

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~~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 a 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. A person seeking a permit for a subsurface drainage~~
11 ~~system that utilizes surface intakes shall apply for a permit under this section~~
12 ~~unless the intake is utilized to completely drain a wetland, pond, slough, or lake~~
13 ~~that has a watershed area comprising eighty acres [32.37 hectares] or more. The~~
14 ~~watershed area of a drainage drained by a subsurface water management system~~
15 ~~without surface intakes may not be used to determine whether the system~~
16 ~~requires a permit under this section.~~

17 b. Subsurface water management systems that use surface intakes must be
18 permitted exclusively under this section if the system will have a drainage
19 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface
20 water management systems that use surface intakes must be permitted
21 exclusively under section 61-32-03 if the system will have a drainage coefficient
22 exceeding three-eighths of an inch [0.95 centimeters].

23 c. A person that installs a water management system that encompasses less than
24 eighty acres [32.37 hectares] shall notify the water resource district within which

1 is found a majority of the land comprising the water management system of the
2 installation before it occurs, but no permit for the installation may be required.

- 3 2. a. The state engineer shall develop an application form for a permit for ~~subsurface-~~
4 ~~drainage of water~~issued~~required~~ under this section. A person seeking to construct
5 an artificial ~~a~~ subsurface ~~drainage~~water management system that requires a
6 permit under this section must submit an application to the water resource district
7 board within which is found a majority of the land area for consideration and
8 approval. ~~Water resource districts may attach any necessary conditions to an~~
9 ~~approved permit, but may not deny an application unless the water resource~~
10 ~~district determines the application is of statewide significance or the proposed~~
11 ~~drainage will flood or adversely affect lands of downstream landowners within~~
12 ~~one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource~~
13 ~~districts must forward copies of all approved permits to the state engineer. Water~~
14 ~~resource districts shall determine if the application proposes drainage of~~
15 ~~statewide significance. If so, the application must be referred to the state~~
16 ~~engineer for consideration and approval, and the state engineer shall make a~~
17 ~~determination within thirty days. The permit applicant shall provide a thirty-day~~
18 ~~notice to downstream property owners within one mile [1.61 kilometers] of the~~
19 ~~proposed subsurface drainage. If an investigation by a water resource district or~~
20 ~~a downstream landowner within one mile [1.61 kilometers] shows that the~~
21 ~~proposed drainage will flood or adversely affect lands of downstream landowners~~
22 ~~within one mile [1.61 kilometers], the water resource district may require flowage~~
23 ~~easements before issuing a permit. If an artificial subsurface drainage system~~
24 ~~drains into an assessment drain, natural watercourse, or pond, slough, or lake, a~~
25 ~~flowage easement is not required. Flowage easements must be filed for record in~~
26 ~~the office of the recorder of the county or counties in which the lands are situated.~~
27 ~~A person that installs an artificial subsurface drainage system without first~~
28 ~~securing a permit to do so, as provided in this section, is liable for all damage~~
29 ~~sustained by a person caused by the draining, and is guilty of an infraction.~~
30 b. Upon submission of an application for a permit, the applicant immediately shall
31 give notice and a copy of the submission via certified mail to each owner of land

1 within one mile [1.61 kilometers] downstream of the proposed subsurface
2 ~~drainage~~water management system outlet unless the distance to the nearest
3 assessment drain, natural watercourse, slough, or lake is less than one mile
4 [1.61 kilometers], in which case notice and a copy of the submission must be
5 given immediately to each owner of land between the outlet and the nearest
6 assessment drain, natural watercourse, slough, or lake. The notice requirement
7 in this section must be waived if the applicant presents signed, notarized letters
8 of approval from all downstream landowners entitled to notice in this subsection.

9 3. At the next meeting of the water resource district board which is at least thirty days
10 after receipt of a permit application, the board shall determine whether the proposed
11 drainage system would affect property owned by the state or any state governmental
12 entity. If property owned by the state or a state governmental entity would be affected
13 by the system, the board shall refer the permit application to the state engineer, who
14 shall approve or deny it within thirty days of receipt. If the state engineer fails to deny
15 the permit application within thirty days of receipt, the permit application is deemed
16 approved. The state engineer shall include a written explanation of the reasons for the
17 denial of the application. The state engineer shall notify, by certified mail, the applicant
18 and all landowners notified under subsection 2 of the approval or denial.

19 ~~4.~~ a. If property owned by the state or a state governmental entity would not be
20 affected by the system for which a permit application is submitted, the The water
21 resource district board shall review the application at its next meeting that is at
22 least thirty days after receipt of the application. The board may charge the
23 applicant a fee not to exceed ~~one~~five hundred dollars. The board shall consider
24 any written, technical evidence provided by the applicant or a landowner notified
25 under subsection 2 addressing whether the land of a notified landowner will be
26 flooded or unreasonably harmed by the proposed ~~drainage~~subsurface water
27 management system. For purposes of this section "technical evidence" means
28 written information regarding the proposed ~~drainage~~subsurface water
29 management system, prepared ~~and signed by a licensed, professional engineer~~
30 after consideration of the ~~engineering~~ design and physical aspects of the
31 proposed ~~drainage~~ system, and any adverse hydrologic effects, including

1 erosion, flood duration, crop loss, and downstream water control device operation
2 impacts, which may occur to land owned by a landowner provided under
3 subsection 2. Technical evidence must be submitted to the permit applicant,
4 notified landowners, and the board within thirty days of the receipt of the permit
5 application by the board.

6 b. If the board finds, based on technical evidence, the proposed
7 ~~drainage~~subsurface water management system will flood or unreasonably harm
8 lands of a landowner notified under subsection 2, the board may require the
9 applicant to obtain a ~~flowage easement~~notarized letter of approval before issuing
10 a permit for the system. ~~The applicant shall file a flowage easement in the office~~
11 ~~of the recorder of the county in which the easement is situated.~~The board may
12 not require a ~~flowage easement~~letter of approval for any land downstream of
13 ~~drainage~~a system that outlets into an assessment drain, natural watercourse, or
14 pond, slough, or lake if notified landowners did not provide technical evidence to
15 the district.

16 c. A water resource district may attach reasonable conditions to an approved permit
17 for a subsurface water management system that outlets directly into a legal
18 assessment drain or public highway right-of-way. For purposes of this subsection,
19 "reasonable conditions" means conditions that address the outlet location, proper
20 erosion control, reseeding of disturbed areas, installation of riprap or other ditch
21 stabilization, and conditions that require all work to be done in a neat and
22 professional manner.

23 d. A water resource district may require a subsurface water management system
24 granted a permit under this section to incorporate a control structure at the outlet
25 into the design of the system and may require the control structure be closed
26 during critical flood periods.

27 e. A water resources district board may not deny a permit application under this
28 section unless the board determines, based on technical evidence submitted by a
29 landowner notified under subsection 2, the proposed ~~drainage~~water management
30 system will flood or unreasonably harm land of a notified landowner, and a
31 ~~flowage easement~~notarized letter of approval required by the board has not been

1 obtained by the applicant. For purposes of this section, "unreasonable harm" is
2 limited to hydrological impacts, including erosion or other adverse impacts that
3 degrade the physical integrity of a roadway. The board shall include a written
4 explanation of the reasons for a denial of an application and notify, by certified
5 mail, the applicant and all landowners notified under subsection 2 of the approval
6 or denial.

7 ~~e.f.~~ The board may not deny a permit more than sixty days after receipt of the
8 application for the permit. If the board fails to deny the permit application within
9 sixty days of receipt, the permit application is deemed approved.

10 ~~5.4.~~ A denial of a permit application by a water resource district board or the state engineer
11 may be appealed, under section 28-34-01, to the district court of the county in which
12 the permit application was filed. The court may approve a permit application denied by
13 a water resource district board or the state engineer if the application meets the
14 requirements of this section.

15 ~~6.5.~~ A water resource district board or the state engineer may not be held liable to any
16 person for issuing a permit under this section.

17 6. A person that installs a subsurface water management system requiring a permit
18 under this section without first securing the permit is liable for all damages sustained
19 by a person caused by the subsurface water management system.