

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; to provide an expiration date; 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~~ of the
11 parcel;

12 (b) The system's location by legal description identifying either the
13 relevant quarter, section, township, and range or the relevant block
14 and lot number;

15 ~~(b)~~(c) The physical footprint of the system's layout;

16 ~~(e)~~(d) The tile-main sizes and locations;

17 ~~(d)~~(e) The laterals to the tile-main sizes and locations;

18 ~~(e)~~(f) Surface inlet sizes and locations; and

19 ~~(f)~~(g) Outlet sizes, locations, and types;

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

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

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

3 c. Unless the district notifies an applicant the application is incomplete and provides
4 a list of information required to complete the application within three business
5 days after the day the district receives the application, the application is deemed
6 complete.

7 d. ~~Project designs~~Detailed drawings submitted pursuant to subparagraph a of
8 paragraph 3 of subdivision b as part of an application for a permit under this
9 section ~~before or~~ after the effective date of this Act are exempt records under
10 section 44-04-18 and may be provided to individuals only as necessary to make
11 a decision whether to approve the permit.

12 4. A district may attach conditions to an approved permit for a subsurface water
13 management system if the conditions address:

14 a. Outlet locations including requirements for pump and control structures to be
15 installed no closer than twenty-five feet [7.62 meters] from the top of the back
16 slope of an assessment drain;

17 b. Installation and maintenance of proper erosion control at all outlets;

18 c. Re-establishment of disturbed areas to previous conditions;

19 d. The minimum distance from rural water supply lines. However, a district may not
20 attach a condition requiring a system to extend beyond an existing easement for
21 a rural water line, or, if the rural water line was installed under a blanket
22 easement, requiring a system to extend beyond twenty feet [6.1 meters] from
23 either side of a rural water line;

24 e. Installation and operation of control structures at project outlets including
25 requirements for control structures to be closed or pump outlets to be turned off
26 during critical flood periods;

27 f. Requirements for a permittee to obtain an amendment to a permit for alterations
28 to outlet locations, new outlets, or improvements resulting in drainage of
29 additional acres;

30 g. If the subsurface water management system will discharge into the watershed
31 area of a assessment drain, inclusion of the relevant property into the

1 assessment district for the assessment drain in accordance with the benefits the
2 property receives, **provided the property is not assessed already for the**
3 **assessment drain.** The water resource district may include the new property into
4 the assessment district, and determine the benefits and assessment amounts
5 under chapters 61-21 and 61-16.1, without conducting the reassessment of
6 benefit proceedings under sections 61-21-44 and 61-16.1-26, **provided the**
7 **property is not assessed already for the assessment drain.**

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

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

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

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

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

30 5. A district shall approve a permit, including any permissible conditions, within thirty
31 days after the district receives the completed application. If the district fails to approve

1 the permit application within that period, the permit is deemed approved with no
2 conditions.

3 6. Upon approval of a permit, the district shall forward notice of the approved permit and
4 ~~of the downstream flow map to the state engineer and to each landowner who owns~~
5 property within one mile [1.61 kilometers] downstream of each project outlet according
6 to the tax rolls of the county in which the property is located, unless the distance to the
7 nearest assessment drain, natural watercourse, slough, or lake is less than one mile
8 [1.61 kilometers] downstream of the proposed outlet, in which case the district shall
9 provide notice to landowners with property between the outlet and the nearest
10 assessment drain, natural watercourse, slough, or lake. The district shall send copies
11 of ~~approved permits~~the notice by first-class mail, attested by an affidavit of mailing.
12 The district does not need to provide copies of the permit application under this
13 subsection.

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

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

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

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

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

27 10. This section applies only to subsurface water management systems that drain, in
28 whole or in part, platted or unplatted lands used for raising agricultural crops or
29 grazing farm animals.

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

1 **61-32-03.2. Smaller subsurface water management systems - ~~Reports~~Notification and**
2 **conditions - Penalty.**

- 3 1. A person may not install a subsurface water management system comprising less than
4 eighty acres [32.37 hectares] of land area until the person has ~~reported to~~notified the
5 board of the water resource district within which is found a majority of the land area of
6 the system of the following information:
- 7 a. The system's ~~maximum discharge~~total acreage and legal description of the land
8 being drained;
- 9 b. The ~~system's discharge location~~outlet locations and types; and
- 10 c. The ~~direction of the discharge flow~~flow direction from each outlet location.
- 11 2. A person required to ~~submit a report~~notify the board under subsection 1 shall ~~design-~~
12 and install the subsurface water management system such that:
- 13 a. Pump and control structures at pump outlets are installed no closer than
14 twenty-five feet [7.62 meters] from the top of the back slope of an assessment
15 drain;
- 16 b. Proper erosion controls are installed and maintained at all outlets; and
- 17 c. Pumps and control structures at project outlets are closed or turned off during
18 critical flood periods.
- 19 3. If a subsurface water management system for which ~~a report~~notification is required
20 under subsection 1 will discharge into the watershed area of an assessment drain, the
21 water resource board that receives the ~~report~~notice may require the relevant property
22 to be included in the assessment district for the assessment drain in accordance with
23 the benefits the property receives, ~~provided the property is not assessed already for~~
24 the assessment drain. The water resource district also may include the property in the
25 assessment district and determine the benefits and assessment amounts under
26 chapter 61-21 and 61-16.1, without conducting the reassessment of benefit
27 proceedings under section 61-21-44 and 61-16.1-26, ~~provided the property is not~~
28 assessed already for the assessment drain.
- 29 4. The board of the water resource district within which the subsurface water
30 management system is located may order the system's owner or operator to bring the

1 system into compliance with subsection 2 if the board finds the system violates that
2 subsection.

3 5. A person that violates this section is guilty of an infraction.

4 6. This section applies only to subsurface water management systems that drain, in
5 whole or in part, platted or unplatted lands used for raising agricultural crops or
6 grazing farm animals.

7 7. This section does not apply to a subsurface water management system that
8 discharges into a body of water completely encompassed by land owned by the
9 person that owns the land drained by the system.

10 8. The information that must be provided to a board of a water resource district under this
11 section is an exempt record under section 44-04-18.

12 **SECTION 4. EXPIRATION DATE.** Section 3 of this Act is effective through December 31,
13 2022, and after that date is ineffective.

14 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.