

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.