

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.

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

8 **SECTION 1.** A new section to chapter 11-11 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Limitation on authority - Discharging water.**

11 Notwithstanding any other provision of law, a county may not require a resident to provide
12 thirty days' notice before discharging water from a subsurface outlet into a legal drain.

13 **SECTION 2. AMENDMENT.** Section 61-16-07 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16-07. Water resource board members - Appointment and number.**

16 When a water resource district has been created, and the state water commission has filed
17 notice with the county auditor of a county where the district or a part thereof is situated, a water
18 resource board ~~shall~~must be appointed within ninety days, as provided herein. If the district's
19 boundaries are confined to one county, the board of county commissioners shall appoint a water
20 resource board consisting of three or five ~~managers~~board members. When a district includes
21 two counties, the water resource board ~~shall~~must consist of five ~~managers~~board members,
22 three appointed by the board of county commissioners of the county having the larger
23 aggregate taxable valuation of property, and two appointed by the board of county
24 commissioners of the other county. If a district includes three counties, the water resource board

1 shallmust consist of five managersboard members, one appointed by the board of county
2 commissioners having the lowest aggregate taxable valuation of property in the district, and two
3 appointed by the board of county commissioners of each of the other two counties. If a district
4 includes four or six counties, the water resource board shallmust consist of two board members
5 from the county having the largest aggregate taxable valuation of property in the district, and
6 one managerboard member from each of the other counties. If a district includes five or seven
7 counties, the water resource board shallmust consist of one managerboard member from each
8 county. Appointments to the water resource board shallmust be made by the boards of county
9 commissioners of the respective counties.

10 **SECTION 3. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling**
13 **vacancies - Compensation of managersboard members.**

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

26 2. Each member of a water resource board shall receive the sum of at least seventy-five
27 dollars but not more than one hundred thirty-five dollars per day while performing
28 duties as a member of the board, and an allowance for meals and lodging expenses at
29 the same rate and under the same conditions as provided for state officials and
30 employees. The allowance for travel expenses shall be at the same rate as provided

1 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
2 section 21-05-01.

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

12 **SECTION 4. AMENDMENT.** Section 61-16-09 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-16-09. Oath of office - Organization of water resource board - Appointment of**
15 **employees - Meetings.**

16 Upon receiving notice of appointment as member of the water resource board, such
17 appointee shall take the oath of office prescribed for civil officers. Such oath ~~shall~~must be filed
18 with the secretary of the board. Notice of the appointment of a member or members of a water
19 resource board ~~shall~~must be mailed to the state water commission. Such notice shall state the
20 name and post-office address of each appointee and the date of appointment.

21 A majority of the ~~managers shall constitute~~board members constitutes a quorum for the
22 transaction of such business as may come before the board, but any number may adjourn a
23 meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer
24 and such other employees as needed for the efficient conduct of the district's business and shall
25 fix their compensation. The offices of secretary and treasurer may be held by the same person.
26 Officers and employees ~~shall~~ hold office at the pleasure of the board.

27 The board shall provide an office suitable for its use as a meeting place and for conducting
28 the affairs of the district. It shall adopt such rules for transacting the business of the district as it
29 may deem necessary, including the time and place of holding regular meetings of the board.
30 Special meetings may be called by the secretary on order of the chairman of the board or upon
31 written request of two members of the board. Notice of a special meeting ~~shall~~must be mailed to

1 each member of the board at least five days before any such meeting provided, that a special
2 meeting may be held whenever all members of the board are present or consent thereto in
3 writing.

4 **SECTION 5. AMENDMENT.** Subsection 8 of section 61-16.1-09 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 8. Make rules ~~and regulations~~ concerning the management, control, regulation, and
7 conservation of waters and prevent the pollution, contamination, or other misuse of the
8 water resources, streams, or bodies of water included within the district. However, the
9 board may not make a rule regarding subsurface water management system permits
10 unless expressly required or allowed under this title.

11 **SECTION 6. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

14 Installation of an artificial subsurface ~~drainage~~water management system comprising eighty
15 acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop
16 an application form for a permit for subsurface ~~drainage of water~~water management. A person
17 seeking to construct an artificial subsurface ~~drainage~~water management system must submit an
18 application to the water resource district within which is found a majority of the land area for
19 consideration and approval. Water resource districts may attach any necessary conditions,
20 except a requirement to locate the project a minimum distance from rural water supply lines
21 beyond an existing easement for the lines, to an approved permit, but may not deny an
22 application unless the water resource district determines, based on technical evidence, the
23 application is of statewide significance or the proposed ~~drainage~~water management system will
24 flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of
25 the proposed subsurface drainage. ~~Water resource districts must forward copies of all approved~~
26 ~~permits to the state engineer~~water management system. For purposes of this section, "technical
27 evidence" means written information regarding the proposed water management system
28 prepared after consideration of the design and physical aspects of the proposed system, and
29 any adverse hydrological effects, including erosion, flood duration, crop loss, and downstream
30 water control device operation impacts, which may occur to land downstream. Water resource
31 districts shall determine if the application proposes ~~drainage~~subsurface water management of

1 statewide significance. If so, the application must be referred to the state engineer for
2 consideration and approval, and the state engineer shall make a determination within thirty
3 days. If the state engineer has not approved or denied the permit within thirty days after receipt
4 of the permit application, the application must be deemed approved by the state engineer. The
5 permit applicant shall provide a thirty-day notice to downstream property owners within one mile
6 [1.61 kilometers] of the proposed subsurface ~~drainagewater~~ management system. If an
7 investigation by a water resource district or a downstream landowner within one mile [1.61
8 kilometers] ~~shows that~~proves, based on technical evidence, the proposed ~~drainagesystem~~ will
9 flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the
10 water resource district may require ~~flowage easements~~the applicant to obtain from the
11 downstream landowners notarized letters approving the system before issuing a permit. If all
12 adversely affected landowners provide the notarized approval letters, the board may waive the
13 thirty-day notice period for the meeting to approve or deny the permit. A landowner may not be
14 required to provide a United States department of agriculture highly erodible land conservation
15 and wetland conservation certification for the investigation. If an artificial subsurface
16 ~~drainagewater management~~ system drains into an assessment ~~drainwater management~~
17 ~~system~~, natural watercourse, or pond, slough, or lake, a ~~flowage easement~~a notarized letter of
18 approval is not required. ~~Flowage easements must be filed for record in the office of the~~
19 ~~recorder of the county or counties in which the lands are situated.~~ A person that installs an
20 artificial subsurface ~~drainagewater management~~ system without first securing a permit to do so,
21 as provided in this section, is liable for all damage sustained by a person caused by the
22 ~~drainingsystem~~, and is guilty of an infraction.

23 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.**

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