

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2342

Introduced by

Senators Miller, Dotzenrod, Luick

Representatives Headland, Kingsbury, Paur

1 A BILL for an Act to create and enact a new subdivision to subsection 5 of section 4-01-23, a
2 new subsection to section 6-09.13-03, and a new section to chapter ~~61-32~~57-39.2 of the North
3 Dakota Century Code, relating to eligible uses of the agriculture partnership in assisting
4 community expansion fund and a sales and use tax refund for qualifying subsurface field tiling-
5 projects~~tile systems; and~~ to amend and reenact subsection 3 of section 6-09.13-01,
6 ~~subsection 45 of section 57-39.2-04, and sections 57-39.5-02 and 61-32-03~~ of the North Dakota
7 Century Code, relating to ~~sustainably grown crops~~, eligible uses for the agriculture partnership
8 in assisting community expansion fund, ~~sales tax on field tile, and drainage permits; and to~~
9 provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 **SECTION 1.** A new subdivision to subsection 5 of section 4-01-23 of the North Dakota
12 Century Code is created and enacted as follows:

13 Implementation of soil health management practices designed to control and
14 when needed reduce salinity, excess water, and erosion and increase organic
15 matter. These practices include subsurface field tile, crop rotation, strip tilling,
16 shelterbelts, animal grazing patterns, and cover crops.

17 **SECTION 2. AMENDMENT.** Subsection 3 of section 6-09.13-01 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 3. "Farm business" means any business conducted by the farmer or farmer's family,
20 which is integrated into the farm operation and is intended to supplement farm income
21 to allow the farmer to continue farming. ~~¶The term~~ may include nontraditional
22 agricultural, manufacturing, processing, value-added processing, targeted service
23 industries, or other activities calculated to produce income, and subsurface field tiling
24 projects.

SECTION 3. A new subsection to section 6-09.13-03 of the North Dakota Century Code is created and enacted as follows:

Subsurface field tiling projects.

~~**SECTION 4. AMENDMENT.** Subsection 45 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:~~

~~—45.—Gross receipts from the sale or lease of farm machinery, farm machinery repair parts, irrigation equipment, or irrigation equipment repair parts used exclusively for agricultural purposes and subsurface field tile used exclusively for a centrally assessed drain tile project.~~

~~**SECTION 5. AMENDMENT.** Section 57-39.5-02 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**57-39.5-02. Imposition – Exemptions.**~~

~~—There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail, including the leasing or renting, of farm machinery or irrigation equipment used exclusively for agricultural purposes and subsurface field tile use exclusively for a centrally assessed drain tile project. Gross receipts from sales at retail of farm machinery or irrigation equipment are exempted from the tax imposed by this chapter when the sale, lease, or rental is made to a purchaser or lessor who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales at retail. There are specifically exempted from the tax imposed by this chapter the gross receipts from the sale or lease of used farm machinery, farm machinery repair parts, used irrigation equipment, or irrigation equipment repair parts used exclusively for agricultural purposes. For purposes of this section, "used" means:~~

~~—1.—Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous sale;~~

~~—2.—Originally purchased outside this state and previously owned by a farmer; or~~

~~—3.—Has been under lease or rental for three years or more.~~

~~**SECTION 6. AMENDMENT.** Section 61-32-03 of the North Dakota Century Code is amended and reenacted as follows:~~

1 ~~— **61-32-03. Permit to drain waters required – Penalty.**~~

2 ~~— Any~~Except as otherwise provided in section 7 of this Act, a person, before draining a pond,
3 ~~slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising~~
4 ~~eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application~~
5 ~~must be submitted to the state engineer. The state engineer shall refer the application to the~~
6 ~~water resource district or districts within which is found a majority of the watershed or drainage~~
7 ~~area of the pond, slough, lake, or sheetwater for consideration and approval, but the state~~
8 ~~engineer may require that applications proposing drainage of statewide or interdistrict~~
9 ~~significance be returned to the state engineer for final approval. A permit may not be granted~~
10 ~~until an investigation discloses that the quantity of water which will be drained from the pond,~~
11 ~~slough, lake, or sheetwater, or any series thereof, will not flood or adversely affect downstream~~
12 ~~lands. If the investigation shows that the proposed drainage will flood or adversely affect lands~~
13 ~~of downstream landowners, the water resource board may not issue a permit until flowage~~
14 ~~easements are obtained. The flowage easements must be filed for record in the office of the~~
15 ~~recorder of the county or counties in which the lands are situated. An owner of land proposing to~~
16 ~~drain shall undertake and agree to pay the expenses incurred in making the required~~
17 ~~investigation. This section does not apply to the construction or maintenance of any existing or~~
18 ~~prospective drain constructed under the supervision of a state or federal agency, as determined~~
19 ~~by the state engineer.~~

20 ~~— Any person draining, or causing to be drained, a pond, slough, lake, or sheetwater, or any~~
21 ~~series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more,~~
22 ~~without first securing a permit to do so, as provided by this section, is liable for all damage~~
23 ~~sustained by any person caused by the draining, and is guilty of an infraction. As used in this~~
24 ~~section, sheetwater means shallow water that floods land not normally subject to standing~~
25 ~~water. The state engineer may adopt rules for temporary permits for emergency drainage.~~

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

28 ~~— **Subsurface field tiling – Permit – Liability.**~~

29 ~~— A subsurface field tiling project may be permitted by the board of the water resource district~~
30 ~~in which the proposed project is located pursuant to the following criteria:~~

- ~~1. A tile system may outlet to the same outlet as surface water if the surface drain is not currently being farmed across. A road ditch is not considered to be farmed. Upon compliance with these conditions, a flowage easement is not required but may be obtained.~~
- ~~2. The local water resource district board may require a control structure on the subsurface field tile project in order that water may be shut off to alleviate spring flooding and for ditch maintenance.~~
- ~~3. The local water resource district board shall act upon a permit application within thirty days of receiving the application.~~
- ~~4. A permittee under this section must agree to indemnify and hold harmless the water resource district issuing a permit under this section.~~
- ~~5. The local water resource district board may assess a fee up to one dollar per acre for the permit application.~~
- ~~6. The person engaging in field tiling is liable for any downstream damage caused by the project.~~

SECTION 4. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax refund for subsurface field tile drainage system.

The owner of a subsurface field tile drainage system within the boundaries of a drainage project authorized by chapter 61-21 may apply for a refund of a portion of the sales or use tax due and paid on the qualifying subsurface field tile system. The tax eligible for refund includes tax paid by the system owner and tax paid by contractors installing the system and is equal to two percentage points of the sales or use tax imposed under this chapter or chapter 57-40.2 on tangible personal property incorporated into the subsurface field tile system. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the qualifying drainage project, the purchase and use of the tangible personal property, and the sales and use taxes paid.

SECTION 5. LEGISLATIVE MANAGEMENT STUDY - SUBSURFACE FIELD TILING.

During the 2011-12 interim, the legislative management shall consider studying the laws and rules relating to subsurface field tiling. The legislative management shall report its findings and

- 1 recommendations, together with any legislation required to implement the recommendations, to
- 2 the sixty-third legislative assembly.