

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1437

Page 1, line 2, after "reenact" insert "subsection 3 of section 61-02-01.4 and"

Page 1, after line 5, insert:

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

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

Renumber accordingly

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 section
3 61-32-03.1 of the North Dakota Century Code, relating to large subsurface water management
4 system permits; to provide a penalty; and to declare an emergency.

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

6 **SECTION 1. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-32-03.1. Permit to drain subsurface waters required - Permit form - [Penalty](#).**

- 9 1.a. Installation of a subsurface water management system comprising eighty acres
10 [32.37 hectares] of land area or more requires a permit. ~~The watershed area drained~~
11 ~~by a subsurface water management system may not be used to determine whether~~
12 ~~the system requires a permit under this section.~~ A person that violates this section is
13 guilty of an infraction.
- 14 b. ~~Subsurface water management systems that use surface intakes~~ or lift stations
15 ~~must be permitted exclusively under this section if the system will have a~~
16 ~~drainage coefficient of three eighths of an inch [0.95 centimeters] or less.~~
17 ~~Subsurface water management systems that use surface intakes must be~~
18 ~~permitted exclusively under section 61-32-03 if the system will have a drainage~~
19 ~~coefficient exceeding three eighths of an inch [0.95 centimeters].~~
- 20 c. ~~Installation of a subsurface water management system comprising less than~~
21 ~~eighty acres [32.37 hectares] of land area does not require a permit.~~

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

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

b. ~~Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map, assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.~~

3. a. ~~If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the~~

land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

- b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
- e. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.
- d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet

1 into the design of the system and may require the control structure be closed
2 during critical flood periods.

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

15 f. ~~The board may not deny a permit more than sixty days after receipt of the~~
16 ~~completed application for the permit. If the board fails to deny the permit~~
17 ~~application within sixty days of receipt, the permit application is deemed~~
18 ~~approved.~~

19 4. ~~A denial of a completed permit application by a water resource district board may be~~
20 ~~appealed, under section 28-34-01, to the district court of the county in which the permit~~
21 ~~application was filed. The court may approve a completed permit application denied by~~
22 ~~a water resource district board or the state engineer if the application meets the~~
23 ~~requirements of this section.~~

24 5. A completed permit application includes:

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

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

29 (3) A project design, including:

30 (a) A detailed drawing depicting the subsurface water management
31 system's location overlain on an aerial photograph showing the

1 system's location by legal description identifying either the relevant
2 quarter, section, township, and range or the relevant block and lot
3 number;

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

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

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

7 (e) Surface inlet sizes and locations; and

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

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

14 (5) Evidence of ownership for each parcel within one mile [1.61 kilometers]
15 downstream of each project outlet according to the tax rolls for the county in
16 which the parcel is located, unless the distance to the nearest assessment
17 drain, natural watercourse, slough, or lake is less than one mile
18 [1.61 kilometers] downstream of a proposed outlet, in which case the
19 applicant shall provide evidence of ownership for each parcel between the
20 outlet and the nearest assessment drain, natural watercourse, slough, or
21 lake.

22 c. Unless the district notifies an applicant the application is incomplete and provides
23 a list of information required to complete the application within three business
24 days after the day the district receives the application, the application is deemed
25 complete.

26 d. ~~A public official may not disclose knowingly and willfully a project design~~Project
27 ~~designs~~ designs submitted as part of an application for a permit under this section ~~before~~
28 ~~or after the effective date of this Act, and acquired by the public servant in an~~
29 ~~official capacity, unless the disclosure was necessary for the public servant to~~
30 ~~carry out the public servant's official duties. Section 12.1-13-01 does not apply to~~
31 ~~disclosures prohibited under this subdivision~~are exempt records under section

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- 1 44-04-18 and may be provided to individuals only as necessary to make a
2 decision whether to approve the permit.
- 3 4. A district may attach conditions to an approved permit for a subsurface water
4 management system if the conditions address:
- 5 a. Outlet locations including requirements for pump and control structures to be
6 installed no closer than twenty-five feet [7.62 meters] from the top of the back
7 slope of an assessment drain;
- 8 b. Installation and maintenance of proper erosion control at all outlets;
- 9 c. Re-establishment of disturbed areas to previous conditions;
- 10 d. The minimum distance from rural water supply lines. However, a district may not
11 attach a condition requiring a system to extend beyond an existing easement for
12 a rural water line, or, if the rural water line was installed under a blanket
13 easement, requiring a system to extend beyond twenty feet [6.1 meters] from
14 either side of a rural water line;
- 15 e. Installation and operation of control structures at project outlets including
16 requirements for control structures to be closed or pump outlets to be turned off
17 during critical flood periods;
- 18 f. Requirements for a permittee to obtain an amendment to a permit for alterations
19 to outlet locations, new outlets, or improvements resulting in drainage of
20 additional acres;
- 21 g. If the subsurface water management system will discharge into the watershed
22 area of a assessment drain, inclusion of the relevant property into the
23 assessment district for the assessment drain in accordance with the benefits the
24 property receives. The water resource district may include the new property into
25 the assessment district, and determine the benefits and assessment amounts
26 under chapters 61-21 and 61-16.1, without conducting the reassessment of
27 benefit proceedings under sections 61-21-44 and 61-16.1-26.
- 28 h. Requirements for a permittee to remove silt and vegetation, or repair erosion and
29 scour damages directly caused by the subsurface water management system, up
30 to one mile [1.61 kilometers] downstream from a proposed outlet, unless the
31 distance to the nearest assessment drain, natural watercourse, slough, or lake is

- 1 less than one mile [1.61 kilometers] downstream of the proposed outlet, in which
2 case the district may require silt and vegetation removal or erosion and scour
3 damage repair between the outlet and the nearest assessment drain, natural
4 watercourse, slough, or lake. For purposes of this subdivision and subdivision i:
5 (1) Downstream damage repair does not include deepening or widening a road
6 ditch or existing drain;
7 (2) The timing and method of silt and vegetation removal or damage repair in a
8 county or township road ditch must be preapproved by the appropriate road
9 authority; and
10 (3) The applicant shall follow any construction site protection requirements of
11 the road authority.
12 i. If a downstream landowner or road authority presents substantial evidence a
13 subsurface water management system directly has caused accumulation of silt
14 or vegetation or other damages erosion, or scouring, the requirement or
15 authorization of the applicant to remove the silt and vegetation or repair the
16 erosion and scour damages directly caused by the system. However, the
17 applicant may not spread silt, vegetation, or debris along adjoining land without
18 the permission of all parties having a legal interest in the land.
19 5. A district shall approve a permit, including any permissible conditions, within thirty
20 days after the district receives the completed application. If the district fails to approve
21 the permit application within that period, the permit is deemed approved with no
22 conditions.
23 6. Upon approval of a permit, the district shall forward copies notice of the approved
24 permit, any notice of decision containing the conditions attached to the approved
25 permit, and the downstream flow map to the state engineer and to each landowner
26 who owns property within one mile [1.61 kilometers] downstream of each project outlet
27 according to the tax rolls of the county in which the property is located, unless the
28 distance to the nearest assessment drain, natural watercourse, slough, or lake is less
29 than one mile [1.61 kilometers] downstream of the proposed outlet, in which case the
30 district shall provide notice to landowners with property between the outlet and the

1 nearest assessment drain, natural watercourse, slough, or lake. The district shall send
2 copies of approved permits by first-class mail, attested by an affidavit of mailing.

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

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

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

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

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

16 **SECTION 2.** Section 61-32-03.2 of the North Dakota Century Code is created and enacted
17 as follows:

18 **61-32-03.2. Smaller subsurface water management systems - Reports and conditions**
19 **- Penalty.**

20 1. A person may not install a subsurface water management system comprising less than
21 eighty acres [32.37 hectares] of land area until the person has reported to the board of
22 the water resource district within which is found a majority of the land area of the
23 system:

24 a. The system's maximum discharge;
25 b. The system's discharge location; and
26 c. The direction of the discharge flow.

27 2. A person required to submit a report under subsection 1 shall design and install the
28 subsurface water management system such that:

29 a. Pump and control structures at pump outlets are installed no closer than
30 twenty-five feet [7.62 meters] from the top of the back slope of an assessment
31 drain; ~~and~~

- 1 b. ~~Control~~Proper erosion controls are installed and maintained at all outlets; and
2 c. Pumps and control structures at project outlets are ~~installed and capable of being~~
3 closed or turned off during critical flood periods.
- 4 3. If a subsurface water management system for which a report is required under
5 subsection 1 will discharge into the watershed area of an assessment drain, the water
6 resource board that receives the report may require the relevant property to be
7 included in the assessment district for the assessment drain in accordance with the
8 benefits the property receives. The water resource district also may include the
9 property in the assessment district and determine the benefits and assessment
10 amounts under chapter 61-21 and 61-16.1, without conducting the reassessment of
11 benefit proceedings under section 61-21-44 and 61-16.1-26.
- 12 4. The board of the water resource district within which the subsurface water
13 management system is located may order the system's owner or operator to bring the
14 system into compliance with subsection 2 if the board finds the system violates that
15 subsection.
- 16 5. A person that violates this section is guilty of an infraction.

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1437

Page 1, line 8, remove the overstrike over "~~Penalty~~"

Page 5, line 26, replace "A public official may not disclose knowingly and willfully a project design" with "Project designs"

Page 5, line 27, remove "~~before or after~~" *P. 5, line 27, remove "and acquired by the public servants in an",*

Page 5, remove lines 28 through 30

Page 5, line 31, replace "disclosures prohibited under this subdivision" with "are exempt records under section 44-04-18 and may be provided to individuals only as necessary to make a decision whether to approve the permit"

Page 6, line 26, after "repair" insert "erosion and scour"

Page 6, line 31, after "or" insert "erosion and scour"

Page 7, line 11, replace "or" with an underscored comma

Page 7, line 12, replace "or other damages" with "erosion, or scouring"

Page 7, line 13, after the second "the" insert "erosion and scour"

Page 7, line 21, replace "copies" with "notice"

Page 7, line 22, remove "notice of"

Page 8, line 16, after "conditions" insert "- Penalty"

Page 8, line 28, remove "and"

Page 8, line 29, replace "Control" with "Proper erosion controls are installed and maintained at all outlets; and

c. Pumps and control"

Page 8, line 29, remove "installed and capable of being"

Page 9, line 9, after "4." insert "The board of the water resource district within which the subsurface water management system is located may order the system's owner or operator to bring the system into compliance with subsection 2 if the board finds the system violates that subsection.

5."

Renumber accordingly

→ P 7, line 22: Remove "any notice of decision containing the conditions attached to the approved permits,"