

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED 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 subsection 3 of  
3 section 61-02-01.4 and section 61-32-03.1 of the North Dakota Century Code, relating to large  
4 subsurface water management system permits and the state water commission cost-share  
5 policy; to provide a penalty; and to declare an emergency.

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

7 **SECTION 1. AMENDMENT.** Subsection 3 of section 61-02-01.4 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 3. Must consider all project costs potentially eligible for reimbursement, except the  
10 commission shall exclude operations expense, regular maintenance, and removal of  
11 vegetative materials and sediment, for assessment drains, and may exclude  
12 operations expense and regular maintenance for other projects. Snagging and  
13 clearing of watercourses ~~are not regular maintenance~~ and deepening or widening of  
14 existing drains are eligible for reimbursement. The commission shall require a water  
15 project sponsor to maintain a capital improvement fund from the rates charged  
16 customers for future extraordinary maintenance projects as condition of funding an  
17 extraordinary maintenance project.

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

20 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

21 1.a. Installation of a subsurface water management system comprising eighty acres  
22 [32.37 hectares] of land area or more requires a permit. ~~The watershed area drained~~  
23 ~~by a subsurface water management system may not be used to determine whether~~

1           ~~the system requires a permit under this section. A person that violates this section is~~  
2           ~~guilty of an infraction.~~

3           ~~b. Subsurface water management systems that use surface intakes or lift stations~~  
4           ~~must be permitted exclusively under this section if the system will have a~~  
5           ~~drainage coefficient of three eighths of an inch [0.95 centimeters] or less.~~  
6           ~~Subsurface water management systems that use surface intakes must be~~  
7           ~~permitted exclusively under section 61-32-03 if the system will have a drainage~~  
8           ~~coefficient exceeding three eighths of an inch [0.95 centimeters].~~

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

11          2. ~~For purposes of this section, a "natural watercourse" includes, in addition to~~  
12          ~~watercourses defined in section 61-01-06, any waterway depicted as a perennial or~~  
13          ~~intermittent stream or river on a United States geological survey topography map.~~

14          3. a. The state engineer shall develop an application form for a permit required under  
15          this section. A person seeking to construct a subsurface water management  
16          system ~~that requires a permit under this section must~~ shall submit a completed  
17          application to the water resource district board within which is found a majority of  
18          the land area for consideration and approval. The ~~water resource district board~~  
19          ~~may charge permit applicants a fee up to one~~ five hundred fifty dollars. ~~Water~~  
20          ~~resource districts shall forward copies of all approved permits to the state~~  
21          ~~engineer.~~ The fee must be paid before the water resource district may approve the  
22          application.

23          b. Upon submission of a completed application for a permit, the water resource  
24          district board immediately shall give notice and a copy of the submission via  
25          certified mail to each owner of land within one mile [1.61 kilometers] downstream  
26          of the proposed subsurface water management system outlet unless the distance  
27          to the nearest waterway depicted as a perennial or intermittent stream or river on  
28          a United States geological survey topography map, assessment drain, natural  
29          watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case  
30          notice and a copy of the submission must be given immediately to each owner of  
31          land between the outlet and the nearest assessment drain, natural watercourse,

1           slough, or lake. The notice requirement in this section must be waived if the  
2           applicant presents signed, notarized letters of approval from all downstream  
3           landowners entitled to notice in this subsection.

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

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

30          c.    A water resource district may attach reasonable conditions to an approved permit  
31          for a subsurface water management system that outlets directly into a legal

1 assessment drain or public highway right of way. For purposes of this subsection,  
2 "reasonable conditions" means conditions that address the outlet location, proper  
3 erosion control, reseeding of disturbed areas, installation of riprap or other ditch  
4 stabilization, and conditions that require all work to be done in a neat and  
5 professional manner. Any condition to locate the project a minimum distance from  
6 rural water supply lines may not extend beyond an existing easement for lines, or  
7 no greater than twenty feet [6.1 meters] from either side of the water line if the  
8 rural water line was installed under a blanket easement.

9 d. A water resource district may require a subsurface water management system  
10 granted a permit under this section to incorporate a control structure at the outlet  
11 into the design of the system and may require the control structure be closed  
12 during critical flood periods.

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

25 f. The board may not deny a permit more than sixty days after receipt of the  
26 completed application for the permit. If the board fails to deny the permit  
27 application within sixty days of receipt, the permit application is deemed  
28 approved.

29 4. A denial of a completed permit application by a water resource district board may be  
30 appealed, under section 28-34-01, to the district court of the county in which the permit  
31 application was filed. The court may approve a completed permit application denied by

1           a water resource district board or the state engineer if the application meets the  
2           requirements of this section.

3       5. A completed permit application includes:

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

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

8           (3) A project design, including:

9           (a) A detailed drawing depicting the subsurface water management  
10           system's location overlain on an aerial photograph showing the  
11           system's location by legal description identifying either the relevant  
12           quarter, section, township, and range or the relevant block and lot  
13           number;

14           (b) The physical footprint of the system's layout;

15           (c) The tile-main sizes and locations;

16           (d) The laterals to the tile-main sizes and locations;

17           (e) Surface inlet sizes and locations; and

18           (f) Outlet sizes, locations, and types;

19           (4) A detailed map or depiction of the flow direction from each outlet location for  
20           one mile [1.61 kilometers] downstream which includes the location of the  
21           downstream parcels by legal description identifying either the relevant  
22           quarter, section, township, and range or the relevant block and lot number;  
23           and

24           (5) Evidence of ownership for each parcel within one mile [1.61 kilometers]  
25           downstream of each project outlet according to the tax rolls for the county in  
26           which the parcel is located, unless the distance to the nearest assessment  
27           drain, natural watercourse, slough, or lake is less than one mile  
28           [1.61 kilometers] downstream of a proposed outlet, in which case the  
29           applicant shall provide evidence of ownership for each parcel between the  
30           outlet and the nearest assessment drain, natural watercourse, slough, or  
31           lake.

- 1           c. Unless the district notifies an applicant the application is incomplete and provides  
2           a list of information required to complete the application within three business  
3           days after the day the district receives the application, the application is deemed  
4           complete.
- 5           d. Project designs submitted as part of an application for a permit under this section  
6           before or after the effective date of this Act are exempt records under section  
7           44-04-18 and may be provided to individuals only as necessary to make a  
8           decision whether to approve the permit.
- 9           4. A district may attach conditions to an approved permit for a subsurface water  
10          management system if the conditions address:
- 11          a. Outlet locations including requirements for pump and control structures to be  
12          installed no closer than twenty-five feet [7.62 meters] from the top of the back  
13          slope of an assessment drain;
- 14          b. Installation and maintenance of proper erosion control at all outlets;
- 15          c. Re-establishment of disturbed areas to previous conditions;
- 16          d. The minimum distance from rural water supply lines. However, a district may not  
17          attach a condition requiring a system to extend beyond an existing easement for  
18          a rural water line, or, if the rural water line was installed under a blanket  
19          easement, requiring a system to extend beyond twenty feet [6.1 meters] from  
20          either side of a rural water line;
- 21          e. Installation and operation of control structures at project outlets including  
22          requirements for control structures to be closed or pump outlets to be turned off  
23          during critical flood periods;
- 24          f. Requirements for a permittee to obtain an amendment to a permit for alterations  
25          to outlet locations, new outlets, or improvements resulting in drainage of  
26          additional acres;
- 27          g. If the subsurface water management system will discharge into the watershed  
28          area of a assessment drain, inclusion of the relevant property into the  
29          assessment district for the assessment drain in accordance with the benefits the  
30          property receives. The water resource district may include the new property into  
31          the assessment district, and determine the benefits and assessment amounts

1           under chapters 61-21 and 61-16.1, without conducting the reassessment of  
2           benefit proceedings under sections 61-21-44 and 61-16.1-26.

3           h. Requirements for a permittee to remove silt and vegetation, or repair erosion and  
4           scour damages directly caused by the subsurface water management system, up  
5           to one mile [1.61 kilometers] downstream from a proposed outlet, unless the  
6           distance to the nearest assessment drain, natural watercourse, slough, or lake is  
7           less than one mile [1.61 kilometers] downstream of the proposed outlet, in which  
8           case the district may require silt and vegetation removal or erosion and scour  
9           damage repair between the outlet and the nearest assessment drain, natural  
10          watercourse, slough, or lake. For purposes of this subdivision and subdivision i:

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

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

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

18          i. If a downstream landowner or road authority presents substantial evidence a  
19          subsurface water management system directly has caused accumulation of silt,  
20          vegetation erosion, or scouring, the requirement or authorization of the applicant  
21          to remove the silt and vegetation or repair the erosion and scour damages  
22          directly caused by the system. However, the applicant may not spread silt,  
23          vegetation, or debris along adjoining land without the permission of all parties  
24          having a legal interest in the land.

25          5. A district shall approve a permit, including any permissible conditions, within thirty  
26          days after the district receives the completed application. If the district fails to approve  
27          the permit application within that period, the permit is deemed approved with no  
28          conditions.

29          6. Upon approval of a permit, the district shall forward notice of the approved permit and  
30          of the downstream flow map to the state engineer and to each landowner who owns  
31          property within one mile [1.61 kilometers] downstream of each project outlet according

1 to the tax rolls of the county in which the property is located, unless the distance to the  
2 nearest assessment drain, natural watercourse, slough, or lake is less than one mile  
3 [1.61 kilometers] downstream of the proposed outlet, in which case the district shall  
4 provide notice to landowners with property between the outlet and the nearest  
5 assessment drain, natural watercourse, slough, or lake. The district shall send copies  
6 of approved permits by first-class mail, attested by an affidavit of mailing.

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

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

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

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

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

20 **SECTION 3.** Section 61-32-03.2 of the North Dakota Century Code is created and enacted  
21 as follows:

22 **61-32-03.2. Smaller subsurface water management systems discharging into**  
23 **assessment drains - Reports and conditions - Penalty.**

24 1. A person may not install a subsurface water management system comprising less than  
25 eighty acres [32.37 hectares] of land area and which drains directly into an  
26 assessment drain or directly into a tributary of an assessment drain, until the person  
27 has reported to the board of the water resource district within which is found a majority  
28 of the land area of the system:

- 29 a. The system's maximum discharge;  
30 b. The system's discharge location; and  
31 c. The direction of the discharge flow.



- 1       2. A person required to submit a report under subsection 1 shall design and install the  
2       subsurface water management system such that:
- 3       a. Pump and control structures at pump outlets are installed no closer than  
4       twenty-five feet [7.62 meters] from the top of the back slope of an assessment  
5       drain;
- 6       b. Proper erosion controls are installed and maintained at all outlets; and
- 7       c. Pumps and control structures at project outlets are closed or turned off during  
8       critical flood periods.
- 9       3. If a subsurface water management system for which a report is required under  
10      subsection 1 will discharge into the watershed area of an assessment drain, the water  
11      resource board that receives the report may require the relevant property to be  
12      included in the assessment district for the assessment drain in accordance with the  
13      benefits the property receives. The water resource district also may include the  
14      property in the assessment district and determine the benefits and assessment  
15      amounts under chapter 61-21 and 61-16.1, without conducting the reassessment of  
16      benefit proceedings under section 61-21-44 and 61-16.1-26.
- 17      4. The board of the water resource district within which the subsurface water  
18      management system is located may order the system's owner or operator to bring the  
19      system into compliance with subsection 2 if the board finds the system violates that  
20      subsection.
- 21      5. A subsurface water management system that drains into a slough or other body of  
22      water completely encompassed by land owned by the person that owns the land  
23      drained by the system may not be deemed a system that drains directly into an  
24      assessment drain or directly into a tributary of an assessment drain.
- 25      6. A person that violates this section is guilty of an infraction.

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