

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2263

Introduced by

Senators Wanzek, Luick, Dotzenrod

Representatives D. Johnson, Kading, Pyle

1 A BILL for an Act to amend and reenact section 61-32-03.1 of the North Dakota Century Code,
2 relating to subsurface water management system permits.

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

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

6 **61-32-03.1. ~~Permit to drain subsurface waters~~Permits for subsurface water**
7 **management systems required - Permit form - Penalty.**

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

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

19 c. ~~A person that installs a water management system that encompasses less than~~
20 ~~eighty acres [32.37 hectares] shall notify the water resource district within which~~
21 ~~is found a majority of the land comprising the water management system of the~~
22 ~~installation before it occurs, but no permit for the installation may be required.~~

23 2. a. The state engineer shall develop an application form for a permit ~~for subsurface~~
24 ~~drainage of water required under this section.~~ A person seeking to construct an

1 ~~artificial~~a subsurface drainage~~water management~~ system that requires a permit
2 under this section must submit an application to the water resource district board
3 within which is found a majority of the land area for consideration and approval.
4 ~~Water resource districts may attach any necessary conditions to an approved~~
5 ~~permit, but may not deny an application unless the water resource district~~
6 ~~determines the application is of statewide significance or the proposed drainage~~
7 ~~will flood or adversely affect lands of downstream landowners within one mile~~
8 ~~[1.61 kilometers] of the proposed subsurface drainage. Water resource districts~~
9 ~~must forward copies of all approved permits to the state engineer. Water resource~~
10 ~~districts shall determine if the application proposes drainage of statewide~~
11 ~~significance. If so, the application must be referred to the state engineer for~~
12 ~~consideration and approval, and the state engineer shall make a determination~~
13 ~~within thirty days. The permit applicant shall provide a thirty-day notice to~~
14 ~~downstream property owners within one mile [1.61 kilometers] of the proposed~~
15 ~~subsurface drainage. If an investigation by a water resource district or a~~
16 ~~downstream landowner within one mile [1.61 kilometers] shows that the proposed~~
17 ~~drainage will flood or adversely affect lands of downstream landowners within~~
18 ~~one mile [1.61 kilometers], the water resource district may require flowage~~
19 ~~easements before issuing a permit. If an artificial subsurface drainage system~~
20 ~~drains into an assessment drain, natural watercourse, or pond, slough, or lake, a~~
21 ~~flowage easement is not required. Flowage easements must be filed for record in~~
22 ~~the office of the recorder of the county or counties in which the lands are situated.~~
23 ~~A person that installs an artificial subsurface drainage system without first~~
24 ~~securing a permit to do so, as provided in this section, is liable for all damage~~
25 ~~sustained by a person caused by the draining, and is guilty of an infraction.~~

- 26 b. Upon submission of an application for a permit, the applicant immediately shall
27 give notice and a copy of the submission via certified mail to each owner of land
28 within one mile [1.61 kilometers] downstream of the proposed subsurface water
29 management system outlet unless the distance to the nearest assessment drain,
30 natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in
31 which case notice and a copy of the submission must be given immediately to

1 each owner of land between the outlet and the nearest assessment drain, natural
2 watercourse, slough, or lake. The notice requirement in this section must be
3 waived if the applicant presents signed, notarized letters of approval from all
4 downstream landowners entitled to notice in this subsection.

- 5 3. a. The water resource district board shall review the application at its next meeting
6 that is at least thirty days after receipt of the application. The board may charge
7 the applicant a fee not to exceed five hundred dollars. The board shall consider
8 any written, technical evidence provided by the applicant or a landowner notified
9 under subsection 2 addressing whether the land of a notified landowner will be
10 flooded or unreasonably harmed by the proposed subsurface water management
11 system. For purposes of this section "technical evidence" means written
12 information regarding the proposed subsurface water management system,
13 prepared after consideration of the design and physical aspects of the proposed
14 system, and any adverse hydrologic effects, including erosion, flood duration,
15 crop loss, and downstream water control device operation impacts, which may
16 occur to land owned by a landowner provided under subsection 2. Technical
17 evidence must be submitted to the permit applicant, notified landowners, and the
18 board within thirty days of the receipt of the permit application by the board.
- 19 b. If the board finds, based on technical evidence, the proposed subsurface water
20 management system will flood or unreasonably harm lands of a landowner
21 notified under subsection 2, the board may require the applicant to obtain a
22 notarized letter of approval before issuing a permit for the system. The board may
23 not require a letter of approval for any land downstream of a system that outlets
24 into an assessment drain, natural watercourse, or pond, slough, or lake if notified
25 landowners did not provide technical evidence to the district.
- 26 c. A water resource district may attach reasonable conditions to an approved permit
27 for a subsurface water management system that outlets directly into a legal
28 assessment drain or public highway right-of-way. For purposes of this subsection,
29 "reasonable conditions" means conditions that address the outlet location, proper
30 erosion control, reseeding of disturbed areas, installation of riprap or other ditch

- 1 stabilization, and conditions that require all work to be done in a neat and
2 professional manner.
- 3 d. A water resource district may require a subsurface water management system
4 granted a permit under this section to incorporate a control structure at the outlet
5 into the design of the system and may require the control structure be closed
6 during critical flood periods.
- 7 e. A water resources district board may not deny a permit application under this
8 section unless the board determines, based on technical evidence submitted by a
9 landowner notified under subsection 2, the proposed water management system
10 will flood or unreasonably harm land of a notified landowner, and a notarized
11 letter of approval required by the board has not been obtained by the applicant.
12 For purposes of this section, "unreasonable harm" is limited to hydrological
13 impacts, including erosion or other adverse impacts that degrade the physical
14 integrity of a roadway. The board shall include a written explanation of the
15 reasons for a denial of an application and notify, by certified mail, the applicant
16 and all landowners notified under subsection 2 of the approval or denial.
- 17 f. The board may not deny a permit more than sixty days after receipt of the
18 application for the permit. If the board fails to deny the permit application within
19 sixty days of receipt, the permit application is deemed approved.
- 20 4. A denial of a permit application by a water resource district board or the state engineer
21 may be appealed, under section 28-34-01, to the district court of the county in which
22 the permit application was filed. The court may approve a permit application denied by
23 a water resource district board or the state engineer if the application meets the
24 requirements of this section.
- 25 5. A water resource district board or the state engineer may not be held liable to any
26 person for issuing a permit under this section.
- 27 6. A person that installs a subsurface water management system requiring a permit
28 under this section without first securing the permit is liable for all damages sustained
29 by a person caused by the subsurface water management system.