

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 managersboard 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 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 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 drainingsystem, 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.