

Introduced by

Senators Hogan, Marcellais

Representative Davis

1 A BILL for an Act to amend and reenact section 61-32-03.3 of the North Dakota Century Code,
2 relating to smaller subsurface water management systems; and to provide a penalty.

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

4 **SECTION 1. AMENDMENT.** Section 61-32-03.3 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-32-03.3. Smaller subsurface water management systems - Notification and**
7 **conditions - Penalty.**

8 1. A person may not install a subsurface water management system comprising less than
9 eighty acres [32.37 hectares] of land area until the person has notified the board of the
10 water resource district within which is found a majority of the land area of the system
11 and all downstream landowners of the following information:

- 12 a. The system's total acreage and the legal description of the land being drained;
13 b. The outlet locations and types; and
14 c. The flow direction from each outlet location.

15 2. A person required to notify the board and downstream landowners under subsection 1
16 shall install the subsurface water management system such that:

- 17 a. Pump and control structures at pump outlets are installed no closer than
18 twenty-five feet [7.62 meters] from the top of the back slope of an assessment
19 drain;
20 b. Proper erosion controls are installed and maintained at all outlets; and
21 c. Pumps and control structures at project outlets are closed or turned off during
22 critical flood periods.

- 1 3. a. A person seeking to install a subsurface water management system under this
2 section shall provide the notice under subsection 1 through certified mail with a
3 proof of delivery signed by the downstream landowner.
- 4 b. The downstream landowner has thirty days from the receipt of the notice to
5 deliver a written objection to the person seeking to install the subsurface water
6 management system and the board of the water resource district in which the
7 majority of the land subject to the planned system is located.
- 8 c. If the downstream landowner:
- 9 (1) Fails to timely deliver the written objection, the person may install the
10 subsurface water management system.
- 11 (2) Timely delivers the written objection, the water resource district in which the
12 majority of the land subject to the planned system is located shall require
13 the person to complete and file a permit application as required under
14 section 61-32-03.1.
- 15 e. Upon receipt of the permit application, the water resource district shall review,
16 analyze, and issue permits in the same manner as provided under section
17 61-32-03.1.
- 18 4. If a subsurface water management system for which notification is required under
19 subsection 1 will discharge into the watershed area of an assessment drain, the water
20 resource board that receives the notice may require the relevant property to be
21 included in the assessment district for the assessment drain in accordance with the
22 benefits the property receives, provided the property is not assessed already for the
23 assessment drain. The water resource district also may include the property in the
24 assessment district and determine the benefits and assessment amounts under
25 chapters 61-21 and 61-16.1, without conducting the reassessment of benefit
26 proceedings under sections 61-21-44 and 61-16.1-26, provided the property is not
27 assessed already for the assessment drain.
- 28 4-5. The board of the water resource district within which the subsurface water
29 management system is located may order the system's owner or operator to bring the
30 system into compliance with subsection 2 if the board finds the system violates that
31 subsection.

- 1 ~~5-6.~~ A person sustaining damages as a result of a subsurface water management system
2 of another person shall participate in mediation before filing an action to recover
3 damages. An aggrieved person shall file a mediation request with the board of the
4 appropriate water resource district, and the board shall appoint a mediation board
5 consisting of a hydrologist employed by the state, an engineer employed by the state,
6 and an individual conducting farming or ranching in the county in which the subsurface
7 water management system is located. All mediation costs must be paid by the owner
8 of the subsurface water management system. An opinion issued by the mediation
9 board is not binding, and participation in a mediation session does not preclude a
10 party from commencing a civil action to recover damages after completion of the
11 mediation.
- 12 7. A person that violates this section is guilty of an infraction.
- 13 ~~6-8.~~ This section applies only to subsurface water management systems that drain, in
14 whole or in part, platted or unplatted lands used for raising agricultural crops or
15 grazing farm animals.
- 16 ~~7-9.~~ This section does not apply to a subsurface water management system that
17 discharges into a body of water completely encompassed by land owned by the
18 person that owns the land drained by the system.
- 19 ~~8-10.~~ The information that must be provided to a board of a water resource district under this
20 section is an exempt record under section 44-04-18.