

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.