

Testimony for Public Hearing  
**House Agriculture Committee**

March 11, 2021

By: Sharon Lipsh, Walsh County Highway Superintendent

**RE: Testimony in Support of S.B. No. 2208**

Good Morning Chairman Johnson and members of the House Agriculture Committee. Thank you for the opportunity to provide testimony on SB 2208. For the record my name is Sharon Lipsh and I am the Walsh County Highway Superintendent. I am here today to testify in support of Senate Bill 2208. However, I would like to advocate for the addition of a County Engineer or Highway Superintendent to the list of study committee voting members. It is my duty as highway superintendent to have roadways that are well maintained, have proper drainage and are safe for the traveling public.

My main concern is in regard to Water Regulation that stems from the maintenance and creation of legal drains and the impacts legal drains have on our roadway systems. Impacts include changes to inslopes and backslopes, changes to structures and installation of new structures in the roadways. Walsh County has approximately 25 legal drains being managed by the local water board. I have had various degrees of involvement with legal drains over my career with Walsh County. My role in these legal drains seems small to many involved but can have a big impact on landowners and my highway department budget, see example below:

Here's an example of how the oversight of a county highway engineer/superintendent can be of value to taxpayers: On a recent legal drain, that was very controversial, I was sent the set of plans to review for the box culverts that were going to be installed as part of the project. As the County Engineer/Superintendent I have knowledge in reviewing plans and was able to recommend changes to three box culverts. The changes recommended reduced the total length of box culverts installed by 122 feet. Due to this review the water board agreed to reduce two of the three box culverts saving 116 feet of box culvert length at an average cost of \$2,300 per linear foot (amount is from NDDOT average bid prices) that resulted in project cost savings of approximately \$267,000. These cost savings would not have been realized had I not been given an opportunity to review the plans. These cost savings don't include the savings realized from the reduction in engineering or site preparation.

Although I've been involved in legal drains during my career, my role has changed over the years with new water board members and my overall working relationship with the board. Not all water boards and highway departments agree on how things should be done which I understand because we have two different roles to fulfill. This is not because we don't want to communicate but the century code makes it difficult for us to agree. At one time, I was involved in the planning stages of legal drains and now I'm simply sent the plan set, after all meetings and votes have been held and am urged to simply go along with their engineers plans. When that doesn't happen, the relationship can be further diminished, see example below:

Another recent example is I was sent a set of plans for an approved legal drain only to see the water board was replacing a county bridge with two large culverts. This is a bridge the county highway department is responsible for; no input was solicited, and I had no say in the design or need. When I questioned the need for this replacement, I was simply told it was going to happen. The reason this is concerning is the current bridge is in poor condition, it is on a dirt roadway and it is only being used by vehicle traffic for limited time during the year. The Highway Department, with the support of the county commission, has developed a program identifying which bridges will be replaced or closed in the county based on protocols developed by the commission and townships. In this instance, the county would never consider replacing this crossing with large culverts. We would have explored a low water crossing or simply closed the road as it is a mile from a well-maintained, paved county road. These culverts will cost approximately \$29,000 plus installation and engineering and Walsh County will be asked to pay 40% of it.

Another issue that is important for Walsh County is if a legal drain is built through a county road, who has jurisdiction of the roadway over the legal drain after it's constructed? The water board believes they have jurisdiction over the road and our State's Attorney believes the highway department has jurisdiction, see the example below for the effect this can have:

An example of why this is a problem is we had a large legal drain culvert wash out on a county road during a major flood event. The water board wanted to complete a study of that culvert before fixing the roadway. It would have taken weeks to get that accomplished. Meanwhile there were residents and landowners who didn't have access to get in or out of their homes and property. Plus I was trying to get the remainder of the roadway passable and needed that location repaired so we could use it.

There are many issues with the current water board regulations, specifically in chapters 61-16.1. There are four different sections that outline the cost share of legal drains and who is responsible for what costs; some of them are contradictory. Some counties have agreements with their water boards that are completely different from those in century code and I believe the code should account for those agreements.

County water boards are appointed and typically consist of members with non-technical backgrounds. They make decisions and provide direction to their engineering team. My concern is the ability of water boards to perform technical reviews of plans pertaining to roadways and structures. As the Highway Superintendent/Engineer is ultimately responsible for roadways and structures, it is important they understand how to assure we have efficient, safe and economical projects. I'd like to see a requirement for highway engineers/superintendents to be part of the process BEFORE a vote on the drain occurs. Highway Departments and County Commissions have no oversight in these legal drain projects but are expected to pay 40% of the cost.

The reason for my testimony is to point out there is a need for this study. These situations I have spoken about are not unique to Walsh County. I know of several highway departments that have difficult working relationships with their water boards. One could say that this might be a communication issue between political subdivisions, water districts and or landowners. I would say this communication breakdown is facilitated by conflicting law, unclear roles, and sometimes merely the people involved. Regardless if this is a communication issue, or a law issue, if this study is meant to fix issues with the current century code, I believe it is important the interim committee is informed of what the issues are. I am very interested in serving on this study committee and I know legislation can be brought forward that all interested parties can live with.

I would like to thank you for your time and urge a do pass with the addition of a voting member from county engineers/highway superintendents.