



WATER DRAINAGE COMMITTEE

Thursday, February 10, 2022
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Larry Luick, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Larry Luick, Kathy Hogan, Ronald Sorvaag; Representatives David Monson, Marvin E. Nelson; Citizen Members Jeff Frith*, Clif Issendorf, Richard Johnson*, Sharon Lipsh, Randy Melvin

Member absent: Representative Dennis Johnson

Others present: Representative Jim Schmidt, Huff, member of the Legislative Management
See [appendix](#) for additional persons present.

**Attended remotely*

It was moved by Senator Sorvaag, seconded by Senator Hogan, and carried on a voice vote that the minutes of the December 8, 2021, meeting be approved as distributed.

STUDY DIRECTIVES 1 AND 2

Ms. Claire Ness, Senior Counsel and Code Revisor, presented a bill draft [[23.0024.01000](#)] regarding a unified assessment process for water projects and memorandums entitled [Actions Taken with North Dakota Century Code Chapter 61-16.1 in Bill Draft 23.0024.01000](#) and [Actions Taken with North Dakota Century Code Chapter 61-21 in Bill Draft 23.0024.01000](#).

The committee discussed the bill draft and requested Ms. Ness to revise the bill draft for review at the next meeting. The requested revisions include:

- Combining all of North Dakota Century Code Chapters 61-16.1 and 61-21 into one chapter;
- Reinstating a truncated assessment process for snagging, clearing, and maintaining natural watercourses or removing debris from bridges and low-water crossings under Section 61-16.1-09.1;
- Replacing the term "watercourse" with "waterway" or "water conveyance" in multiple sections of the Century Code;
- Revising provisions regarding costs incurred by water resource boards;
- Revising notice requirements; and
- Adding a provision for the Department of Agriculture's mediation board to mediate certain disputes arising from assessment projects.

Ms. Ness presented a memorandum entitled [Imposition of Culvert and Bridge Costs on Political Subdivisions](#).

The committee discussed the authority of water resource boards to impose the costs of certain culverts and bridges running through or over highways in counties and townships. Members of the committee noted problems have arisen due to insufficient notice to counties and townships regarding the designs of drains necessitating culverts and bridges.

Ms. Lipsh noted she would gather additional information on this issue for the next meeting.

Mr. Aaron Carranza, Regulatory Division Director, Department of Water Resources, noted the State Water Commission has authority to determine necessary flow rates for certain culverts under Title 24.

The committee requested Ms. Ness to include additional revisions to the bill draft to:

- Require a water resource board to provide notice of a possible drain to the relevant highway authority before the first public meeting on the drain project; and
- Allocate 40 percent of the costs of a culvert or bridge necessitated by a legal drain to the highway authority unless the highway authority and water resource boards agree to a different allocation.

STUDY DIRECTIVE 4

Ms. Ness presented a bill draft [\[23.0025.01000\]](#) regarding a cost-benefit analysis for assessment water projects. Ms. Ness noted the committee requested the bill draft to satisfy the committee's mandate to recommend a method for ensuring the cost to a landowner for an assessment project does not exceed the benefit to the landowner from the project.

In response to questions from a committee member, Dr. Duane Pool, Natural Resource Economist, Department of Water Resources, noted most states use a cost-benefit analysis for publicly funded projects. He noted water resource boards and others may use the economic analysis tool developed for the State Water Commission when performing the cost-benefit analysis required under the bill draft.

Representative Schmidt noted:

- The economic analysis tool developed for the State Water Commission applies to water projects for which state cost-shares have been requested and for which the total cost exceeds a threshold dollar amount.
- The cost-benefit analysis for individual parcels in the bill draft should have a similar threshold.
- The State Water Commission could impose a cost-benefit analysis requirement by policy for projects that do not meet the threshold.

In response to a question from Chairman Luick, Representative Schmidt noted a total project cost of \$1 million may be an appropriate threshold.

Representative Nelson noted the threshold for requiring a cost-benefit analysis on a per-parcel basis should be a project cost of \$20 per acre.

Ms. Ness noted adding a threshold would impact appeals of water resource board decisions and other procedures for assessment projects.

Dr. Pool noted adding a threshold would impact voting rights and calculations of individual assessment amounts.

The committee discussed the bill draft and requested Ms. Ness to revise the bill draft to impose a \$1 million threshold for requiring a cost-benefit analysis on a per-parcel basis.

In response to a request from Representative Nelson, Ms. Ness noted she would provide another revised bill draft with a threshold of \$20 per acre.

ADDITIONAL MATTERS

Senator Mark Weber presented an amendment [\[21.0194.01001\]](#) to Senate Bill No. 2208 (2021) which he supported during the 2021 legislative session. He noted the amendment is necessary to address when removal of natural obstructions such as beaver dams is required and who has responsibility for the removal.

Ms. Ness noted the committee may wish to consider recommending an omnibus bill in lieu of or in addition to the separate bill drafts the committee may recommend. She noted, if there are amendments to and repeals of the same sections of the Century Code in separate bills, the amendments and repeals would have to be reconciled, leading to potentially inadvertent results.

No further business appearing, Chairman Luick adjourned the meeting at 2:00 p.m.

Claire Ness
Senior Counsel and Code Revisor

ATTACH:1