

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2280

Introduced by

Senators Luick, Miller, Uglem, Wanzek

Representatives Schmidt, Wall

1 A BILL ~~for an Act to create and enact a new section to chapter 61-32 of the North Dakota~~
2 ~~Century Code, relating to subsurface field tile leaching projects.~~for an Act to create and enact a
3 new subsection to section 61-21-02 and a new section to chapter 61-32 of the North Dakota
4 Century Code, relating to subsurface drainage of water; to provide a penalty; and to declare an
5 emergency.

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

7 ~~— **SECTION 1.** A new section to chapter 61-32 of the North Dakota Century Code is created~~
8 ~~and enacted as follows:~~

9 ~~— **Permit to construct subsurface field tile leaching projects required.**~~

10 ~~— A person may not construct a subsurface field tile leaching project comprising eighty acres~~
11 ~~[32.37 hectares] or more without first securing a permit to do so. The permit application must be~~
12 ~~submitted to the local water resource district board in which the property is located. Cooperation~~
13 ~~between neighboring district officers is necessary. A water resource district that believes it does~~
14 ~~not have the requisite expertise to make a permit determination may refer the permit application~~
15 ~~to the state engineer for a determination. Areas determined by the state engineer as areas of~~
16 ~~statewide significance may only be permitted by the state engineer. The permit applicant shall~~
17 ~~notify downstream property owners for a minimum of one mile [1.61 kilometers] affected by the~~
18 ~~outlet flow of the leaching system unless the outlet flow first exits into a tax-assessed legal~~
19 ~~drain, a river, a stream, or a body of water of significant size. The applicant is responsible for~~
20 ~~damages to downstream property caused by flows from the leaching project. Permitting fees, if~~
21 ~~any, must be determined by each water resource district board.~~

22 **SECTION 1.** A new subsection to section 61-21-02 of the North Dakota Century Code is
23 created and enacted as follows:

24 The installation of artificial subsurface drainage systems.

SECTION 2. A new section to chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

Permit to drain subsurface waters required - Permit form - Penalty.

Installation of an artificial subsurface drainage system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The state engineer shall develop an application form for a permit for subsurface drainage of water. A person seeking to construct an artificial subsurface drainage system must submit an application to the water resource district within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. Water resource districts must forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.

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