

**FIRST ENGROSSMENT  
with Senate Amendments  
ENGROSSED HOUSE BILL NO. 1390**

Introduced by

Representatives Headland, Blum, Brandenburg, Kading

Senators Meyer, Rust, Wanzek

1 A BILL for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota  
2 Century Code, relating to water resource board members and subsurface water management  
3 system permits; to provide for a legislative management study; to provide for a penalty; and to  
4 declare an emergency.

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

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

8 **61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling**  
9 **vacancies - Compensation of managers.**

10 1. When a water resource district has been created, any resident landowner in the  
11 district, except a county commissioner, is eligible, subject to the provisions of this  
12 section, for appointment to the water resource board. After June 30, 1985, when the  
13 term of office of a district manager has expired, the manager's successor shall hold  
14 office for three years from the first day of January next following the date of the  
15 successor's appointment. The term of office of a manager does not terminate until the  
16 successor in office is appointed and qualified. In case the office of any district  
17 manager becomes vacant, the manager appointed to fill the vacancy shall serve the  
18 unexpired term of the manager whose office became vacant. Within three months after  
19 the start of an individual's term as a district manager, the individual shall attend a  
20 course on water management, and each district manager shall attend a course on  
21 water management every three years during the manager's term.

22 2. Each member of a water resource board shall receive the sum of at least seventy-five  
23 dollars but not more than one hundred thirty-five dollars per day while performing  
24 duties as a member of the board, and an allowance for meals and lodging expenses at

1 the same rate and under the same conditions as provided for state officials and  
2 employees. The allowance for travel expenses shall be at the same rate as provided  
3 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by  
4 section 21-05-01.

- 5 3. A manager may be removed from the board by the board of county commissioners  
6 after it appears to the board of county commissioners by competent evidence, and  
7 after a public hearing, if so requested by the manager subject to removal, at which  
8 hearing the manager must be apprised of and allowed ample opportunity to repudiate  
9 the evidence, that the manager has been guilty of misconduct, malfeasance, crime in  
10 office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability  
11 to perform the duties of office for reasons of health.

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

14 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

- 15 1. a. Installation of an ~~artificial subsurface drainage~~ subsurface water management  
16 system comprising eighty acres [32.37 hectares] of land area or more requires a  
17 permit. The watershed area drained by a subsurface water management system  
18 may not be used to determine whether the system requires a permit under this  
19 section.
- 20 b. Subsurface water management systems that use surface intakes must be  
21 permitted exclusively under this section if the system will have a drainage  
22 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface  
23 water management systems that use surface intakes must be permitted  
24 exclusively under section 61-32-03 if the system will have a drainage coefficient  
25 exceeding three-eighths of an inch [0.95 centimeters].
- 26 c. Installation of a subsurface water management system comprising less than  
27 eighty acres [32.37 hectares] of land area does not require a permit.
- 28 2. a. The state engineer shall develop an application form for a permit ~~for subsurface~~  
29 ~~drainage of water~~ required under this section. A person seeking to construct an  
30 ~~artificial subsurface drainage system~~ subsurface water management system  
31 that requires a permit under this section must submit ~~an~~ a completed application

1 to the water resource district board within which is found a majority of the land  
2 area for consideration and approval. ~~Water resource districts may attach any~~  
3 ~~necessary conditions to an approved permit, but may not deny an application~~  
4 ~~unless the water resource district determines the application is of statewide~~  
5 ~~significance or the proposed drainage will flood or adversely affect lands of~~  
6 ~~downstream landowners within one mile [1.61 kilometers] of the proposed~~  
7 ~~subsurface drainage.~~ The water resource district board may charge permit  
8 applicants a fee up to one hundred fifty dollars. Water resource districts ~~must~~shall  
9 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 a completed application for a permit, the water resource  
27 district board immediately shall give notice and a copy of the submission via  
28 certified mail to each owner of land within one mile [1.61 kilometers] downstream  
29 of the proposed subsurface water management system outlet unless the distance  
30 to the nearest assessment drain, natural watercourse, slough, or lake is less than  
31 one mile [1.61 kilometers], in which case notice and a copy of the submission

1           must be given immediately to each owner of land between the outlet and the  
2           nearest assessment drain, natural watercourse, slough, or lake. The notice  
3           requirement in this section must be waived if the applicant presents signed,  
4           notarized letters of approval from all downstream landowners entitled to notice in  
5           this subsection.

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

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

- 1           c. A water resource district may attach reasonable conditions to an approved permit  
2           for a subsurface water management system that outlets directly into a legal  
3           assessment drain or public highway right of way. For purposes of this subsection,  
4           "reasonable conditions" means conditions that address the outlet location, proper  
5           erosion control, reseeding of disturbed areas, installation of riprap or other ditch  
6           stabilization, and conditions that require all work to be done in a neat and  
7           professional manner. Any condition to locate the project a minimum distance from  
8           rural water supply lines may not extend beyond an existing easement for lines, or  
9           no greater than twenty feet [6.1 meters] from either side of the water line if the  
10           rural water line was installed under a blanket easement.
- 11           d. A water resource district may require a subsurface water management system  
12           granted a permit under this section to incorporate a control structure at the outlet  
13           into the design of the system and may require the control structure be closed  
14           during critical flood periods.
- 15           e. A water resource district board may not deny a completed permit application  
16           under this section unless the board determines, based on technical evidence  
17           submitted by a landowner notified under subsection 2, the proposed water  
18           management system will flood or unreasonably harm land of a notified  
19           landowner, and a notarized letter of approval required by the board has not been  
20           obtained by the applicant. For purposes of this section, "unreasonable harm" is  
21           limited to hydraulic impacts, including erosion or other adverse impacts that  
22           degrade the physical integrity of a roadway or real property within one mile [1.61  
23           kilometers] downstream of the system's outlet. The board shall include a written  
24           explanation of the reasons for a denial of a completed application and notify, by  
25           certified mail, the applicant and all landowners notified under subsection 2 of the  
26           approval or denial.
- 27           f. The board may not deny a permit more than sixty days after receipt of the  
28           completed application for the permit. If the board fails to deny the permit  
29           application within sixty days of receipt, the permit application is deemed  
30           approved.

- 1       4. A denial of a completed permit application by a water resource district board may be  
2       appealed, under section 28-34-01, to the district court of the county in which the permit  
3       application was filed. The court may approve a completed permit application denied by  
4       a water resource district board or the state engineer if the application meets the  
5       requirements of this section.
- 6       5. A water resource district board may not be held liable to any person for issuing a  
7       permit under this section.
- 8       6. A person that installs a subsurface water management system requiring a permit  
9       under this section without first securing the permit is liable for all damages sustained  
10      by a person caused by the subsurface water management system.
- 11      7. A person that installs a subsurface water management system requiring a permit  
12      under this section without first securing the permit is guilty of an infraction.

13       **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.**

14      During the 2017-18 interim, the legislative management shall consider studying and monitoring  
15      the nutrient management plan developed by the state department of health. The legislative  
16      management shall report its findings and recommendations, together with any legislation  
17      required to implement the recommendations, to the sixty-sixth legislative assembly.

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