

Introduced by

Senators Luick, Dotzenrod, Osland

Representatives C. Johnson, Magrum, Mitskog

1 A BILL for an Act to amend and reenact section 61-32-03.1 of the North Dakota Century Code,
2 relating to permitting of subsurface water management systems by water resource district
3 boards.

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

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

7 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

8 1. a. Installation of a subsurface water management system comprising eighty acres
9 [32.37 hectares] of land area or more requires a permit. The watershed area
10 drained by a subsurface water management system may not be used to
11 determine whether the system requires a permit under this section.

12 b. Subsurface water management systems that use surface intakes must be
13 permitted exclusively under this section if the system will have a drainage
14 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface
15 water management systems that use surface intakes must be permitted
16 exclusively under section 61-32-03 if the system will have a drainage coefficient
17 exceeding three-eighths of an inch [0.95 centimeters].

18 c. Installation of a subsurface water management system comprising less than
19 eighty acres [32.37 hectares] of land area does not require a permit.

20 2. a. The state engineer shall develop an application form for a permit required under
21 this section. A person seeking to construct a subsurface water management
22 system that requires a permit under this section ~~must~~shall submit a completed
23 application to the water resource district board within which is found a majority of
24 the land area for consideration and approval. The water resource district board

1 may charge permit applicants a fee up to one hundred fifty dollars plus the actual
2 cost, up to one thousand dollars, of acquiring any expert advice or information
3 necessary for the board to assess the permit application. Water resource districts
4 shall forward copies of all approved permits to the state engineer.

5 b. ~~Upon submission~~Within ten business days of receipt of a completed application
6 for a permit, the water resource district board ~~immediately~~ shall ~~give~~send notice
7 and a copy of the submission via certified mail to each owner of land within one
8 mile [1.61 kilometers] downstream of the proposed subsurface water
9 management system outlet unless the distance to the nearest assessment drain,
10 natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in
11 which case notice and a copy of the submission must be given immediately to
12 each owner of land between the outlet and the nearest assessment drain, natural
13 watercourse, slough, or lake. The notice requirement in this section must be
14 waived if the applicant presents signed, notarized letters of approval from all
15 downstream landowners entitled to notice in this subsection.

16 3. a. If the water resource board receives notarized letters of approval from all
17 downstream landowners entitled to notice, the board shall approve the completed
18 permit application as soon as practicable but no later than thirty days after receipt
19 of the last letter. Otherwise, the water resource board shall review the completed
20 application at its next meeting that is at least ~~thirty~~forty-five days after receipt of
21 the application. The board shall consider any written, technical evidence provided
22 by the applicant ~~or~~ a landowner notified under subsection 2, or the board,
23 addressing whether the land of a notified landowner will be flooded or
24 unreasonably harmed by the proposed subsurface water management system.
25 For purposes of this section "technical evidence" means written information
26 regarding the proposed subsurface water management system, prepared after
27 consideration of the design and physical aspects of the proposed system, and
28 any adverse hydraulic effects, including erosion, flood duration, crop loss, and
29 downstream water control device operation impacts, which may occur to land
30 owned by a landowner provided under subsection 2. Technical evidence must be
31 submitted to the permit applicant, notified landowners, and the board within

1 ~~thirty~~forty-five days of the receipt of the completed permit application by the
2 board. A notified landowner may not object to the proposed system unless the
3 landowner presents technical evidence under this subsection.

4 b. If the board finds, based on technical evidence, the proposed subsurface water
5 management system will flood or unreasonably harm lands of a landowner
6 notified under subsection 2, the board may require the applicant to obtain a
7 notarized letter of approval before issuing a permit for the system. The board may
8 not require a letter of approval for any land downstream of a system that outlets
9 into an assessment drain, natural watercourse, or pond, slough, or lake if notified
10 landowners did not provide technical evidence to the district.

11 c. A water resource district may attach reasonable conditions to an approved permit
12 for a subsurface water management system ~~that outlets directly into a legal-~~
13 ~~assessment drain or public highway right of way~~to mitigate adverse impacts. For
14 purposes of this subsection, "reasonable conditions" means conditions that
15 address the outlet location, proper erosion control, reseeding of disturbed areas,
16 installation of riprap or other ditch stabilization, and conditions that require all
17 work to be done in a neat and professional manner. Any condition to locate the
18 project a minimum distance from rural water supply lines may not extend beyond
19 an existing easement for lines, or no greater than twenty feet [6.1 meters] from
20 either side of the water line if the rural water line was installed under a blanket
21 easement.

22 d. A water resource district may require a subsurface water management system
23 granted a permit under this section to incorporate a control structure at the outlet
24 into the design of the system and may require the control structure be closed
25 during critical flood periods.

26 e. A water resource district board may not deny a completed permit application
27 under this section unless the board determines, based on technical evidence
28 submitted by a landowner notified under subsection 2 or the board, the proposed
29 water management system will flood or unreasonably harm land of a notified
30 landowner, and a notarized letter of approval required by the board has not been
31 obtained by the applicant. For purposes of this section, "unreasonable harm" is

- 1 limited to hydraulic impacts, including erosion or other adverse impacts that
2 degrade the physical integrity of a roadway or real property within one mile [1.61
3 kilometers] downstream of the system's outlet. The board shall include a written
4 explanation of the reasons for a denial of a completed application and notify, by
5 certified mail, the applicant and all landowners notified under subsection 2 of the
6 approval or denial.
- 7 f. The board may not deny a permit more than sixty days after receipt of the
8 completed application for the permit. If the board fails to deny the permit
9 application within sixty days of receipt, the permit application is deemed
10 approved.
- 11 4. A denial of a completed permit application by a water resource district board may be
12 appealed, under section 28-34-01, to the district court of the county in which the permit
13 application was filed. The court may approve a completed permit application denied by
14 a water resource district board or the state engineer if the application meets the
15 requirements of this section.
- 16 5. A water resource district board may not be held liable to any person for issuing a
17 permit under this section.
- 18 6. A person that installs a subsurface water management system requiring a permit
19 under this section without first securing the permit is liable for all damages sustained
20 by a person caused by the subsurface water management system.
- 21 7. A person that installs a subsurface water management system requiring a permit
22 under this section without first securing the permit is guilty of an infraction.