

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1544

Introduced by

Representatives D. Johnston, Heilman, Hendrix, Koppelman, Nehring, VanWinkle

Senator Wobbema

1 A BILL for an Act to amend and reenact sections 61-32-03 and 61-32-03.3 of the North Dakota
2 Century Code, relating to drainage permits.

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

4 **SECTION 1. AMENDMENT.** Section 61-32-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-32-03. Permit to drain waters required - Penalty.**

7 1. Any person, before draining a pond, slough, lake, or sheetwater, ~~or any series thereof,~~
8 which has a watershed area comprising eighty acres [32.37 hectares] or more, shall
9 first secure a drainage permit to do so. Any person, before draining a pond, slough,
10 lake, or sheetwater, which has a watershed area comprising less than eighty acres
11 [32.37 hectares] but from which the drainage flows directly onto the property of
12 another landowner without first obtaining prior written consent from the downstream
13 landowner, shall first secure a drainage permit.

14 2. The permit application must be submitted to the department of water resources. The
15 department shall refer the application to the water resource district or districts within
16 which is found a majority of the watershed or drainage area of the pond, slough, lake,
17 or sheetwater for consideration and approval, but the department may require
18 applications proposing drainage of statewide or interdistrict significance be returned to
19 the department for final approval.

20 3. A permit may not be granted until an investigation discloses the quantity of water
21 which will be drained from the pond, slough, lake, or sheetwater, or any series of those
22 water bodies, will not flood or adversely affect downstream lands. If the investigation
23 shows the proposed drainage will flood or adversely affect lands of downstream
24 landowners, the water resource board may not issue a permit until flowage easements

are obtained. The flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. This section does not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the department of water resources.

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

SECTION 2. AMENDMENT. Section 61-32-03.3 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.3. Smaller subsurface water management systems - Notification and conditions - Penalty.

1. A person may not install a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area until the person has notified the board of the water resource district within which is found a majority of the land area of the system and, if the planned subsurface water management system will flow onto the property of a downstream landowner, all affected downstream landowners of the following information:

- a. The system's total acreage and legal description of the land being drained;
- b. The outlet locations and types; and
- c. The flow direction from each outlet location.

2. A person required to notify the board and downstream landowners under subsection 1 shall install the subsurface water management system such that:

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

- 1 b. Proper erosion controls are installed and maintained at all outlets; and
- 2 c. Pumps and control structures at project outlets are closed or turned off during
- 3 critical flood periods.
- 4 3. a. A person seeking to install a subsurface water management system under this
- 5 section which is required to provide notice to a downstream landowner under
- 6 subsection 1 shall provide the notice through certified mail with a proof of delivery
- 7 signed by the downstream landowner.
- 8 b. The downstream landowner has sixty days from the receipt of the notice to
- 9 deliver a written objection to the person seeking to install the subsurface water
- 10 management system and the board of the water resource district in which the
- 11 majority of the land subject to the planned system is located.
- 12 c. If the downstream landowner:
- 13 (1) Fails to timely deliver the written objection, the person may install the
- 14 subsurface water management system.
- 15 (2) Timely delivers the written objection, the water resource district in which the
- 16 majority of the land subject to the planned system is located shall require
- 17 the person to complete and file a permit application as required under
- 18 section 61-32-03.1.
- 19 d. Upon receipt of the permit application, the water resource district shall review,
- 20 analyze, and issue permits in the same manner as provided under section
- 21 61-32-03.1.
- 22 4. If a subsurface water management system for which notification is required under
- 23 subsection 1 will discharge into the watershed area of an assessment drain, the water
- 24 resource board that receives the notice may require the relevant property to be
- 25 included in the assessment district for the assessment drain in accordance with the
- 26 benefits the property receives, provided the property is not assessed already for the
- 27 assessment drain. The water resource district also may include the property in the
- 28 assessment district and determine the benefits and assessment amounts under
- 29 chapters 61-21 and 61-16.1, without conducting the reassessment of benefit
- 30 proceedings under sections 61-21-44 and 61-16.1-26, provided the property is not
- 31 assessed already for the assessment drain.

1 ~~4.5.~~ The board of the water resource district within which the subsurface water
2 management system is located may order the system's owner or operator to bring the
3 system into compliance with subsection 2 if the board finds the system violates that
4 subsection.

5 ~~5.6.~~ A person that violates this section is guilty of an infraction.

6 ~~6.7.~~ This section applies only to subsurface water management systems that drain, in
7 whole or in part, platted or unplatted lands used for raising agricultural crops or
8 grazing farm animals.

9 ~~7.8.~~ This section does not apply to a subsurface water management system that
10 discharges into a body of water completely encompassed by land owned by the
11 person that owns the land drained by the system.

12 ~~8.9.~~ The information that must be provided to a board of a water resource district under this
13 section is an exempt record under section 44-04-18.