~~
29 ~~management shall report its findings and recommendations, together with any legislation~~
30 ~~required to implement the recommendations, to the sixty-sixth legislative assembly.~~

1 **SECTION 1. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling**
4 **vacancies - Compensation of managers.**

5 1. When a water resource district has been created, any resident landowner in the
6 district, except a county commissioner, is eligible, subject to the provisions of this
7 section, for appointment to the water resource board. After June 30, 1985, when the
8 term of office of a district manager has expired, the manager's successor shall hold
9 office for three years from the first day of January next following the date of the
10 successor's appointment. The term of office of a manager does not terminate until the
11 successor in office is appointed and qualified. In case the office of any district
12 manager becomes vacant, the manager appointed to fill the vacancy shall serve the
13 unexpired term of the manager whose office became vacant. Within three months after
14 the start of an individual's term as a district manager, the individual shall attend a
15 course on water management, and each district manager shall attend a course on
16 water management every three years during the manager's term.

17 2. Each member of a water resource board shall receive the sum of at least seventy-five
18 dollars but not more than one hundred thirty-five dollars per day while performing
19 duties as a member of the board, and an allowance for meals and lodging expenses at
20 the same rate and under the same conditions as provided for state officials and
21 employees. The allowance for travel expenses shall be at the same rate as provided
22 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
23 section 21-05-01.

24 3. A manager may be removed from the board by the board of county commissioners
25 after it appears to the board of county commissioners by competent evidence, and
26 after a public hearing, if so requested by the manager subject to removal, at which
27 hearing the manager must be apprised of and allowed ample opportunity to repudiate
28 the evidence, that the manager has been guilty of misconduct, malfeasance, crime in
29 office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability
30 to perform the duties of office for reasons of health.

1 **SECTION 2. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

4 1. a. Installation of ~~an artificial subsurface drainage~~ a subsurface water management
5 system comprising eighty acres [32.37 hectares] of land area or more requires a
6 permit. The watershed area drained by a subsurface water management system
7 may not be used to determine whether the system requires a permit under this
8 section.

9 b. Subsurface water management systems that use surface intakes must be
10 permitted exclusively under this section if the system will have a drainage
11 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface
12 water management systems that use surface intakes must be permitted
13 exclusively under section 61-32-03 if the system will have a drainage coefficient
14 exceeding three-eighths of an inch [0.95 centimeters].

15 c. Installation of a subsurface water management system comprising less than
16 eighty acres [32.37 hectares] of land area does not require a permit.

17 2. a. The state engineer shall develop an application form for a permit ~~for subsurface~~
18 ~~drainage of water~~ required under this section. A person seeking to construct ~~an~~
19 ~~artificial subsurface drainage system~~ a subsurface water management system
20 that requires a permit under this section must submit ~~an~~ a completed application
21 to the water resource district board within which is found a majority of the land
22 area for consideration and approval. ~~Water resource districts may attach any~~
23 ~~necessary conditions to an approved permit, but may not deny an application~~
24 ~~unless the water resource district determines the application is of statewide~~
25 ~~significance or the proposed drainage will flood or adversely affect lands of~~
26 ~~downstream landowners within one mile [1.61 kilometers] of the proposed~~
27 ~~subsurface drainage.~~ The water resource district board may charge permit
28 applicants a fee up to one hundred fifty dollars. Water resource districts ~~must~~ shall
29 forward copies of all approved permits to the state engineer. ~~Water resource~~
30 ~~districts shall determine if the application proposes drainage of statewide~~
31 ~~significance. If so, the application must be referred to the state engineer for~~

1 ~~consideration and approval, and the state engineer shall make a determination~~
2 ~~within thirty days. The permit applicant shall provide a thirty-day notice to~~
3 ~~downstream property owners within one mile [1.61 kilometers] of the proposed~~
4 ~~subsurface drainage. If an investigation by a water resource district or a~~
5 ~~downstream landowner within one mile [1.61 kilometers] shows that the proposed~~
6 ~~drainage will flood or adversely affect lands of downstream landowners within~~
7 ~~one mile [1.61 kilometers], the water resource district may require flowage~~
8 ~~easements before issuing a permit. If an artificial subsurface drainage system~~
9 ~~drains into an assessment drain, natural watercourse, or pond, slough, or lake, a~~
10 ~~flowage easement is not required. Flowage easements must be filed for record in~~
11 ~~the office of the recorder of the county or counties in which the lands are situated.~~
12 ~~A person that installs an artificial subsurface drainage system without first~~
13 ~~securing a permit to do so, as provided in this section, is liable for all damage~~
14 ~~sustained by a person caused by the draining, and is guilty of an infraction.~~

15 b. Upon submission of a completed application for a permit, the water resource
16 district board immediately shall give notice and a copy of the submission via
17 certified mail to each owner of land within one mile [1.61 kilometers] downstream
18 of the proposed subsurface water management system outlet unless the distance
19 to the nearest assessment drain, natural watercourse, slough, or lake is less than
20 one mile [1.61 kilometers], in which case notice and a copy of the submission
21 must be given immediately to each owner of land between the outlet and the
22 nearest assessment drain, natural watercourse, slough, or lake. The notice
23 requirement in this section must be waived if the applicant presents signed,
24 notarized letters of approval from all downstream landowners entitled to notice in
25 this subsection.

26 3. a. If the water resource board receives notarized letters of approval from all
27 downstream landowners entitled to notice, the board shall approve the completed
28 permit application as soon as practicable but no later than thirty days after receipt
29 of the last letter. Otherwise, the water resource board shall review the completed
30 application at its next meeting that is at least thirty days after receipt of the
31 application. The board shall consider any written, technical evidence provided by

1 the applicant or a landowner notified under subsection 2 addressing whether the
2 land of a notified landowner will be flooded or unreasonably harmed by the
3 proposed subsurface water management system. For purposes of this section
4 "technical evidence" means written information regarding the proposed
5 subsurface water management system, prepared after consideration of the
6 design and physical aspects of the proposed system, and any adverse hydraulic
7 effects, including erosion, flood duration, crop loss, and downstream water
8 control device operation impacts, which may occur to land owned by a landowner
9 provided under subsection 2. Technical evidence must be submitted to the permit
10 applicant, notified landowners, and the board within thirty days of the receipt of
11 the completed permit application by the board. A notified landowner may not
12 object to the proposed system unless the landowner presents technical evidence
13 under this subsection.

14 b. If the board finds, based on technical evidence, the proposed subsurface water
15 management system will flood or unreasonably harm lands of a landowner
16 notified under subsection 2, the board may require the applicant to obtain a
17 notarized letter of approval before issuing a permit for the system. The board may
18 not require a letter of approval for any land downstream of a system that outlets
19 into an assessment drain, natural watercourse, or pond, slough, or lake if notified
20 landowners did not provide technical evidence to the district.

21 c. A water resource district may attach reasonable conditions to an approved permit
22 for a subsurface water management system that outlets directly into a legal
23 assessment drain or public highway right of way. For purposes of this subsection,
24 "reasonable conditions" means conditions that address the outlet location, proper
25 erosion control, reseeding of disturbed areas, installation of riprap or other ditch
26 stabilization, and conditions that require all work to be done in a neat and
27 professional manner. Any condition to locate the project a minimum distance from
28 rural water supply lines may not extend beyond an existing easement for lines, or
29 no greater than twenty feet [6.1 meters] from either side of the water line if the
30 rural water line was installed under a blanket easement.

- 1 d. A water resource district may require a subsurface water management system
2 granted a permit under this section to incorporate a control structure at the outlet
3 into the design of the system and may require the control structure be closed
4 during critical flood periods.
- 5 e. A water resource district board may not deny a completed permit application
6 under this section unless the board determines, based on technical evidence
7 submitted by a landowner notified under subsection 2, the proposed water
8 management system will flood or unreasonably harm land of a notified
9 landowner, and a notarized letter of approval required by the board has not been
10 obtained by the applicant. For purposes of this section, "unreasonable harm" is
11 limited to hydraulic impacts, including erosion or other adverse impacts that
12 degrade the physical integrity of a roadway or real property within one mile [1.61
13 kilometers] downstream of the system's outlet. The board shall include a written
14 explanation of the reasons for a denial of a completed application and notify, by
15 certified mail, the applicant and all landowners notified under subsection 2 of the
16 approval or denial.
- 17 f. The board may not deny a permit more than sixty days after receipt of the
18 completed application for the permit. If the board fails to deny the permit
19 application within sixty days of receipt, the permit application is deemed
20 approved.
- 21 4. A denial of a completed permit application by a water resource district board may be
22 appealed, under section 28-34-01, to the district court of the county in which the permit
23 application was filed. The court may approve a completed permit application denied by
24 a water resource district board or the state engineer if the application meets the
25 requirements of this section.
- 26 5. A water resource district board may not be held liable to any person for issuing a
27 permit under this section.
- 28 6. A person that installs a subsurface water management system requiring a permit
29 under this section without first securing the permit is liable for all damages sustained
30 by a person caused by the subsurface water management system.

1 7. A person that installs a subsurface water management system requiring a permit
2 under this section without first securing the permit is guilty of an infraction.

3 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.**

4 During the 2017-18 interim, the legislative management shall consider studying and monitoring
5 the nutrient management plan developed by the state department of health. The legislative
6 management shall report its findings and recommendations, together with any legislation
7 required to implement the recommendations, to the sixty-sixth legislative assembly.

8 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

March 31, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; to provide for a legislative management study; to provide for a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Within three months after the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts must shall forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without

~~first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.~~

b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.

c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat

and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.

- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
 - e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
 - f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
- 4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
 - 5. A water resource district board may not be held liable to any person for issuing a permit under this section.
 - 6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
 - 7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

17.0868.03015

FIRST ENGROSSMENT

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1390

Introduced by

Representatives Headland, Blum, Brandenburg, Kading

Senators Meyer, Rust, Wanzek

1 ~~A BILL for an Act to create and enact a new section to chapter 11-11 and section 61-32-03.2 of~~
 2 ~~the North Dakota Century Code, relating to a limitation on county authority and subsurface~~
 3 ~~water management on land that qualifies for prevented planting insurance coverage; to amend~~
 4 ~~and reenact sections 61-16-07, 61-16-08, and 61-16-09 and subsection 8 of section 61-16.1-09~~
 5 ~~of the North Dakota Century Code, relating to water resource district board members and~~
 6 ~~subsurface water management projects; and to provide for a legislative management study for~~
 7 an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century
 8 Code, relating to water resource board members and subsurface water management system
 9 permits; to provide for a legislative management study; to provide for a penalty; and to declare
 10 an emergency.

11 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

12 ~~— SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is created~~
 13 ~~and enacted as follows:~~

14 ~~— Limitation on authority - Discharging water.~~

15 ~~— Notwithstanding any other provision of law, a county may not require a resident to provide~~
 16 ~~thirty days' notice before discharging water from a subsurface outlet into a legal drain.~~

17 ~~— SECTION 2. AMENDMENT. Section 61-16-07 of the North Dakota Century Code is~~
 18 ~~amended and reenacted as follows:~~

19 ~~— 61-16-07. Water resource board members - Appointment and number.~~

20 ~~— When a water resource district has been created, and the state water commission has filed~~
 21 ~~notice with the county auditor of a county where the district or a part thereof is situated, a water~~
 22 ~~resource board shall must be appointed within ninety days, as provided herein. If the district's~~
 23 ~~boundaries are confined to one county, the board of county commissioners shall appoint a water~~
 24 ~~resource board consisting of three or five managers board members. When a district includes~~

1 ~~two counties, the water resource board shall must consist of five managers board members,~~
2 ~~three appointed by the board of county commissioners of the county having the larger~~
3 ~~aggregate taxable valuation of property, and two appointed by the board of county~~
4 ~~commissioners of the other county. If a district includes three counties, the water resource board~~
5 ~~shall must consist of five managers board members, one appointed by the board of county~~
6 ~~commissioners having the lowest aggregate taxable valuation of property in the district, and two~~
7 ~~appointed by the board of county commissioners of each of the other two counties. If a district~~
8 ~~includes four or six counties, the water resource board shall must consist of two board members~~
9 ~~from the county having the largest aggregate taxable valuation of property in the district, and~~
10 ~~one manager board member from each of the other counties. If a district includes five or seven~~
11 ~~counties, the water resource board shall must consist of one manager board member from each~~
12 ~~county. Appointments to the water resource board shall must be made by the boards of county~~
13 ~~commissioners of the respective counties.~~

14 ~~— **SECTION 3. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is~~
15 ~~amended and reenacted as follows:~~

16 ~~— **61-16-08. Eligibility for appointment to board – Term of office – Removal – Filling**~~
17 ~~**vacancies – Compensation of managers board members.**~~

18 ~~— 1. When a water resource district has been created, any resident landowner in the~~
19 ~~district, except a county commissioner, is eligible, subject to the provisions of this~~
20 ~~section, for appointment to the water resource board. After June 30, 1985, when the~~
21 ~~term of office of a district manager has expired, the manager's successor shall hold~~
22 ~~office for three years from the first day of January next following the date of the~~
23 ~~successor's appointment. The term of office of a manager does not terminate until the~~
24 ~~successor in office is appointed and qualified. In case the office of any district~~
25 ~~manager becomes vacant, the manager appointed to fill the vacancy shall serve the~~
26 ~~unexpired term of the manager whose office became vacant Before the start of an~~
27 ~~individual's term as a water resource board member, the individual shall attend a~~
28 ~~course on water management, and each board member shall attend a course on water~~
29 ~~management once every three years during the member's term on the board.~~

30 ~~— 2. Each member of a water resource board shall receive the sum of at least seventy five~~
31 ~~dollars but not more than one hundred thirty five dollars per day while performing~~

1 duties as a member of the board, and an allowance for meals and lodging expenses at
2 the same rate and under the same conditions as provided for state officials and
3 employees. The allowance for travel expenses shall be at the same rate as provided
4 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
5 section 21-05-01.

6 ~~3. A managerboard member may be removed from the board by the board of county~~
7 ~~commissioners after it appears to the board of county commissioners by competent~~
8 ~~evidence, and after a public hearing, if so requested by the managerboard member~~
9 ~~subject to removal, at which hearing the managerboard member must be apprised of~~
10 ~~and allowed ample opportunity to repudiate the evidence, that the managerboard~~
11 ~~member has been guilty of misconduct, malfeasance, crime in office, neglect of duty in~~
12 ~~office, habitual drunkenness, gross incompetency, nonattendance at board meetings,~~
13 ~~refusal to carry out duties required by law, or inability to perform the duties of office for~~
14 ~~reasons of health.~~

15 ~~SECTION 4. AMENDMENT.~~ Section 61-16-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 ~~61-16-09. Oath of office – Organization of water resource board – Appointment of~~
18 ~~employees – Meetings.~~

19 ~~Upon receiving notice of appointment as member of the water resource board, such~~
20 ~~appointee shall take the oath of office prescribed for civil officers. Such oath shall~~must ~~be filed~~
21 ~~with the secretary of the board. Notice of the appointment of a member or members of a water~~
22 ~~resource board shall~~must ~~be mailed to the state water commission. Such notice shall state the~~
23 ~~name and post office address of each appointee and the date of appointment.~~

24 ~~A majority of the managers shall constitute~~board members constitutes ~~a quorum for the~~
25 ~~transaction of such business as may come before the board, but any number may adjourn a~~
26 ~~meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer~~
27 ~~and such other employees as needed for the efficient conduct of the district's business and shall~~
28 ~~fix their compensation. The offices of secretary and treasurer may be held by the same person.~~
29 ~~Officers and employees shall hold office at the pleasure of the board.~~

30 ~~The board shall provide an office suitable for its use as a meeting place and for conducting~~
31 ~~the affairs of the district. It shall adopt such rules for transacting the business of the district as it~~

1 may deem necessary, including the time and place of holding regular meetings of the board.
2 Special meetings may be called by the secretary on order of the chairman of the board or upon
3 written request of two members of the board. Notice of a special meeting shall must be mailed to
4 each member of the board at least five days before any such meeting provided, that a special
5 meeting may be held whenever all members of the board are present or consent thereto in
6 writing.

7 ~~—~~ **SECTION 5. AMENDMENT.** Subsection 8 of section 61-16.1-09 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 ~~—~~ 8. ~~Make rules and regulations concerning the management, control, regulation, and~~
10 ~~conservation of waters and prevent the pollution, contamination, or other misuse of the~~
11 ~~water resources, streams, or bodies of water included within the district. However, the~~
12 ~~board may not make a rule regarding subsurface water management system permits~~
13 ~~unless expressly required or allowed under this title.~~

14 ~~—~~ **SECTION 6. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 ~~—~~ **61-32-03.1. Permit to drain subsurface waters required – Permit form – Penalty.**

17 ~~—~~ Installation of an artificial subsurface drainagewater management system comprising eighty
18 acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop
19 an application form for a permit for subsurface drainage of waterwater management. A person
20 seeking to construct an artificial subsurface drainagewater management system must submit an
21 application to the water resource district within which is found a majority of the land area for
22 consideration and approval. Water resource districts may attach any necessary conditions,
23 except a requirement to locate the project a minimum distance from rural water supply lines
24 beyond an existing easement for the lines, to an approved permit, but may not deny an
25 application unless the water resource district determines, based on technical evidence, the
26 application is of statewide significance or the proposed drainagewater management system will
27 flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of
28 the proposed subsurface drainage. Water resource districts must forward copies of all approved
29 permits to the state engineerwater management system. For purposes of this section, "technical
30 evidence" means written information regarding the proposed water management system
31 prepared after consideration of the design and physical aspects of the proposed system, and

1 ~~any adverse hydrological effects, including erosion, flood duration, crop loss, and downstream~~
2 ~~water control device operation impacts, which may occur to land downstream.~~ Water resource
3 ~~districts shall determine if the application proposes drainage subsurface water management of~~
4 ~~statewide significance. If so, the application must be referred to the state engineer for~~
5 ~~consideration and approval, and the state engineer shall make a determination within thirty~~
6 ~~days. If the state engineer has not approved or denied the permit within thirty days after receipt~~
7 ~~of the permit application, the application must be deemed approved by the state engineer.~~ The
8 ~~permit applicant shall provide a thirty-day notice to downstream property owners within one mile~~
9 ~~[1.61 kilometers] of the proposed subsurface drainage water management system.~~ If an
10 ~~investigation by a water resource district or a downstream landowner within one mile [1.61~~
11 ~~kilometers] shows that proves, based on technical evidence, the proposed drainage system will~~
12 ~~flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the~~
13 ~~water resource district may require flowage easements the applicant to obtain from the~~
14 ~~downstream landowners notarized letters approving the system before issuing a permit. If all~~
15 ~~adversely affected landowners provide the notarized approval letters, the board may waive the~~
16 ~~thirty-day notice period for the meeting to approve or deny the permit. A landowner may not be~~
17 ~~required to provide a United States department of agriculture highly erodible land conservation~~
18 ~~and wetland conservation certification for the investigation.~~ If an artificial subsurface
19 ~~drainage water management system drains into an assessment drain water management~~
20 ~~system, natural watercourse, or pond, slough, or lake, a flowage easement a notarized letter of~~
21 ~~approval is not required. Flowage easements must be filed for record in the office of the~~
22 ~~recorder of the county or counties in which the lands are situated. A person that installs an~~
23 ~~artificial subsurface drainage water management system without first securing a permit to do so,~~
24 ~~as provided in this section, is liable for all damage sustained by a person caused by the~~
25 ~~drainage system, and is guilty of an infraction.~~

26 ~~— SECTION 7. LEGISLATIVE MANAGEMENT STUDY – NUTRIENT MANAGEMENT PLAN.~~

27 ~~During the 2017–18 interim, the legislative management shall consider studying and monitoring~~
28 ~~the nutrient management plan developed by the state department of health. The legislative~~
29 ~~management shall report its findings and recommendations, together with any legislation~~
30 ~~required to implement the recommendations, to the sixty-sixth legislative assembly.~~

1 **SECTION 1. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling**
4 **vacancies - Compensation of managers.**

5 1. When a water resource district has been created, any resident landowner in the
6 district, except a county commissioner, is eligible, subject to the provisions of this
7 section, for appointment to the water resource board. After June 30, 1985, when the
8 term of office of a district manager has expired, the manager's successor shall hold
9 office for three years from the first day of January next following the date of the
10 successor's appointment. The term of office of a manager does not terminate until the
11 successor in office is appointed and qualified. In case the office of any district
12 manager becomes vacant, the manager appointed to fill the vacancy shall serve the
13 unexpired term of the manager whose office became vacant. Within three months after
14 the start of an individual's term as a district manager, the individual shall attend a
15 course on water management, and each district manager shall attend a course on
16 water management every three years during the manager's term.

17 2. Each member of a water resource board shall receive the sum of at least seventy-five
18 dollars but not more than one hundred thirty-five dollars per day while performing
19 duties as a member of the board, and an allowance for meals and lodging expenses at
20 the same rate and under the same conditions as provided for state officials and
21 employees. The allowance for travel expenses shall be at the same rate as provided
22 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
23 section 21-05-01.

24 3. A manager may be removed from the board by the board of county commissioners
25 after it appears to the board of county commissioners by competent evidence, and
26 after a public hearing, if so requested by the manager subject to removal, at which
27 hearing the manager must be apprised of and allowed ample opportunity to repudiate
28 the evidence, that the manager has been guilty of misconduct, malfeasance, crime in
29 office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability
30 to perform the duties of office for reasons of health.

1 **SECTION 2. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

4 1. a. ~~Installation of an artificial subsurface drainage~~ Installation of a subsurface water management
5 system comprising eighty acres [32.37 hectares] of land area or more requires a
6 permit. The watershed area drained by a subsurface water management system
7 may not be used to determine whether the system requires a permit under this
8 section.

9 b. Subsurface water management systems that use surface intakes must be
10 permitted exclusively under this section if the system will have a drainage
11 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface
12 water management systems that use surface intakes must be permitted
13 exclusively under section 61-32-03 if the system will have a drainage coefficient
14 exceeding three-eighths of an inch [0.95 centimeters].

15 c. Installation of a subsurface water management system comprising less than
16 eighty acres [32.37 hectares] of land area does not require a permit.

17 2. a. ~~The state engineer shall develop an application form for a permit for subsurface~~
18 ~~drainage of water required under this section.~~ The state engineer shall develop an application form for a permit
19 for subsurface drainage of water required under this section. A person seeking to construct an
20 ~~artificial subsurface drainage system~~ artificial subsurface drainage system
21 that requires a permit under this section must submit a completed application
22 to the water resource district board within which is found a majority of the land
23 area for consideration and approval. ~~Water resource districts may attach any~~
24 ~~necessary conditions to an approved permit, but may not deny an application~~
25 ~~unless the water resource district determines the application is of statewide~~
26 ~~significance or the proposed drainage will flood or adversely affect lands of~~
27 ~~downstream landowners within one mile [1.61 kilometers] of the proposed~~
28 ~~subsurface drainage.~~ The water resource district board may charge permit
29 applicants a fee up to one hundred fifty dollars. Water resource districts must shall
30 ~~forward copies of all approved permits to the state engineer. ~~Water resource~~~~
31 ~~districts shall determine if the application proposes drainage of statewide~~
 ~~significance. If so, the application must be referred to the state engineer for~~

1 ~~consideration and approval, and the state engineer shall make a determination~~
2 ~~within thirty days. The permit applicant shall provide a thirty-day notice to~~
3 ~~downstream property owners within one mile [1.61 kilometers] of the proposed~~
4 ~~subsurface drainage. If an investigation by a water resource district or a~~
5 ~~downstream landowner within one mile [1.61 kilometers] shows that the proposed~~
6 ~~drainage will flood or adversely affect lands of downstream landowners within~~
7 ~~one mile [1.61 kilometers], the water resource district may require flowage~~
8 ~~easements before issuing a permit. If an artificial subsurface drainage system~~
9 ~~drains into an assessment drain, natural watercourse, or pond, slough, or lake, a~~
10 ~~flowage easement is not required. Flowage easements must be filed for record in~~
11 ~~the office of the recorder of the county or counties in which the lands are situated.~~
12 ~~A person that installs an artificial subsurface drainage system without first~~
13 ~~securing a permit to do so, as provided in this section, is liable for all damage~~
14 ~~sustained by a person caused by the draining, and is guilty of an infraction.~~

15 b. Upon submission of a completed application for a permit, the water resource
16 district board immediately shall give notice and a copy of the submission via
17 certified mail to each owner of land within one mile [1.61 kilometers] downstream
18 of the proposed subsurface water management system outlet unless the distance
19 to the nearest assessment drain, natural watercourse, slough, or lake is less than
20 one mile [1.61 kilometers], in which case notice and a copy of the submission
21 must be given immediately to each owner of land between the outlet and the
22 nearest assessment drain, natural watercourse, slough, or lake. The notice
23 requirement in this section must be waived if the applicant presents signed,
24 notarized letters of approval from all downstream landowners entitled to notice in
25 this subsection.

26 3. a. If the water resource board receives notarized letters of approval from all
27 downstream landowners entitled to notice, the board shall approve the completed
28 permit application as soon as practicable but no later than thirty days after receipt
29 of the last letter. Otherwise, the water resource board shall review the completed
30 application at its next meeting that is at least thirty days after receipt of the
31 application. The board shall consider any written, technical evidence provided by

1 the applicant or a landowner notified under subsection 2 addressing whether the
2 land of a notified landowner will be flooded or unreasonably harmed by the
3 proposed subsurface water management system. For purposes of this section
4 "technical evidence" means written information regarding the proposed
5 subsurface water management system, prepared after consideration of the
6 design and physical aspects of the proposed system, and any adverse hydraulic
7 effects, including erosion, flood duration, crop loss, and downstream water
8 control device operation impacts, which may occur to land owned by a landowner
9 provided under subsection 2. Technical evidence must be submitted to the permit
10 applicant, notified landowners, and the board within thirty days of the receipt of
11 the completed permit application by the board. A notified landowner may not
12 object to the proposed system unless the landowner presents technical evidence
13 under this subsection.

14 b. If the board finds, based on technical evidence, the proposed subsurface water
15 management system will flood or unreasonably harm lands of a landowner
16 notified under subsection 2, the board may require the applicant to obtain a
17 notarized letter of approval before issuing a permit for the system. The board may
18 not require a letter of approval for any land downstream of a system that outlets
19 into an assessment drain, natural watercourse, or pond, slough, or lake if notified
20 landowners did not provide technical evidence to the district.

21 c. A water resource district may attach reasonable conditions to an approved permit
22 for a subsurface water management system. For purposes of this subsection,
23 "reasonable conditions" means conditions that address the outlet location, proper
24 erosion control, reseeding of disturbed areas, installation of riprap or other ditch
25 stabilization, and conditions that require all work to be done in a neat and
26 professional manner. Any condition to locate the project a minimum distance from
27 rural water supply lines may not extend beyond an existing easement for lines, or
28 no greater than twenty feet [6.1 meters] from either side of the water line if the
29 rural water line was installed under a blanket easement.

30 d. A water resource district may require a subsurface water management system
31 granted a permit under this section to incorporate a control structure at the outlet

1 into the design of the system and may require the control structure be closed
2 during critical flood periods.

3 e. A water resource district board may not deny a completed permit application
4 under this section unless the board determines, based on technical evidence
5 submitted by a landowner notified under subsection 2, the proposed water
6 management system will flood or unreasonably harm land of a notified
7 landowner, and a notarized letter of approval required by the board has not been
8 obtained by the applicant. For purposes of this section, "unreasonable harm" is
9 limited to hydraulic impacts, including erosion or other adverse impacts that
10 degrade the physical integrity of a roadway or real property within one mile [1.61
11 kilometers] downstream of the system's outlet. The board shall include a written
12 explanation of the reasons for a denial of a completed application and notify, by
13 certified mail, the applicant and all landowners notified under subsection 2 of the
14 approval or denial.

15 f. The board may not deny a permit more than sixty days after receipt of the
16 completed application for the permit. If the board fails to deny the permit
17 application within sixty days of receipt, the permit application is deemed
18 approved.

19 4. A denial of a completed permit application by a water resource district board may be
20 appealed, under section 28-34-01, to the district court of the county in which the permit
21 application was filed. The court may approve a completed permit application denied by
22 a water resource district board or the state engineer if the application meets the
23 requirements of this section.

24 5. A water resource district board may not be held liable to any person for issuing a
25 permit under this section.

26 6. A person that installs a subsurface water management system requiring a permit
27 under this section without first securing the permit is liable for all damages sustained
28 by a person caused by the subsurface water management system.

29 7. A person that installs a subsurface water management system requiring a permit
30 under this section without first securing the permit is guilty of an infraction.

1 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.**

2 During the 2017-18 interim, the legislative management shall consider studying and monitoring
3 the nutrient management plan developed by the state department of health. The legislative
4 management shall report its findings and recommendations, together with any legislation
5 required to implement the recommendations, to the sixty-sixth legislative assembly.

6 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Senate Agriculture Committee Members,

Here is a recap of the committee's proposed changes to HB 1390. The new proposed amendment will be EXACTLY the same as 17.0868.03013 except for SOME the changes the committee agreed on. The explanations below are labeled from the "Christmas tree" version which the committee was working from.

- P. 6. There was confusion in subsections 1,2 & 3 with the use of members and managers. NDCC 61-16-07 sets out appointment of the water resource board in which "member" and "managers" are used interchangeably throughout the chapter, this is not an issue with interpretation. Claire Ness of Legislative Council advises not to make this change during this session as it is used interchangeably throughout the chapters. There will **NOT** be any change in the 014 version.
- P. 6 line 13-16. Will now require managers/members to attend a course on water management within 3 months of beginning their term.
- P. 9 line 17. "**May Not**" must be left as in 03012 version. It is Legislative Council's style throughout the code to avoid "**shall not**" in all instances.

When "**may not**" is used it is an absolute prohibition. "**May not**" does NOT give discretion to the person who "may not" do something.

Any reference in NDCC which uses "**shall not**" is accidental and is left over from prior revisions and should be changed in the future. If it is helpful for committee members, there is a discussion of using "may not" vs. "shall not" on the top of pg. 93 of the North Dakota Legislative Drafting Manual 2017. Available at <http://www.legis.nd.gov/files/documents/2017draftingmanual.pdf>

- P. 9 line 22. The 03014 amendment language will read, "A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system **that outlets directly into a legal assessment drain or public highway right-of-way.**"

If the bolded language is added back (from 03012 version), then the water resource district board may attach reasonable conditions to approved permits ***only*** for systems that meet the description of outlets which drain directly into a legal assessment drain or public highway right-of-way. If this language is left out of the bill, then the water resource district board may attach reasonable conditions to ***any*** approved permit.

- P. 10 Lines 8- 11. The new language will read, "For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property with one mile [1.61 kilometers] downstream **of the system's outlet.**"

This language is only to add a point of reference to measure the distance of one mile downstream.

- P. 10 lines 19-20 and line 24. Will remove the references to the state engineer.

The state engineer does not have authority over water resource district boards. Prior references to the state engineer have been taken out, this was an oversight.