

2023 HOUSE AGRICULTURE

HB 1239

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1239
2/10/2023

Relating to smaller subsurface water management systems; and to provide a penalty.

Chairman Thomas call the meeting to order 9:00 AM

Members present: Chairman Thomas, Representative Beltz, Christy, Finley-DeVile, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Study
- Drain tiles
- Acreage

In favor:

Representative Cynthia Schreiber-Beck, District 25, Wahpeton and Executive Director, ND Agricultural Aviation Association, #20216

Dani Quissell, Representing ND Water Resource Districts Association, #20356

Phil Murphy, ND Soybean Growers Association, #20335

Brenda Elmer, Executive Director, ND Corn Gowers Association, #20444

Samuel Wagner, Ag and Food Field Organizer, Dakota Resource Council, #19995

Additional written testimony:

Levi Otis, Director of Government Affairs & Public Policy, Ellingson Companies, #20401

Chairman Thomas adjourned the hearing 9:14 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1239
2/16/2023

Relating to smaller subsurface water management systems; and to provide a penalty.

Chairman Thomas call the meeting to order 8:30 AM

Members present: Chairman Thomas, Representative Beltz, Christy, Finley-DeVile, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Committee Action

Representative Schreiber-Beck moved to amend by adding an emergency clause and move to adopt, LC #23.0445.01001
Vice Chairman Beltz seconded.

Roll call vote:

| Representatives | Vote |
|---------------------------------------|-------------|
| Representative Paul J. Thomas | Y |
| Representative Mike Beltz | Y |
| Representative Josh Christy | Y |
| Representative Lisa Finley-DeVile | Y |
| Representative Jay Fisher | Y |
| Representative Craig Headland | AB |
| Representative Donna Henderson | Y |
| Representative Dwight Kiefert | Y |
| Representative SuAnn Olson | Y |
| Representative Brandon Prichard | Y |
| Representative Cynthia Schreiber-Beck | Y |
| Representative Bill Tveit | Y |
| Representative Lori VanWinkle | Y |

Motion passed 12-0-1

Representative Schreiber-Beck moved a do pass as amended.
Representative Christy seconded.

Roll call vote:

| Representatives | Vote |
|-------------------------------|-------------|
| Representative Paul J. Thomas | Y |
| Representative Mike Beltz | Y |

| | |
|---------------------------------------|----|
| Representative Josh Christy | Y |
| Representative Lisa Finley-DeVille | Y |
| Representative Jay Fisher | Y |
| Representative Craig Headland | AB |
| Representative Donna Henderson | Y |
| Representative Dwight Kiefert | Y |
| Representative SuAnn Olson | Y |
| Representative Brandon Prichard | Y |
| Representative Cynthia Schreiber-Beck | Y |
| Representative Bill Tveit | Y |
| Representative Lori VanWinkle | Y |

Motion passed 12-0-1

Representative Schreiber-Beck will carry the bill.

Chairman Thomas adjourned the hearing 8:39 AM

Diane Lillis, Committee Clerk

February 16, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1239

Page 1, line 2, remove "and"

Page 1, line 3, after "penalty" insert "; and to declare an emergency"

Page 2, after line 23, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

DR
191
2-16-23

REPORT OF STANDING COMMITTEE

HB 1239: Agriculture Committee (Rep. Thomas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1239 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and"

Page 1, line 3, after "penalty" insert "; and to declare an emergency"

Page 2, after line 23, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2023 SENATE AGRICULTURE AND VETERANS AFFAIRS

HB 1239

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1239
3/16/2023

| |
|--|
| A bill relating to smaller subsurface water management systems; to provide a penalty; and to declare an emergency. |
|--|

9:00 AM Chairman Luick called the meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Water management systems
- Assessment drain
- Agricultural land
- Permits for tiling.

9:00 AM Representative Cindi Schreiber-Beck introduced HB 1239 and testified. #24006

9:04 AM Dani Quissell, North Dakota Water Association, testified on behalf of Jack Dwyer in favor. #25419

9:06 AM Levi Otis, Director of Government Affairs, Ellingson Companies, and drainage contractor, testified verbally in favor of HB 1239

9:09 AM Doug Zank, Member of Foster County Water Board, testified verbally in favor of HB 1239.

9:11 AM Phil Murphy, Lobbyist, North Dakota Soybean Growers, testified verbally in favor of HB 1239.

9:12 AM Samantha Vangsness, Lobbyist, North Dakota Corn Growers Association, testified in favor, on behalf of Brenda Elmer, North Dakota Corn Growers Association. #25522

Additional written testimony:
Sam Wagner #25481

9:13 AM Chairman Luick closed the hearing.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1239
3/30/2023

A bill relating to smaller subsurface water management systems; to provide a penalty; and to declare an emergency.

9:47 AM Chairman Luick opened the Committee Work for HB 1239. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Committee action

9:47 AM Senator Myrdal moved to amend HB 1239. LC23.0445.02001. Senator Weber seconded the motion. #27106

Roll call vote:

| Senators | Vote |
|-----------------------|------|
| Senator Larry Luick | Y |
| Senator Janne Myrdal | Y |
| Senator Kathy Hogan | Y |
| Senator Randy D. Lemm | Y |
| Senator Mark F. Weber | Y |
| Senator Kent Weston | Y |

Vote: 6-0-0 TO AMEND HB 1239.

9:54 AM Senator Hogan moved to DO PASS AS AMENDED HB 1239. Senator Myrdal seconded the motion.

Roll call vote:

| Senators | Vote |
|-----------------------|------|
| Senator Larry Luick | Y |
| Senator Janne Myrdal | N |
| Senator Kathy Hogan | Y |
| Senator Randy D. Lemm | Y |
| Senator Mark F. Weber | N |
| Senator Kent Weston | N |

Vote: 3-3-0 MOTION FAILED

9:57 AM Chairman Luick closed the meeting.

Brenda Cook, Committee Clerk

March 17, 2023

JA
3-30-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1239

Page 1, line 9, replace "A" with "Except as provided under subsection 7, a"

Page 2, line 19, after "system" insert "comprising less than fifteen acres [6.07 hectares] of land area, or a subsurface water management system"

Renumber accordingly

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1239
3/30/2023

A bill relating to smaller subsurface water management systems; to provide a penalty; and to declare an emergency.

10:22 AM Chairman Luick opened the Committee Work for HB 1239. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Committee action

10:22 AM Senator Hogan moved to reconsider HB 1239.
Senator Weston seconded the motion.

Roll call vote:

| Senators | Vote |
|-----------------------|------|
| Senator Larry Luick | Y |
| Senator Janne Myrdal | N |
| Senator Kathy Hogan | Y |
| Senator Randy D. Lemm | Y |
| Senator Mark F. Weber | Y |
| Senator Kent Weston | Y |

Vote: 5-1-0 DO PASS to reconsider HB 1239.

10:23 AM Senator Hogan moved to DO PASS AS AMENDED.
Amendment was passed this morning, March 30, 2023 at 9:47 AM.
Senator Weber seconded the motion.

Roll call vote:

| Senators | Vote |
|-----------------------|------|
| Senator Larry Luick | Y |
| Senator Janne Myrdal | N |
| Senator Kathy Hogan | Y |
| Senator Randy D. Lemm | Y |
| Senator Mark F. Weber | Y |
| Senator Kent Weston | N |

Vote 4-2-0 Motion DO PASS HB 1239 AS AMENDED.

Senator Weber will carry the bill.

10:27 AM Chairman Luick closed the meeting.

Brenda Cook, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1239, as engrossed: Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1239 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 9, replace "A" with "Except as provided under subsection 7, a"

Page 2, line 19, after "system" insert "comprising less than fifteen acres [6.07 hectares] of land area, or a subsurface water management system"

Renumber accordingly

2023 CONFERENCE COMMITTEE

HB 1239

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1239
4/14/2023

Relating to smaller subsurface water management systems; and to provide a penalty.

Chairman Beltz call the meeting to order 1:30 PM

Members present: Chairman Beltz, Schreiber-Beck, VanWinkle, Senators Weber, Myrdal, Lemm.

Members absent: Representative Schreiber-Beck, Representative VanWinkle Winkle.
Chairman Beltz

Chairman Beltz no meeting can be held due to lack of a quorum.

Chairman Beltz adjourned the hearing 1:31 PM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1239
4/18/2023

Relating to smaller subsurface water management systems; and to provide a penalty.

Chairman Beltz call the meeting to order 9:00 AM

Members present: Chairman Beltz, Representatives Schreiber-Beck, VanWinkle, Senators Weber, Myrdal, Lemm.

Discussion Topics:

- Acreage provision
- Assessment drain
- Agricultural land

Representative Schreiber-Beck moved the Senate recede from Senate amendments.
Representative Weber seconded.

Motion failed 4-2-0

Chairman Beltz adjourned the hearing 9:10 AM

Diane Lillis, Committee Clerk

**2023 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL NO. HB 1239 as engrossed

House Agriculture Committee

- Action Taken** HOUSE accede to Senate Amendments
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows
- Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Schreiber-Beck Seconded by: Weber

| Representatives | | | | Yes | No | Senators | | | | Yes | No |
|-----------------|------|------|--|-----|----|-------------------|------|------|--|-----|----|
| | 4-14 | 4-18 | | | | | 4-14 | 4-18 | | | |
| Chairman Beltz | X | X | | X | | Chairman Weber | X | X | | X | |
| Schreiber-Beck | AB | X | | X | | Senator Myrdal | X | X | | | X |
| Lemm | AB | X | | X | | Senator Lemm | X | X | | | X |
| | | | | | | | | | | | |
| Total Rep. Vote | | | | 3 | 0 | Total Senate Vote | | | | 1 | 2 |

Vote Count Yes: 4 No: 2 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1239
4/20/2023

Conference Committee

Relating to smaller subsurface water management systems; and to provide a penalty.

Chairman Beltz call the meeting to order 9:00 AM

Members present: Chairman Beltz, Representatives Schreiber-Beck, VanWinkle, Senators Weber, Myrdal, Lemm.

Discussion Topics:

- Farmstead
- Agricultural land

Representative Schreiber-Beck, District 25, Wahpeton, ND, #27732

Representative Schreiber-Beck moved the Senate recede from Senate amendments.
Representative VanWinkle seconded.

Motion passed 6-0-0

House carrier is Representative Schreiber-Beck.
Senate carrier is Weber.

Chairman Beltz adjourned the hearing 9:06 AM

Diane Lillis, Committee Clerk

**2023 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL. HB 1239 as engrossed

House Agriculture Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Schreiber-Beck Seconded by: VanWinkle

| Representatives | 4-20 | | Yes | No | Senators | 4-20 | | Yes | No |
|-----------------|------|--|-----|----|-------------------|------|--|-----|----|
| Chairman Beltz | X | | X | | Chairman Weber | X | | X | |
| Schreiber-Beck | X | | X | | Myrdal | X | | X | |
| VanWinkle | X | | X | | Lemm | X | | X | |
| | | | | | | | | | |
| | | | | | | | | | |
| Total Rep. Vote | | | 3 | | Total Senate Vote | | | 3 | |

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Schreiber-Beck Senate Carrier Weber

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1239, as engrossed: Your conference committee (Sens. Weber, Myrdal, Lemm and Reps. Beltz, Schreiber-Beck, VanWinkle) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1627 and place HB 1239 on the Seventh order.

Engrossed HB 1239 was placed on the Seventh order of business on the calendar.

TESTIMONY

HB 1239

Testimony HB1239

Sam Wagner
Ag and Food Field Organizer
Dakota Resource Council
1720 Burnt Boat Dr. Ste 104
Bismarck ND 58503
Testimony in Support for HB1239

To the Honorable Chairman and the members of the Committee, we submit these remarks on behalf of DRC.

Mr. Chairman,

DRC would like to offer testimony in support of HB1239. For years our organization has talked about the loophole of not reporting drainage under 80 acres to water boards across the state. When we are doing assessments of property and research for mitigating floods in our state it is crucial to have accurate information available to our water boards to make informed decisions. It is also important for landowners affected by the drainage to have access to this information and be notified if they are going to be drained on. HB1239 will be an effective solution to this problem.

We also support that consideration was given by allowing landowners to drain on their own property and the notification that affected landowners would receive when someone wants to drain onto their property.

We urge a DO PASS on HB1239.

Thank you for your time and consideration.

HB1239 -- Introduction and Support

February 10, 2023

Chairman Thomas, Vice-Chair Beltz and members of the committee on agriculture:

For the record, I am Cindy Schreiber-Beck, District 25 Representative.

House Bill 1239 simply reinstates a portion of code that sunset on January 1, 2023.

NDCC :

61-32-03.2. Smaller subsurface water management systems - Notification and conditions - Penalty. Expired under S.L. 2021, ch. 490, § 4.

The section that is being reinstated address subsurface water management systems under 80 acres and includes:

- Notification of board of the water resource district and information required.
- Requirements related to the installation
- Method to include in assessment drain if not previously
- Oversight of subsurface water management system by the board of water resource
- Penalty of infraction if a violation of the section
- Section only applies if system is on agricultural land
- Section does not apply if water discharges into a body of water completely encompassed by land owned by the person that owns the land drained by the system
- All information provided to the board of a water resource district under the section is an exempt record under section 44-04-18

Thank you for your favorable consideration of this bill.

44-04-18. Access to public records - Electronically stored information. 1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 13 of section 44-04-17.1, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities. 2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. An initial request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may require written clarification of the request to determine what records are being requested, but may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. The public entity may withhold records pursuant to a request until such time as a requester provides payment for any outstanding balance for prior requests. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If a public entity receives five or more requests from the same requester within seven days, the public entity may treat the requests as one request in computing the time it takes to locate and excise the records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law. 3. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for

copies of electronic records which take more than one hour of information technology resources to produce. Page No. 5 4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal or mobile device. A public entity is not required to provide a copy of a record that is available to the requester on the public entity's website or on the internet. The public entity shall notify the requester the record is available online and direct the requester to the website where the record can be accessed. If the requester does not have reasonable access to the internet due to lack of computer, lack of internet availability, or inability to use a computer or the internet, the public entity shall produce paper copies for the requester, but may charge the applicable fees under this section. 5. A state-level public entity as defined in subdivision a of subsection 13 of section 44-04-17.1 or a political subdivision as defined in subsection 11 of section 44-04-17.1, may establish procedures for providing access from an outside location to any computer database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available. 6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules. 7. A denial of a request for records made under this section must describe the legal authority for the denial, or a statement that a record does not exist, and must be in writing if requested. 8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3. 9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. 10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working

paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed. 11. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege. 12. A public entity may allow an individual to utilize the individual's own personal devices for duplication of records and, if so, shall establish reasonable procedures to protect the integrity of the records as long as the procedures are not used to prevent access to the records. 13. If repeated requests for records disrupt other essential functions of the public entity, the public entity may refuse to permit inspection of the records, or provide copies of the records. A public entity refusing to provide access or copies of public records under this section shall state in writing the reasons supporting the refusal and provide the reasoning to the requester. The requester may seek an attorney general's opinion under section 44-04-21.1, on whether the public entity's decision was proper

What constitutes an infraction?

Offenses punishable by a fine only (up to \$1,000) fall under the classification of infraction. A traffic ticket is a common example of an infraction. Infractions do not involve jail time.

Testimony on 1239

Chairman Thomas and Committee, my name is Phil Murphy with the ND Soybean Growers Association.

The NDSGA Board has signed a letter supporting Water Resource Districts in general. This bill ensures notification which carries over from 2022 for tiling pieces less than 80 acres and we stand in support of these reasonable requirements. Please support the bill and thank you for your consideration.



North Dakota
Water Resource
Districts Association

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

HB 1239
Testimony of Dani Quissell
House Agriculture Committee

Chairman Thomas and members of the House Agriculture Committee, I'm Dani Quissell, here today on behalf of the North Dakota Water Resource Districts Association. I rise today in support of HB 1239.

Last session the agriculture and water groups came together to make needed updates to the drainage statutes via HB 1437. Part of that bill included a requirement that landowners who have tile projects that fall under the 80-acre permitting threshold notify their local water resource district and provide some very basic information about the project. That information included: the total project area and location of the project, location of outlets, and the direction of the water flow out of the outlets.

The legislature intended this notification requirement to be piloted in the biennium following the 2021 Legislative Session. Therefore, the requirement expired at the end of December 2022. From our perspective, the pilot has been successful, and we support the continuation of the notification requirement as envisioned in HB 1239.

From a planning and water management perspective, the information provided through notification is very important to water boards despite the small size of these projects. The water boards use this information for planning purposes. Knowing where water is coming from and which direction it is flowing is extremely beneficial when water boards are developing and building shared infrastructure like drains.

This notification requirement also provides water boards the information necessary to assure the public that the current drainage laws are being followed should there be an inquiry from a constituent.

For these reasons, I ask you to give HB 1239 a Do Pass recommendation.

Thank you. I'd be happy to stand for any questions you may have.



February 9, 2023

Chairman Thomas, and Members of the House Ag Committee,

I am writing to you in support of House bill 1239.

Last session, Agribusinesses, Farm groups, Commodity groups and Water organizations all came together to write a fantastic bill on tile-drainage permitting. The only thing better would have been to remove the requirement of permitting all together.

I support the reinstatement of the sunset clause because it simply makes sense. If we are going to have water boards managing water on watersheds, then we need to assist giving them the tools to succeed. For years people called the water board questioning if someone had a permit and didn't know the answer because the project was "under 80 acres". Now, we don't get calls from water boards because they know what is permitted and what is under 80 acres. Communication is key.

House Bill 1239 reinstates a portion of code that sunset on January 1, 2023. NDCC : 61-32-03.2. Smaller subsurface water management systems - Notification and conditions - Penalty. Expired under S.L. 2021, ch. 490, § 4. The section that is being reinstated address subsurface water management systems under 80 acres and includes: Notification of board of the water resource district and information required. Requirements related to the installation. Method to include in assessment drain if not previously. Oversight of subsurface water management system by the board of water resource. Penalty of infraction if a violation of the section. Section only applies if the system is on agricultural land. Section does not apply if water discharges into a body of water completely encompassed by land owned by the person that owns the land drained by the system. All information provided to the board of a water resource district under the section is an exempt record under section 44-04-18 Thank you for your favorable consideration of this bill.

Sincerely,

Levi Otis
lotis@ellingsoncompanies.com
701-893-9030
Director of Government Affairs & Public Policy
Ellingson Companies
Harwood, ND & West Concord MN.

CORPORATE OFFICE

56113 State Hwy 56, West Concord, MN 55985
507.527.2294 | Fax 507.527.2296

HARWOOD OFFICE

500 Ellingson Rd, Harwood, ND 58042
701.893.9030 | Fax 701.893.9040

EllingsonCompanies.com

888.527.2294



Testimony of Brenda Elmer, executive director

North Dakota Corn Growers Association

In SUPPORT of HB 1239

February 10, 2023

Chairman Thomas and members of the House Agriculture Committee,

Thank you for the opportunity to testify before you today in support of HB 1239. My name is Brenda Elmer, executive director of the North Dakota Corn Growers Association (NDCGA), which is the voice of the more than 13,000 corn growers across the state.

NDCGA appreciates the role of the water resource districts and the work they perform. During the 67th Legislative Assembly HB 1437 was passed to update the drainage statutes in North Dakota. In that legislation, landowners who have tile projects that fall under the 80-acre permitting threshold were required to notify their local water resource district and provide some very basic information about the project. That simple requirement was sunset, and HB 1239 would continue the notification requirement, which appears to have worked well.

We urge a 'Do Pass' recommendation on HB 1239. Thank you for your time today. I'd be glad to answer any questions.

HB1239 -- Introduction and Support

March 16, 2023

Chair Luick, Vice-Chair Myrdal and members of the committee on agriculture and veterans affairs:

For the record, I am Cindy Schreiber-Beck, District 25 Representative.

House Bill 1239 reinstates a portion of code that sunset on January 1, 2023.

NDCC : 61-32-03.2. Smaller subsurface water management systems - Notification and conditions - Penalty. Expired under S.L. 2021, ch. 490, § 4.

Section 1 would reinstate the portion of the 2021 bill that was sunset. The section addresses subsurface water management systems under 80 acres and includes the following:

- Notification to the board of the water resource district and the information required including acreage, legal description of the land, outlet location and types, and flow direction from each outlet
- Requirements related to the installation including pump location, erosion controls, and that pumps and control structures at the outlets are to be off or closed during critical flood periods.
- Allows the water resource board to include the land in an assessment drain if the land was not previously in the assessment drain
- Oversight of subsurface water management system by the board of the water resource district
- Penalty of infraction if a violation of the section
- The section would only apply if the system was installed on agricultural land
- The section does not apply if water discharges into a body of water completely encompassed by land owned by the person that owns the land drained by the system
- All information provided to the board of a water resource district under the section is an exempt record under section 44-04-18

Section 2 is an emergency clause since permits are now being submitted for spring tiling.

Since the update last session there has been minimal issues with the permitting and installation of subsurface tile. Constituents and members of the water resource board favor reinstating the notification because of the ease of including land in an assessment drain, public relations, and the basic oversight. In the valley, although the land is privately owned, most of the tile water outlets into a township, county or state ditch or drain, all considered public property, thus notification is important for future planning.

Thank you for the opportunity to bring HB1239 before the committee and for the reasons stated, I ask for your favorable consideration.

44-04-18. Access to public records - Electronically stored information. 1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 13 of section 44-04-17.1, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities. 2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. An initial request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may require written clarification of the request to determine what records are being requested, but may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. The public entity may withhold records pursuant to a request until such time as a requester provides payment for any outstanding balance for prior requests. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If a public entity receives five or more requests from the same requester within seven days, the public entity may treat the requests as one request in computing the time it takes to locate and excise the records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law. 3. Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce. Page No. 5 4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a

computer terminal or mobile device. A public entity is not required to provide a copy of a record that is available to the requester on the public entity's website or on the internet. The public entity shall notify the requester the record is available online and direct the requester to the website where the record can be accessed. If the requester does not have reasonable access to the internet due to lack of computer, lack of internet availability, or inability to use a computer or the internet, the public entity shall produce paper copies for the requester, but may charge the applicable fees under this section. 5. A state-level public entity as defined in subdivision a of subsection 13 of section 44-04-17.1 or a political subdivision as defined in subsection 11 of section 44-04-17.1, may establish procedures for providing access from an outside location to any computer database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available. 6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules. 7. A denial of a request for records made under this section must describe the legal authority for the denial, or a statement that a record does not exist, and must be in writing if requested. 8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3. 9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. 10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed. 11. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege. 12. A public entity may allow an individual to utilize the individual's own personal devices for duplication of records and, if so, shall establish reasonable procedures to protect the integrity of the records as long as the procedures are not used to prevent access to the records. 13. If repeated requests for records disrupt other essential functions of the public entity, the public entity may refuse to permit inspection of the records, or provide copies of the records. A public entity refusing to provide access or copies of public records under this section shall state in writing the reasons supporting the refusal and provide the reasoning to the requester. The requester may seek an attorney general's opinion under section 44-04-21.1, on whether the public entity's decision was proper

What constitutes an infraction?

Offenses punishable by a fine only (up to \$1,000) fall under the classification of infraction. A traffic ticket is a common example of an infraction. Infractions do not involve jail time.

The logo for the North Dakota Water Resource Districts Association is a dark purple silhouette of the state of North Dakota. Inside the silhouette, the text "North Dakota Water Resource Districts Association" is written in white, sans-serif font, stacked in four lines.

**North Dakota
Water Resource
Districts Association**

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

**HB 1239
Testimony of Jack Dwyer
House Agriculture Committee**

Chairman Luick and members of the Senate Agriculture Committee, I'm Jack Dwyer, Executive Secretary of the North Dakota Water Resource Districts Association. I rise today in support of HB 1239.

Last session the agriculture and water groups came together to make needed updates to the drainage statutes via HB 1437. Part of that bill included a requirement that landowners who have tile projects that fall under the 80-acre permitting threshold notify their local water resource district and provide some very basic information about the project. That information included: the total project area and location of the project, location of outlets, and the direction of the water flow out of the outlets.

The legislature intended this notification requirement to be piloted in the biennium following the 2021 Legislative Session. Therefore, the requirement expired at the end of December 2022. From our perspective, the pilot has been successful, and we support the continuation of the notification requirement as envisioned in HB 1239.

From a planning and water management perspective, the information provided through notification is very important to water boards despite the small size of these projects. The water boards use this information for planning purposes. Knowing where water is coming from and which direction it is flowing is extremely beneficial when water boards are developing and building shared infrastructure like drains.

This notification requirement also provides water boards the information necessary to assure the public that the current drainage laws are being followed should there be an inquiry from a constituent.

For these reasons, I ask you to give HB 1239 a Do Pass recommendation.

Thank you. I'd be happy to stand for any questions you may have.

Testimony HB1239

Sam Wagner
Ag and Food Field Organizer
Dakota Resource Council
1720 Burnt Boat Dr. Ste 104
Bismarck ND 58503
Testimony in Support for HB1239

To the Honorable Chairman and the members of the Committee, we submit these remarks on behalf of DRC.

Mr. Chairman,

DRC has offered testimony in support of HB1239 in the House and we have only seen the change of adding an emergency clause to the bill. Because of this our support hasn't changed. For years our organization has talked about the loophole of not reporting drainage under 80 acres to water boards across the state. When we are doing assessments of property and research for mitigating floods in our state it is crucial to have accurate information available to our water boards to make informed decisions. It is also important for landowners affected by the drainage to have access to this information and be notified if they are going to be drained on. HB1239 will be an effective solution to this problem.

We also support that consideration was given by allowing landowners to drain on their own property and the notification that affected landowners would receive when someone wants to drain onto their property.

We urge a DO PASS on HB1239.

Thank you for your time and consideration.



Testimony of Brenda Elmer, executive director

North Dakota Corn Growers Association

In SUPPORT of HB 1239

March 16, 2023

Chairman Luick and members of the Senate Agriculture and Veteran Affairs Committee,

Thank you for the opportunity to testify before you today in support of HB 1239. My name is Brenda Elmer, executive director of the North Dakota Corn Growers Association (NDCGA), which is the voice of the more than 13,000 corn growers across the state.

NDCGA appreciates the role of the water resource districts and the work they perform. During the 67th Legislative Assembly HB 1437 was passed to update the drainage statutes in North Dakota. In that legislation, landowners who have tile projects that fall under the 80-acre permitting threshold were required to notify their local water resource district and provide some very basic information about the project. That simple requirement was sunset, and HB 1239 would continue the notification requirement, which appears to have worked well.

We urge a 'Do Pass' recommendation on HB 1239. Thank you for your time today.

23.0445.02001
Title.

Prepared by the Legislative Council staff for
the Senate Agriculture and Veterans Affairs
Committee

March 17, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1239

Page 1, line 9, replace "A" with "Except as provided under subsection 7, a"

Page 2, line 19, after "system" insert "comprising less than fifteen acres [6.07 hectares] of land area, or a subsurface water management system"

Renumber accordingly

23.0445.02001

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1239

Introduced by

Representatives Schreiber-Beck, Beltz, D. Johnson, Pyle, Thomas
Senators Klein, Sorvaag

1 A BILL for an Act to create and enact a new section to chapter 61-32 of the North Dakota
2 Century Code, relating to smaller subsurface water management systems; to provide a penalty;
3 and to declare an emergency.

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

5 **SECTION 1.** A new section to chapter 61-32 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Smaller subsurface water management systems - Notification and conditions -**
8 **Penalty.**

- 9 1. A person may not install a subsurface water
10 management system comprising less than eighty acres [32.37 hectares] of land area
11 until the person has notified the board of the water resource district within which is
12 found a majority of the land area of the system of the following information:
 - 13 a. The system's total acreage and legal description of the land being drained;
 - 14 b. The outlet locations and types; and
 - 15 c. The flow direction from each outlet location.
- 16 2. A person required to notify the board under subsection 1 shall install the subsurface
17 water management system such that:
 - 18 a. Pump and control structures at pump outlets are installed no closer than
19 twenty-five feet [7.62 meters] from the top of the back slope of an assessment
20 drain;
 - 21 b. Proper erosion controls are installed and maintained at all outlets; and
 - 22 c. Pumps and control structures at project outlets are closed or turned off during
23 critical flood periods.

- 1 3. If a subsurface water management system for which notification is required under
2 subsection 1 will discharge into the watershed area of an assessment drain, the water
3 resource board that receives the notice may require the relevant property to be
4 included in the assessment district for the assessment drain in accordance with the
5 benefits the property receives, provided the property is not assessed already for the
6 assessment drain. The water resource district also may include the property in the
7 assessment district and determine the benefits and assessment amounts under
8 chapters 61-21 and 61-16.1, without conducting the reassessment of benefit
9 proceedings under sections 61-21-44 and 61-16.1-26, provided the property is not
10 assessed already for the assessment drain.
- 11 4. The board of the water resource district within which the subsurface water
12 management system is located may order the system's owner or operator to bring the
13 system into compliance with subsection 2 if the board finds the system violates that
14 subsection.
- 15 5. A person that violates this section is guilty of an infraction.
- 16 6. This section applies only to subsurface water management systems that drain, in
17 whole or in part, platted or unplatted lands used for raising agricultural crops or
18 grazing farm animals.
- 19 7. This section does not apply to a subsurface water management system comprising
20 less than fifteen acres [6.07 hectares] of land area, or a subsurface water
21 management system that discharges into a body of water completely encompassed by
22 land owned by the person that owns the land drained by the system.
- 23 8. The information that must be provided to a board of a water resource district under this
24 section is an exempt record under section 44-04-18.

25 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1437

(Representatives Schreiber-Beck, D. Anderson, Beltz, D. Johnson, J. Nelson, O'Brien, Schmidt)
(Senators Klein, Kreun)

AN ACT to create and enact section 61-32-03.2 of the North Dakota Century Code, relating to small subsurface water management systems; to amend and reenact subsection 3 of section 61-02-01.4 and section 61-32-03.1 of the North Dakota Century Code, relating to large subsurface water management system permits and the state water commission cost-share policy; to provide a penalty; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 61-02-01.4 of the North Dakota Century Code is amended and reenacted as follows:

3. Must consider all project costs potentially eligible for reimbursement, except the commission shall exclude operations expense, regular maintenance, and removal of vegetative materials and sediment, for assessment drains, and may exclude operations expense and regular maintenance for other projects. Snagging and clearing of watercourses are not regular maintenance and deepening or widening of existing drains are eligible for reimbursement. The commission shall require a water project sponsor to maintain a capital improvement fund from the rates charged customers for future extraordinary maintenance projects as condition of funding an extraordinary maintenance project.

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

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

- 1.a. Installation of a subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. ~~The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.~~ A person that violates this section is guilty of an infraction.
 - b. Subsurface water management systems that use surface intakes or lift stations must be permitted exclusively under this section ~~if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].~~
 - c. ~~Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.~~
2. For purposes of this section, a "natural watercourse" includes, in addition to watercourses defined in section 61-01-06, any waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map.
3. a. The state engineer shall develop an application form for a permit required under this section. A person seeking to construct a subsurface water management system that ~~requires a permit under this section must~~ shall submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. The ~~water resource district board~~ may charge permit applicants a fee up to ~~one~~ five hundred fifty dollars. ~~Water resource districts shall forward~~

~~copies of all approved permits to the state engineer. The fee must be paid before the water resource district may approve the application.~~

- ~~b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map, assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.~~
- ~~3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.~~
- ~~b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.~~
- ~~c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.~~
- ~~d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.~~
- ~~e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a~~

- ~~landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.~~
- f. ~~The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.~~
4. ~~A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.~~
5. A completed permit application includes:
- (1) A completed application form signed by an applicant and filed with the district;
 - (2) Evidence of ownership for each parcel to be tiled according to the tax rolls of the county in which the parcel is located;
 - (3) A project design, including:
 - (a) A detailed drawing depicting the subsurface water management system's location overlain on an aerial photograph of the parcel;
 - (b) The system's location by legal description identifying either the relevant quarter, section, township, and range or the relevant block and lot number;
 - (c) The physical footprint of the system's layout;
 - (d) The tile-main sizes and locations;
 - (e) The laterals to the tile-main sizes and locations;
 - (f) Surface inlet sizes and locations; and
 - (g) Outlet sizes, locations, and types;
 - (4) A downstream flow map or depiction of the flow direction from each outlet location for one mile [1.61 kilometers] downstream which includes the location of the downstream parcels by legal description identifying either the relevant quarter, section, township, and range or the relevant block and lot number; and
 - (5) Evidence of ownership for each parcel within one mile [1.61 kilometers] downstream of each project outlet according to the tax rolls for the county in which the parcel is located, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of a proposed outlet, in which case the applicant shall provide evidence of ownership for each parcel between the outlet and the nearest assessment drain, natural watercourse, slough, or lake.

- c. Unless the district notifies an applicant the application is incomplete and provides a list of information required to complete the application within three business days after the day the district receives the application, the application is deemed complete.
 - d. Detailed drawings submitted pursuant to subparagraph a of paragraph 3 of subdivision b as part of an application for a permit under this section after the effective date of this Act are exempt records under section 44-04-18 and may be provided to individuals only as necessary to make a decision whether to approve the permit.
4. A district may attach conditions to an approved permit for a subsurface water management system if the conditions address:
- a. Outlet locations including requirements for pump and control structures to be installed no closer than twenty-five feet [7.62 meters] from the top of the back slope of an assessment drain;
 - b. Installation and maintenance of proper erosion control at all outlets;
 - c. Re-establishment of disturbed areas to previous conditions;
 - d. The minimum distance from rural water supply lines. However, a district may not attach a condition requiring a system to extend beyond an existing easement for a rural waterline, or, if the rural waterline was installed under a blanket easement, requiring a system to extend beyond twenty feet [6.1 meters] from either side of a rural waterline;
 - e. Installation and operation of control structures at project outlets including requirements for control structures to be closed or pump outlets to be turned off during critical flood periods;
 - f. Requirements for a permittee to obtain an amendment to a permit for alterations to outlet locations, new outlets, or improvements resulting in drainage of additional acres;
 - g. If the subsurface water management system will discharge into the watershed area of an assessment drain, inclusion of the relevant property into the assessment district for the assessment drain in accordance with the benefits the property receives, provided the property is not assessed already for the assessment drain. The water resource district may include the new property into the assessment district, and determine the benefits and assessment amounts under chapters 61-21 and 61-16.1, without conducting the reassessment of benefit proceedings under sections 61-21-44 and 61-16.1-26, provided the property is not assessed already for the assessment drain.
 - h. Requirements for a permittee to remove silt and vegetation, or repair erosion and scour damages directly caused by the subsurface water management system, up to one mile [1.61 kilometers] downstream from a proposed outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of the proposed outlet, in which case the district may require silt and vegetation removal or erosion and scour damage repair between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. For purposes of this subdivision and subdivision i:
 - (1) Downstream damage repair does not include deepening or widening a road ditch or existing drain;
 - (2) The timing and method of silt and vegetation removal or damage repair in a county or township road ditch must be preapproved by the appropriate road authority; and
 - (3) The applicant shall follow any construction site protection requirements of the road authority.

- i. If a downstream landowner or road authority presents substantial evidence a subsurface water management system directly has caused accumulation of silt, vegetation erosion, or scouring, the requirement or authorization of the applicant to remove the silt and vegetation or repair the erosion and scour damages directly caused by the system. However, the applicant may not spread silt, vegetation, or debris along adjoining land without the permission of all parties having a legal interest in the land.
5. A district shall approve a permit, including any permissible conditions, within thirty days after the district receives the completed application. If the district fails to approve the permit application within that period, the permit is deemed approved with no conditions.
6. Upon approval of a permit, the district shall forward notice of the approved permit and the downstream flow map to the state engineer and to each landowner who owns property within one mile [1.61 kilometers] downstream of each project outlet according to the tax rolls of the county in which the property is located, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of the proposed outlet, in which case the district shall provide notice to landowners with property between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The district shall send copies of the notice by first-class mail, attested by an affidavit of mailing. The district does not need to provide copies of the permit application under this subsection.
7. An amendment of a previously approved subsurface water management system permit must be made according to the provisions for approving a permit under this section.
8. A water resource district board may not be held liable to any person for issuing a permit under this section.
6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.
9. Approval of a permit under this section does not prohibit a downstream party unreasonably damaged by the discharge of water from a subsurface water management system from seeking damages in a civil action.
10. This section applies only to subsurface water management systems that drain, in whole or in part, platted or unplatted lands used for raising agricultural crops or grazing farm animals.

SECTION 3. Section 61-32-03.2 of the North Dakota Century Code is created and enacted as follows:

61-32-03.2. 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 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 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;
 - b. Proper erosion controls are installed and maintained at all outlets; and
 - c. Pumps and control structures at project outlets are closed or turned off during critical flood periods.
3. If a subsurface water management system for which notification is required under subsection 1 will discharge into the watershed area of an assessment drain, the water resource board that receives the notice may require the relevant property to be included in the assessment district for the assessment drain in accordance with the benefits the property receives, provided the property is not assessed already for the assessment drain. The water resource district also may include the property in the assessment district and determine the benefits and assessment amounts under chapters 61-21 and 61-16.1, without conducting the reassessment of benefit proceedings under sections 61-21-44 and 61-16.1-26, provided the property is not assessed already for the assessment drain.
4. The board of the water resource district within which the subsurface water management system is located may order the system's owner or operator to bring the system into compliance with subsection 2 if the board finds the system violates that subsection.
5. A person that violates this section is guilty of an infraction.
6. This section applies only to subsurface water management systems that drain, in whole or in part, platted or unplatted lands used for raising agricultural crops or grazing farm animals.
7. This section does not apply to a subsurface water management system that discharges into a body of water completely encompassed by land owned by the person that owns the land drained by the system.
8. The information that must be provided to a board of a water resource district under this section is an exempt record under section 44-04-18.

SECTION 4. EXPIRATION DATE. Section 3 of this Act is effective through December 31, 2022, and after that date is ineffective.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1437 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 91 Nays 0 Absent 3

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,
at _____ o'clock _____ M.

Secretary of State

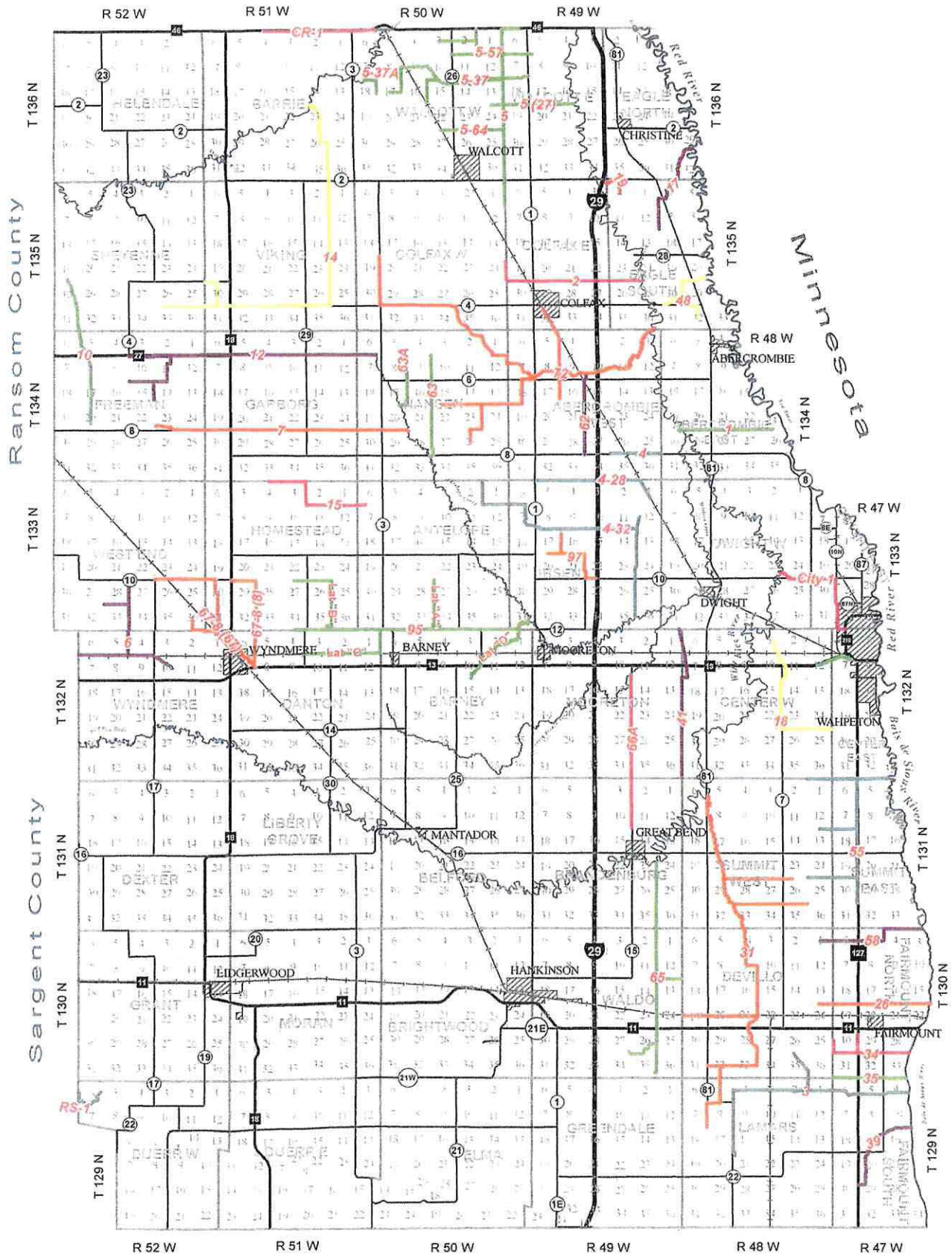
**CHAPTER 57-02
GENERAL PROPERTY ASSESSMENT**

57-02-01. Definitions.

As used in this title, unless the context or subject matter otherwise requires:

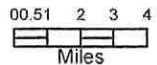
1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection.
 - a. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:
 - (1) The land is platted by the owner.
 - (2) Public improvements, including sewer, water, or streets, are in place.
 - (3) Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
 - (4) Property is zoned other than agricultural.
 - (5) Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
 - (6) The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
 - (7) The property sells for more than four times the county average true and full agricultural value.
 - b. Land that was assessed as agricultural property at the time the land was put to use for extraction of oil, natural gas, or subsurface minerals as defined in section 38-12-01 must continue to be assessed as agricultural property if the remainder of the surface owner's parcel of property on which the subsurface mineral activity is occurring continues to qualify for assessment as agricultural property under this subsection.
2. "Air carrier transportation property" means the operative property of each airline whose property is assessed for taxation purposes pursuant to chapters 57-06 and 57-32.
3. "Assessed valuation" means fifty percent of the true and full value of property.
4. "Centrally assessed property" means all property which is assessed by the state board of equalization under chapters 57-05, 57-06, and 57-32.
5. "Commercial property" means all property, or portions of property, not included in the classes of property defined in subsections 1, 4, 11, and 12.
6. "Credits" means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deeds or mortgages, due or to become due.
7. "Governing body" means a board of county commissioners, city council, board of city commissioners, school board, or board of education, or the similarly constituted and acting board of any other municipality.
8. "Money" or "moneys" means gold and silver coin, treasury notes, bank notes, and every deposit which any person owning the same or holding in trust and residing in this state is entitled to withdraw as money or on demand.
9. "Municipality" or "taxing district" means a county, city, township, school district, water conservation and flood control district, Garrison Diversion Conservancy District, county park district, joint county park district, irrigation district, park district, rural fire protection district, or any other subdivision of the state empowered to levy taxes.
10. "Person" includes a firm, corporation, or limited liability company.

Cass County



South Dakota

Legal Assessment Drains
Richland County, ND



Instructions For
North Dakota Subsurface Water Management System Notification
For Projects Less Than 80 Acres

Under the 2021 North Dakota state law for subsurface water management projects (aka “Drain Tile”), notification is required for projects that drain, in whole or in part, platted or unplatted lands used for raising agricultural crops or grazing farm animals and involves less than 80 acres of land. Farmsteads, bin sites, etc do not require notification. Notification is not required if a person’s tile system discharges into a body of water completely encompassed by land owned by the person that owns the land drained by the system. (Water that does not leave the person’s land.)

If your project involves 80 acres or more, please go to the “*State Drain Tile Application 80 Acres or Greater*” on our website.

For projects requiring notification, please complete the attached 2 page form in its entirety and forward it to the Water Resource District. The District asks that you voluntarily provide a water flow map showing the location of the outlet and the water flow for one mile downstream of the outlet.

Notifications do not require a signature and may be submitted by someone other than the landowner.

Options for submission of notification for include:

- Deliver, mail or email completed notification form to the District
- Call or email the District with the information necessary for Office Staff to complete the notification form

There is no fee for submission of the notification.

Please do not hesitate to contact our office if you have any questions regarding this notification process.

Richland County Water Resource District
418 2nd Avenue North
Wahpeton, ND 58075
Phone: 701-642-7773
Website: co.richland.nd.us
Email: tbladow@co.richland.nd.us



NOTIFICATION TO INSTALL SUBSURFACE WATER MANAGEMENT SYSTEM

OFFICE OF THE STATE ENGINEER

REGULATORY DIVISION

SFN 61990 (5/2021)

ONLY FOR SYSTEMS LESS THAN 80 ACRES

This Form Serves As A Notification Required Under North Dakota Century Code § 61-32-03.2 To Notify Your Water Resource District (WRD) Prior To Installation Of A Subsurface Water Management System Less Than 80 Acres.

Alternatively, The Information In This Form May Also Be Provided To The WRD Via Phone Or Email.

Systems 80 Acres Or More Require A Permit And Require A Separate Application Titled "Application To Install A Subsurface Water Management System - SFN 61244," Which Is Located On The State Water Commission's Website Or Available From Your WRD.

Number

(WRD USE ONLY)

| Location Of Land To Be Tiled | | | | |
|--|---------|-------------------|--------------------------------|----------|
| ¼ | Section | Township | Range | County |
| ¼ | Section | Township | Range | County |
| ¼ | Section | Township | Range | County |
| ¼ | Section | Township | Range | County |
| Outlet Information | | | | |
| ¼ | Section | Township | Range | County |
| ¼ | Section | Township | Range | County |
| Type Of System Outlet <input type="checkbox"/> Gravity - No Control Structure <input type="checkbox"/> Gravity - With Control Structure <input type="checkbox"/> Pump | | | | |
| Flow Direction From Each Outlet (check all that apply) <input type="checkbox"/> North <input type="checkbox"/> South <input type="checkbox"/> East <input type="checkbox"/> West | | | | |
| Total Land Area To Be Tiled (Acres) | | | WRD In Which System Is Located | |
| Contact Information | | | | |
| Notification Provided By (print name or organization) | | | | |
| Address | | City | State | ZIP Code |
| Telephone Number | | Cell Phone Number | | |
| Email Address | | | | |

| WRD Receipt Information (FOR WRD USE ONLY) | |
|--|---------------|
| WRD Signature | Received Date |

NOTIFICATION TO INSTALL SUBSURFACE WATER MANAGEMENT SYSTEM

Additional Information For Project Owner

- Your Project Must Comply With The Provisions of N.D.C.C. § 61-32-03.2, which states:
 - A person required to notify the water resource district shall install the subsurface water management system such that:
 - 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;
 - Proper erosion controls are installed and maintained at all outlets; and
 - Pumps and control structures at project outlets are closed or turned off during critical flood periods.
 - The notification requirement applies only to subsurface water management systems that drain, in whole or in part, platted or unplatted lands used for raising agricultural crops or grazing farm animals.
 - The notification requirement does not apply to a subsurface water management system that discharges into a body of water completely encompassed by land owned by the person that owns the land drained by the system.
 - The information that must be provided to a board of a water resource district under (as part of a notification) is an exempt record under section 44-04-18.

- There Are Other Regulatory Considerations Outside Of This Notification, Including:
 - Road Authority Permissions Or Approvals;
 - Assessment Drain Set Backs;
 - Rural Water Line Set Backs;
 - Utility Locates;
 - Other Local, State, And Federal Permits Or Permissions, If Required.