

Sixty-fifth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1390**

Introduced by

Representatives Headland, Blum, Brandenburg, Kading

Senators Meyer, Rust, Wanzek

A BILL for an Act to create and enact a new section to chapter 11-11 and section 61-32-03.2 of the North Dakota Century Code, relating to a limitation on county authority and subsurface ~~drains~~water management on land that qualifies for prevented planting insurance coverage; to amend and reenact sections ~~06-09.13-03 and 61-16-07~~, 61-16-08, and 61-16-09 and subsection 8 of section 61-16.1-09, ~~and section 61-32-03.1~~ of the North Dakota Century Code, relating to ~~loans to farmers~~water resource district board members and subsurface ~~drainage~~water management projects; and to provide for a legislative management study.

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

~~**SECTION 1. AMENDMENT.** Section 06-09.13-03 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**6-09.13-03. Loans to farmers -- Purposes -- Eligible uses.**~~

~~**1.** The loan moneys received by a farmer under this chapter must be used for a farm business. Eligible uses are:~~

~~**1. a.** Purchase of real property and equipment.~~

~~**2. b.** Expansions.~~

~~**3. c.** Working capital.~~

~~**4. d.** Purchase of inventory.~~

~~**5. e.** Subsurface field tiling projects.~~

~~**2.** The moneys cannot may not be used to refinance any existing debt.~~

~~**3.** There is no lifetime limit on the amount of loan moneys a farmer may receive under this chapter.~~

**SECTION 1.** A new section to chapter 11-11 of the North Dakota Century Code is created and enacted as follows:

**Limitation on authority - ~~Dumping~~Discharging water.**

Notwithstanding any other provision of law, a county may not require a resident to provide thirty days' notice before ~~dumping~~discharging water from a subsurface outlet into a legal subsurface drain.

**SECTION 2. AMENDMENT.** Section 61-16-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-16-07. Water resource board ~~members~~ - Appointment and number.**

When a water resource district has been created, and the state water commission has filed notice with the county auditor of a county where the district or a part thereof is situated, a water resource board ~~shall~~must be appointed within ninety days, as provided herein. If the district's boundaries are confined to one county, the board of county commissioners shall appoint a water resource board consisting of three or five ~~managers~~board members. When a district includes two counties, the water resource board ~~shall~~must consist of five ~~managers~~board members, three appointed by the board of county commissioners of the county having the larger aggregate taxable valuation of property, and two appointed by the board of county commissioners of the other county. If a district includes three counties, the water resource board ~~shall~~must consist of five ~~managers~~board members, one appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district, and two appointed by the board of county commissioners of each of the other two counties. If a district includes four or six counties, the water resource board ~~shall~~must consist of two board members from the county having the largest aggregate taxable valuation of property in the district, and one ~~manager~~board member from each of the other counties. If a district includes five or seven counties, the water resource board ~~shall~~must consist of one ~~manager~~board member from each county. Appointments to the water resource board ~~shall~~must be made by the boards of county commissioners of the respective counties.

**SECTION 3. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of ~~managers~~board members.**

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this

1 section, for appointment to the water resource board. After June 30, 1985, when the  
2 term of office of a district manager has expired, the manager's successor shall hold  
3 office for three years from the first day of January next following the date of the  
4 successor's appointment. The term of office of a manager does not terminate until the  
5 successor in office is appointed and qualified. In case the office of any district  
6 manager becomes vacant, the manager appointed to fill the vacancy shall serve the  
7 unexpired term of the manager whose office became vacant. Before the start of an  
8 individual's term as a water resource board member, the individual shall attend a  
9 course on water management, and each board member shall attend a course on water  
10 management once every three years during the member's term on the board.

11 2. Each member of a water resource board shall receive the sum of at least seventy-five  
12 dollars but not more than one hundred thirty-five dollars per day while performing  
13 duties as a member of the board, and an allowance for meals and lodging expenses at  
14 the same rate and under the same conditions as provided for state officials and  
15 employees. The allowance for travel expenses shall be at the same rate as provided  
16 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by  
17 section 21-05-01.

18 3. A ~~manager~~board member may be removed from the board by the board of county  
19 commissioners after it appears to the board of county commissioners by competent  
20 evidence, and after a public hearing, if so requested by the ~~manager~~board member  
21 subject to removal, at which hearing the ~~manager~~board member must be apprised of  
22 and allowed ample opportunity to repudiate the evidence, that the ~~manager~~board  
23 member has been guilty of misconduct, malfeasance, crime in office, neglect of duty in  
24 office, habitual drunkenness, gross incompetency, nonattendance at board meetings,  
25 refusal to carry out duties required by law, or inability to perform the duties of office for  
26 reasons of health.

27 **SECTION 4. AMENDMENT.** Section 61-16-09 of the North Dakota Century Code is  
28 amended and reenacted as follows:

**61-16-09. Oath of office - Organization of water resource board - Appointment of employees - Meetings.**

Upon receiving notice of appointment as member of the water resource board, such appointee shall take the oath of office prescribed for civil officers. Such oath ~~shall~~must be filed with the secretary of the board. Notice of the appointment of a member or members of a water resource board ~~shall~~must be mailed to the state water commission. Such notice shall state the name and post-office address of each appointee and the date of appointment.

A majority of the ~~managers shall constitute~~board members constitutes a quorum for the transaction of such business as may come before the board, but any number may adjourn a meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer and such other employees as needed for the efficient conduct of the district's business and shall fix their compensation. The offices of secretary and treasurer may be held by the same person. Officers and employees ~~shall~~ hold office at the pleasure of the board.

The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting ~~shall~~must be mailed to each member of the board at least five days before any such meeting provided, that a special meeting may be held whenever all members of the board are present or consent thereto in writing.

**SECTION 5. AMENDMENT.** Subsection 8 of section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

8. Make rules ~~and regulations~~ concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district. However, the board may not make a rule regarding subsurface ~~drainage-water~~ management system permits unless expressly required or allowed under this title.

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

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

Installation of an artificial subsurface ~~drainage~~water management 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~~water management. A person seeking to construct an artificial subsurface ~~drainage~~water management 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, except a requirement to locate the project a minimum distance from rural water supply lines beyond an existing easement for the lines, to an approved permit, but may not deny an application unless the water resource district determines, based on technical evidence, the application is of statewide significance or the proposed ~~drainage~~water management system will flood or adversely affect lands of 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 management system. For purposes of this section, "technical evidence" means written information regarding the proposed water management system prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydrological effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land downstream. Water resource districts shall determine if the application proposes ~~drainage~~subsurface water management 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. If the state engineer has not approved or denied the permit within thirty days after receipt of the permit application, the application must be deemed approved by the state engineer. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface ~~drainage~~water management system. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] ~~shows that~~proves, based on technical evidence, the proposed ~~drainage~~system will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require ~~flowage easements~~the applicant to obtain from the downstream landowners notarized letters approving the system before issuing a permit. If all adversely affected landowners provide the notarized approval letters, the board may waive the

1 thirty-day notice period for the meeting to approve or deny the permit. A landowner may not be  
2 required to provide a United States department of agriculture highly erodible land conservation  
3 and wetland conservation certification for the investigation. If an artificial subsurface  
4 drainagewater management system drains into an assessment drainwater management  
5 system, natural watercourse, or pond, slough, or lake, a flowage easementa notarized letter of  
6 approval is not required. ~~Flowage easements must be filed for record in the office of the~~  
7 ~~recorder of the county or counties in which the lands are situated.~~ A person that installs an  
8 artificial subsurface drainagewater management system without first securing a permit to do so,  
9 as provided in this section, is liable for all damage sustained by a person caused by the  
10 drainingsystem, and is guilty of an infraction.

11 ~~—SECTION 7. Section 61-32-03.2 of the North Dakota Century Code is created and enacted~~  
12 ~~as follows:~~

13 ~~—61-32-03.2. Prevented planting coverage -- Permit exception.~~

14 ~~—Notwithstanding section 61-32-03.1, a person that wishes to install a subsurface drainage~~  
15 ~~system comprising land that qualifies for prevented planting coverage under the Federal Crop~~  
16 ~~Insurance Act of 1938 [7 U.S.C. 1508, 1508a] is not required to obtain a permit for the drain.~~

17 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.**

18 During the 2017-18 interim, the legislative management shall consider studying and monitoring  
19 the nutrient management plan developed by the state department of health. The legislative  
20 management shall report its findings and recommendations, together with any legislation  
21 required to implement the recommendations, to the sixty-sixth legislative assembly.