

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 drainage 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 required - Permit form - Penalty.**

7 1. Installation of an ~~artificial~~ subsurface drainage system ~~comprising~~that drains eighty
8 acres [32.37 hectares] of land area or more requires a permit. A person seeking a
9 permit for a subsurface drainage system that utilizes surface intakes shall apply for a
10 permit under this section unless the intake is utilized to completely drain a wetland,
11 pond, slough, or lake that has a watershed area comprising eighty acres
12 [32.37 hectares] or more. The watershed area of a drainage system without surface
13 intakes may not be used to determine whether the system requires a permit under this
14 section.

15 2. a. The state engineer shall develop an application form for a permit ~~for subsurface~~
16 ~~drainage of water~~issued under this section. A person seeking to construct an
17 ~~artificial~~ subsurface drainage system that requires a permit under this section
18 must submit an application to the water resource district board within which is
19 found a majority of the land area for consideration and approval. ~~Water resource~~
20 ~~districts may attach any necessary conditions to an approved permit, but may not~~
21 ~~deny an application unless the water resource district determines the application~~
22 ~~is of statewide significance or the proposed drainage will flood or adversely affect~~
23 ~~lands of downstream landowners within one mile [1.61 kilometers] of the~~
24 ~~proposed subsurface drainage. Water resource districts must forward copies of~~

1 all approved permits to the state engineer. Water resource districts shall
2 determine if the application proposes drainage of statewide significance. If so, the
3 application must be referred to the state engineer for consideration and approval,
4 and the state engineer shall make a determination within thirty days. The permit
5 applicant shall provide a thirty-day notice to downstream property owners within
6 one mile [1.61 kilometers] of the proposed subsurface drainage. If an
7 investigation by a water resource district or a downstream landowner within one
8 mile [1.61 kilometers] shows that the proposed drainage will flood or adversely
9 affect lands of downstream landowners within one mile [1.61 kilometers], the
10 water resource district may require flowage easements before issuing a permit. If
11 an artificial subsurface drainage system drains into an assessment drain, natural
12 watercourse, or pond, slough, or lake, a flowage easement is not required.
13 Flowage easements must be filed for record in the office of the recorder of the
14 county or counties in which the lands are situated. A person that installs an
15 artificial subsurface drainage system without first securing a permit to do so, as
16 provided in this section, is liable for all damage sustained by a person caused by
17 the draining, and is guilty of an infraction.

18 b. Upon submission of an application for a permit, the applicant immediately shall
19 give notice and a copy of the submission to each owner of land within one mile
20 [1.61 kilometers] downstream of the proposed subsurface drainage system outlet
21 unless the distance to the nearest assessment drain, natural watercourse,
22 slough, or lake is less than one mile [1.61 kilometers], in which case notice and a
23 copy of the submission must be given immediately to each owner of land
24 between the outlet and the nearest assessment drain, natural watercourse,
25 slough, or lake.

26 3. At the next meeting of the water resource district board which is at least thirty days
27 after receipt of a permit application, the board shall determine whether the proposed
28 drainage system would affect property owned by the state or any state governmental
29 entity. If property owned by the state or a state governmental entity would be affected
30 by the system, the board shall refer the permit application to the state engineer, who
31 shall approve or deny it within thirty days of receipt. If the state engineer fails to deny

1 the permit application within thirty days of receipt, the permit application is deemed
2 approved. The state engineer shall include a written explanation of the reasons for the
3 denial of the application. The state engineer shall notify, by certified mail, the applicant
4 and all landowners notified under subsection 2 of the approval or denial.

- 5 4. a. If property owned by the state or a state governmental entity would not be
6 affected by the system for which a permit application is submitted, the water
7 resource district board shall review the application. The board may charge the
8 applicant a fee not to exceed one hundred dollars. The board shall consider any
9 written, technical evidence provided by the applicant or a landowner notified
10 under subsection 2 addressing whether the land of a notified landowner will be
11 flooded or unreasonably harmed by the proposed drainage system. For purposes
12 of this section "technical evidence" means written information regarding the
13 proposed drainage system, prepared and signed by a licensed, professional
14 engineer after consideration of the engineering design and physical aspects of
15 the proposed drainage system, and any adverse hydrologic effects, including
16 erosion, flood duration, crop loss, and downstream water control device operation
17 impacts, which may occur to land owned by a landowner provided under
18 subsection 2. Technical evidence must be submitted to the permit applicant,
19 notified landowners, and the board within thirty days of the receipt of the permit
20 application by the board.
- 21 b. If the board finds, based on technical evidence, the proposed drainage system
22 will flood or unreasonably harm lands of a landowner notified under subsection 2,
23 the board may require the applicant to obtain a flowage easement before issuing
24 a permit for the system. The applicant shall file a flowage easement in the office
25 of the recorder of the county in which the easement is situated. The board may
26 not require a flowage easement for any land downstream of drainage into an
27 assessment drain, natural watercourse, or pond, slough, or lake if notified
28 landowners did not provide technical evidence to the district.
- 29 c. A water resources district board may not deny a permit application under this
30 section unless the board determines, based on technical evidence submitted by a
31 landowner notified under subsection 2, the proposed drainage system will flood

- 1 or unreasonably harm land of a notified landowner, and a flowage easement
2 required by the board has not been obtained by the applicant. For purposes of
3 this section, "unreasonable harm" is limited to hydrological impacts, including
4 erosion or other adverse impacts that degrade the physical integrity of a roadway.
5 The board shall include a written explanation of the reasons for a denial of an
6 application and notify, by certified mail, the applicant and all landowners notified
7 under subsection 2 of the approval or denial.
- 8 d. The board may not deny a permit more than sixty days after receipt of the
9 application for the permit. If the board fails to deny the permit application within
10 sixty days of receipt, the permit application is deemed approved.
- 11 5. A denial of a permit application by a water resource district board or the state engineer
12 may be appealed, under section 28-34-01, to the district court of the county in which
13 the permit application was filed. The court may approve a permit application denied by
14 a water resource district board or the state engineer if the application meets the
15 requirements of this section.
- 16 6. A water resource district board or the state engineer may not be held liable to any
17 person for issuing a permit under this section.