

HOUSE BILL NO. 1437

Introduced by

Representatives Schreiber-Beck, D. Anderson, Beltz, D. Johnson, J. Nelson, O'Brien,
Schmidt

Senators Klein, Kreun

1 A BILL for an Act to create and enact section 61-32-03.2 of the North Dakota Century Code,
2 relating to small subsurface water management systems; to amend and reenact section
3 61-32-03.1 of the North Dakota Century Code, relating to large subsurface water management
4 system permits; to provide a penalty; and to declare an emergency.

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

6 **SECTION 1. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-32-03.1. Permit to drain subsurface waters required - Permit form -Penalty.**

9 1.a. Installation of a subsurface water management system comprising eighty acres
10 [32.37 hectares] of land area or more requires a permit. ~~The watershed area drained~~
11 ~~by a subsurface water management system may not be used to determine whether~~
12 ~~the system requires a permit under this section.~~ A person that violates this section is
13 guilty of an infraction.

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

20 e. ~~Installation of a subsurface water management system comprising less than~~
21 ~~eighty acres [32.37 hectares] of land area does not require a permit.~~

- 1 2. For purposes of this section, a "natural watercourse" includes, in addition to
2 watercourses defined in section 61-01-06, any waterway depicted as a perennial or
3 intermittent stream or river on a United States geological survey topography map.
- 4 3. a. The state engineer shall develop an application form for a permit required under
5 this section. A person seeking to construct a subsurface water management
6 system ~~that requires a permit under this section must~~ shall submit a completed
7 application to the water resource district board within which is found a majority of
8 the land area for consideration and approval. ~~The water resource district board~~
9 ~~may charge permit applicants a fee up to one~~ five hundred fifty dollars. Water-
10 ~~resource districts shall forward copies of all approved permits to the state~~
11 ~~engineer~~ The fee must be paid before the water resource district may approve the
12 application.
- 13 b. ~~Upon submission of a completed application for a permit, the water resource~~
14 ~~district board immediately shall give notice and a copy of the submission via~~
15 ~~certified mail to each owner of land within one mile [1.61 kilometers] downstream~~
16 ~~of the proposed subsurface water management system outlet unless the distance~~
17 ~~to the nearest waterway depicted as a perennial or intermittent stream or river on~~
18 ~~a United States geological survey topography map, assessment drain, natural~~
19 ~~watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case~~
20 ~~notice and a copy of the submission must be given immediately to each owner of~~
21 ~~land between the outlet and the nearest assessment drain, natural watercourse,~~
22 ~~slough, or lake. The notice requirement in this section must be waived if the~~
23 ~~applicant presents signed, notarized letters of approval from all downstream~~
24 ~~landowners entitled to notice in this subsection.~~
- 25 3. a. ~~If the water resource board receives notarized letters of approval from all~~
26 ~~downstream landowners entitled to notice, the board shall approve the completed~~
27 ~~permit application as soon as practicable but no later than thirty days after receipt~~
28 ~~of the last letter. Otherwise, the water resource board shall review the completed~~
29 ~~application at its next meeting that is at least thirty days after receipt of the~~
30 ~~application. The board shall consider any written, technical evidence provided by~~
31 ~~the applicant or a landowner notified under subsection 2 addressing whether the~~

1 land of a notified landowner will be flooded or unreasonably harmed by the
2 proposed subsurface water management system. For purposes of this section
3 "technical evidence" means written information regarding the proposed
4 subsurface water management system, prepared after consideration of the
5 design and physical aspects of the proposed system, and any adverse hydraulic
6 effects, including erosion, flood duration, crop loss, and downstream water
7 control device operation impacts, which may occur to land owned by a landowner
8 provided under subsection 2. Technical evidence must be submitted to the permit
9 applicant, notified landowners, and the board within thirty days of the receipt of
10 the completed permit application by the board. A notified landowner may not
11 object to the proposed system unless the landowner presents technical evidence
12 under this subsection.

- 13 b. If the board finds, based on technical evidence, the proposed subsurface water
14 management system will flood or unreasonably harm lands of a landowner
15 notified under subsection 2, the board may require the applicant to obtain a
16 notarized letter of approval before issuing a permit for the system. The board may
17 not require a letter of approval for any land downstream of a system that outlets
18 into an assessment drain, natural watercourse, or pond, slough, or lake if notified
19 landowners did not provide technical evidence to the district.
- 20 e. A water resource district may attach reasonable conditions to an approved permit
21 for a subsurface water management system that outlets directly into a legal
22 assessment drain or public highway right of way. For purposes of this subsection,
23 "reasonable conditions" means conditions that address the outlet location, proper
24 erosion control, reseeding of disturbed areas, installation of riprap or other ditch
25 stabilization, and conditions that require all work to be done in a neat and
26 professional manner. Any condition to locate the project a minimum distance from
27 rural water supply lines may not extend beyond an existing easement for lines, or
28 no greater than twenty feet [6.1 meters] from either side of the water line if the
29 rural water line was installed under a blanket easement.
- 30 d. A water resource district may require a subsurface water management system
31 granted a permit under this section to incorporate a control structure at the outlet

1 into the design of the system and may require the control structure be closed
2 during critical flood periods.

3 e. ~~A water resource district board may not deny a completed permit application~~
4 ~~under this section unless the board determines, based on technical evidence~~
5 ~~submitted by a landowner notified under subsection 2, the proposed water~~
6 ~~management system will flood or unreasonably harm land of a notified~~
7 ~~landowner, and a notarized letter of approval required by the board has not been~~
8 ~~obtained by the applicant. For purposes of this section, "unreasonable harm" is~~
9 ~~limited to hydraulic impacts, including erosion or other adverse impacts that~~
10 ~~degrade the physical integrity of a roadway or real property within one mile [1.61~~
11 ~~kilometers] downstream of the system's outlet. The board shall include a written~~
12 ~~explanation of the reasons for a denial of a completed application and notify, by~~
13 ~~certified mail, the applicant and all landowners notified under subsection 2 of the~~
14 ~~approval or denial.~~

15 f. ~~The board may not deny a permit more than sixty days after receipt of the~~
16 ~~completed application for the permit. If the board fails to deny the permit~~
17 ~~application within sixty days of receipt, the permit application is deemed~~
18 ~~approved.~~

19 4. ~~A denial of a completed permit application by a water resource district board may be~~
20 ~~appealed, under section 28-34-01, to the district court of the county in which the permit~~
21 ~~application was filed. The court may approve a completed permit application denied by~~
22 ~~a water resource district board or the state engineer if the application meets the~~
23 ~~requirements of this section.~~

24 5. A completed permit application includes:

25 (1) A completed application form signed by an applicant and filed with the
26 district;

27 (2) Evidence of ownership for each parcel to be tiled according to the tax rolls
28 of the county in which the parcel is located;

29 (3) A project design, including:

30 (a) A detailed drawing depicting the subsurface water management
31 system's location overlain on an aerial photograph showing the

- 1 system's location by legal description identifying either the relevant
2 quarter, section, township, and range or the relevant block and lot
3 number;
- 4 (b) The physical footprint of the system's layout;
5 (c) The tile-main sizes and locations;
6 (d) The laterals to the tile-main sizes and locations;
7 (e) Surface inlet sizes and locations; and
8 (f) Outlet sizes, locations, and types;
- 9 (4) A detailed map or depiction of the flow direction from each outlet location for
10 one mile [1.61 kilometers] downstream which includes the location of the
11 downstream parcels by legal description identifying either the relevant
12 quarter, section, township, and range or the relevant block and lot number;
13 and
- 14 (5) Evidence of ownership for each parcel within one mile [1.61 kilometers]
15 downstream of each project outlet according to the tax rolls for the county in
16 which the parcel is located, unless the distance to the nearest assessment
17 drain, natural watercourse, slough, or lake is less than one mile
18 [1.61 kilometers] downstream of a proposed outlet, in which case the
19 applicant shall provide evidence of ownership for each parcel between the
20 outlet and the nearest assessment drain, natural watercourse, slough, or
21 lake.
- 22 c. Unless the district notifies an applicant the application is incomplete and provides
23 a list of information required to complete the application within three business
24 days after the day the district receives the application, the application is deemed
25 complete.
- 26 d. A public official may not disclose knowingly and willfully a project design
27 submitted as part of an application for a permit under this section before or after
28 the effective date of this Act, and acquired by the public servant in an official
29 capacity, unless the disclosure was necessary for the public servant to carry out
30 the public servant's official duties. Section 12.1-13-01 does not apply to
31 disclosures prohibited under this subdivision.

- 1 4. A district may attach conditions to an approved permit for a subsurface water
2 management system if the conditions address:
- 3 a. Outlet locations including requirements for pump and control structures to be
4 installed no closer than twenty-five feet [7.62 meters] from the top of the back
5 slope of an assessment drain;
- 6 b. Installation and maintenance of proper erosion control at all outlets;
- 7 c. Re-establishment of disturbed areas to previous conditions;
- 8 d. The minimum distance from rural water supply lines. However, a district may not
9 attach a condition requiring a system to extend beyond an existing easement for
10 a rural water line, or, if the rural water line was installed under a blanket
11 easement, requiring a system to extend beyond twenty feet [6.1 meters] from
12 either side of a rural water line;
- 13 e. Installation and operation of control structures at project outlets including
14 requirements for control structures to be closed or pump outlets to be turned off
15 during critical flood periods;
- 16 f. Requirements for a permittee to obtain an amendment to a permit for alterations
17 to outlet locations, new outlets, or improvements resulting in drainage of
18 additional acres;
- 19 g. If the subsurface water management system will discharge into the watershed
20 area of a assessment drain, inclusion of the relevant property into the
21 assessment district for the assessment drain in accordance with the benefits the
22 property receives. The water resource district may include the new property into
23 the assessment district, and determine the benefits and assessment amounts
24 under chapters 61-21 and 61-16.1, without conducting the reassessment of
25 benefit proceedings under sections 61-21-44 and 61-16.1-26.
- 26 h. Requirements for a permittee to remove silt and vegetation, or repair damages
27 directly caused by the subsurface water management system, up to one mile
28 [1.61 kilometers] downstream from a proposed outlet, unless the distance to the
29 nearest assessment drain, natural watercourse, slough, or lake is less than
30 one mile [1.61 kilometers] downstream of the proposed outlet, in which case the
31 district may require silt and vegetation removal or damage repair between the

1 outlet and the nearest assessment drain, natural watercourse, slough, or lake.

2 For purposes of this subdivision and subdivision i:

3 (1) Downstream damage repair does not include deepening or widening a road
4 ditch or existing drain;

5 (2) The timing and method of silt and vegetation removal or damage repair in a
6 county or township road ditch must be preapproved by the appropriate road
7 authority; and

8 (3) The applicant shall follow any construction site protection requirements of
9 the road authority.

10 i. If a downstream landowner or road authority presents substantial evidence a
11 subsurface water management system directly has caused accumulation of silt or
12 vegetation or other damages, the requirement or authorization of the applicant to
13 remove the silt and vegetation or repair the damages directly caused by the
14 system. However, the applicant may not spread silt, vegetation, or debris along
15 adjoining land without the permission of all parties having a legal interest in the
16 land.

17 5. A district shall approve a permit, including any permissible conditions, within thirty
18 days after the district receives the completed application. If the district fails to approve
19 the permit application within that period, the permit is deemed approved with no
20 conditions.

21 6. Upon approval of a permit, the district shall forward copies of the approved permit, any
22 notice of decision containing the conditions attached to the approved permit, and the
23 downstream flow map to the state engineer and to each landowner who owns property
24 within one mile [1.61 kilometers] downstream of each project outlet according to the
25 tax rolls of the county in which the property is located, unless the distance to the
26 nearest assessment drain, natural watercourse, slough, or lake is less than one mile
27 [1.61 kilometers] downstream of the proposed outlet, in which case the district shall
28 provide notice to landowners with property between the outlet and the nearest
29 assessment drain, natural watercourse, slough, or lake. The district shall send copies
30 of approved permits by first-class mail, attested by an affidavit of mailing.

1 7. An amendment of a previously approved subsurface water management system
2 permit must be made according to the provisions for approving a permit under this
3 section.

4 8. A water resource district board may not be held liable to any person for issuing a
5 permit under this section.

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

9 ~~7. A person that installs a subsurface water management system requiring a permit~~
10 ~~under this section without first securing the permit is guilty of an infraction.~~

11 9. Approval of a permit under this section does not prohibit a downstream party
12 unreasonably damaged by the discharge of water from a subsurface water
13 management system from seeking damages in a civil action.

14 **SECTION 2.** Section 61-32-03.2 of the North Dakota Century Code is created and enacted
15 as follows:

16 **61-32-03.2. Smaller subsurface water management systems - Reports and conditions.**

17 1. A person may not install a subsurface water management system comprising less than
18 eighty acres [32.37 hectares] of land area until the person has reported to the board of
19 the water resource district within which is found a majority of the land area of the
20 system:

- 21 a. The system's maximum discharge;
22 b. The system's discharge location; and
23 c. The direction of the discharge flow.

24 2. A person required to submit a report under subsection 1 shall design and install the
25 subsurface water management system such that:

- 26 a. Pump and control structures at pump outlets are installed no closer than
27 twenty-five feet [7.62 meters] from the top of the back slope of an assessment
28 drain; and
29 b. Control structures at project outlets are installed and capable of being closed or
30 turned off during critical flood periods.

- 1 3. If a subsurface water management system for which a report is required under
2 subsection 1 will discharge into the watershed area of an assessment drain, the water
3 resource board that receives the report may require the relevant property to be
4 included in the assessment district for the assessment drain in accordance with the
5 benefits the property receives. The water resource district also may include the
6 property in the assessment district and determine the benefits and assessment
7 amounts under chapter 61-21 and 61-16.1, without conducting the reassessment of
8 benefit proceedings under section 61-21-44 and 61-16.1-26.
9 4. A person that violates this section is guilty of an infraction.

10 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.