

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1390**

Introduced by

Representatives Headland, Blum, Brandenburg, Kading

Senators Meyer, Rust, Wanzek

1 A BILL for an Act to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota
2 Century Code, relating to water resource board members and subsurface water management
3 system permits; to provide for a legislative management study; to provide for a penalty; and to
4 declare an emergency.

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

6 **SECTION 1. AMENDMENT.** Section 61-16-08 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling**
9 **vacancies - Compensation of managers.**

10 1. When a water resource district has been created, any resident landowner in the
11 district, except a county commissioner, is eligible, subject to the provisions of this
12 section, for appointment to the water resource board. After June 30, 1985, when the
13 term of office of a district manager has expired, the manager's successor shall hold
14 office for three years from the first day of January next following the date of the
15 successor's appointment. The term of office of a manager does not terminate until the
16 successor in office is appointed and qualified. In case the office of any district
17 manager becomes vacant, the manager appointed to fill the vacancy shall serve the
18 unexpired term of the manager whose office became vacant. Within three months after
19 the start of an individual's term as a district manager, the individual shall attend a
20 course on water management, and each district manager shall attend a course on
21 water management every three years during the manager's term.

22 2. Each member of a water resource board shall receive the sum of at least seventy-five
23 dollars but not more than one hundred thirty-five dollars per day while performing
24 duties as a member of the board, and an allowance for meals and lodging expenses at

1 the same rate and under the same conditions as provided for state officials and
2 employees. The allowance for travel expenses shall be at the same rate as provided
3 by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by
4 section 21-05-01.

- 5 3. A manager may be removed from the board by the board of county commissioners
6 after it appears to the board of county commissioners by competent evidence, and
7 after a public hearing, if so requested by the manager subject to removal, at which
8 hearing the manager must be apprised of and allowed ample opportunity to repudiate
9 the evidence, that the manager has been guilty of misconduct, malfeasance, crime in
10 office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability
11 to perform the duties of office for reasons of health.

12 **SECTION 2. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

- 15 1. a. Installation of an ~~artificial subsurface drainage~~ subsurface water management
16 system comprising eighty acres [32.37 hectares] of land area or more requires a
17 permit. ~~The watershed area drained by a subsurface water management system~~
18 may not be used to determine whether the system requires a permit under this
19 section.
- 20 b. Subsurface water management systems that use surface intakes must be
21 permitted exclusively under this section if the system will have a drainage
22 coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface
23 water management systems that use surface intakes must be permitted
24 exclusively under section 61-32-03 if the system will have a drainage coefficient
25 exceeding three-eighths of an inch [0.95 centimeters].
- 26 c. Installation of a subsurface water management system comprising less than
27 eighty acres [32.37 hectares] of land area does not require a permit.
- 28 2. a. The state engineer shall develop an application form for a permit ~~for subsurface~~
29 ~~drainage of water~~ required under this section. A person seeking to construct an
30 ~~artificial subsurface drainage system~~ subsurface water management system
31 that requires a permit under this section must submit ~~an~~ a completed application

1 to the water resource district board within which is found a majority of the land
2 area for consideration and approval. ~~Water resource districts may attach any~~
3 ~~necessary conditions to an approved permit, but may not deny an application~~
4 ~~unless the water resource district determines the application is of statewide~~
5 ~~significance or the proposed drainage will flood or adversely affect lands of~~
6 ~~downstream landowners within one mile [1.61 kilometers] of the proposed~~
7 ~~subsurface drainage. The water resource district board may charge permit~~
8 ~~applicants a fee up to one hundred fifty dollars.~~ Water resource districts ~~must~~shall
9 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 a completed application for a permit, the water resource
27 district board immediately shall give notice and a copy of the submission via
28 certified mail to each owner of land within one mile [1.61 kilometers] downstream
29 of the proposed subsurface water management system outlet unless the distance
30 to the nearest assessment drain, natural watercourse, slough, or lake is less than
31 one mile [1.61 kilometers], in which case notice and a copy of the submission

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

6 3. a. If the water resource board receives notarized letters of approval from all
7 downstream landowners entitled to notice, the board shall approve the completed
8 permit application as soon as practicable but no later than thirty days after receipt
9 of the last letter. Otherwise, the water resource board shall review the completed
10 application at its next meeting that is at least thirty days after receipt of the
11 application. The board shall consider any written, technical evidence provided by
12 the applicant or a landowner notified under subsection 2 addressing whether the
13 land of a notified landowner will be flooded or unreasonably harmed by the
14 proposed subsurface water management system. For purposes of this section
15 "technical evidence" means written information regarding the proposed
16 subsurface water management system, prepared after consideration of the
17 design and physical aspects of the proposed system, and any adverse hydraulic
18 effects, including erosion, flood duration, crop loss, and downstream water
19 control device operation impacts, which may occur to land owned by a landowner
20 provided under subsection 2. Technical evidence must be submitted to the permit
21 applicant, notified landowners, and the board within thirty days of the receipt of
22 the completed permit application by the board. A notified landowner may not
23 object to the proposed system unless the landowner presents technical evidence
24 under this subsection.

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

- 1 c. A water resource district may attach reasonable conditions to an approved permit
2 for a subsurface water management system that outlets directly into a legal
3 assessment drain or public highway right of way. For purposes of this subsection,
4 "reasonable conditions" means conditions that address the outlet location, proper
5 erosion control, reseeding of disturbed areas, installation of riprap or other ditch
6 stabilization, and conditions that require all work to be done in a neat and
7 professional manner. Any condition to locate the project a minimum distance from
8 rural water supply lines may not extend beyond an existing easement for lines, or
9 no greater than twenty feet [6.1 meters] from either side of the water line if the
10 rural water line was installed under a blanket easement.
- 11 d. A water resource district may require a subsurface water management system
12 granted a permit under this section to incorporate a control structure at the outlet
13 into the design of the system and may require the control structure be closed
14 during critical flood periods.
- 15 e. A water resource district board may not deny a completed permit application
16 under this section unless the board determines, based on technical evidence
17 submitted by a landowner notified under subsection 2, the proposed water
18 management system will flood or unreasonably harm land of a notified
19 landowner, and a notarized letter of approval required by the board has not been
20 obtained by the applicant. For purposes of this section, "unreasonable harm" is
21 limited to hydraulic impacts, including erosion or other adverse impacts that
22 degrade the physical integrity of a roadway or real property within one mile [1.61
23 kilometers] downstream of the system's outlet. The board shall include a written
24 explanation of the reasons for a denial of a completed application and notify, by
25 certified mail, the applicant and all landowners notified under subsection 2 of the
26 approval or denial.
- 27 f. The board may not deny a permit more than sixty days after receipt of the
28 completed application for the permit. If the board fails to deny the permit
29 application within sixty days of receipt, the permit application is deemed
30 approved.

- 1 4. A denial of a completed permit application by a water resource district board may be
2 appealed, under section 28-34-01, to the district court of the county in which the permit
3 application was filed. The court may approve a completed permit application denied by
4 a water resource district board or the state engineer if the application meets the
5 requirements of this section.
- 6 5. 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 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN.**

14 During the 2017-18 interim, the legislative management shall consider studying and monitoring
15 the nutrient management plan developed by the state department of health. The legislative
16 management shall report its findings and recommendations, together with any legislation
17 required to implement the recommendations, to the sixty-sixth legislative assembly.

18 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.