

## Senate Bill 2324

Feb 12, 2021 9 am Revised for the House 3/8/2021

- Good morning, I am Sue Backer from Courtenay, ND. We are a farm family. I grew up on the farm that my family is now farming and farming is our livelihood.
- I am here today in regards to Senate Bill 2324. I am in favor of Senate Bill 2324 to amend Century Code 24-03-08, relating to installation of culverts.
- There have been two engineering studies done on our property showing that a larger culvert needs to be installed on a township road and still no action has been taken by our Township Board.
- My family and I are farming the land that I grew up on near Montpelier. This land has been farmed by my family since my grandfather homesteaded in the early 1900. There is a natural waterway that has flowed through this property every spring on its way to the James River since as long as any of us can remember. Usually by summer this waterway is dry. Seven years ago we began noticing that water was backing up along the township road that separates our farm land and our neighbor to the north. Our neighbor also noticed that the water was backing up on our side of the road. Here are some **aerial photos** that we took with our drone showing the conditions. We contacted our local township with our concern but they kept dismissing the problem as just an unusually wet spring, heavy rain runoff etc. and basically kept avoiding the issue. Every year since, the problem continued to get worse as the wet conditions continued and we lost more and more land that we were previously able to crop, yet our neighbor to the north's field conditions did not change drastically due to the wet conditions. We could physically see that the culvert and roadway was holding back the water that was coming through the natural drain. But our township officers told us that they could not put a bigger culvert in because culverts must be smaller the further upstream you get and if the culvert in question was replaced with a bigger culvert then they would need to replace all of the downstream culverts as well. That got us thinking, so we started to trace the waterway upstream and discovered that the upstream culverts were larger than our downstream culvert. We were elated to have found out that there was an explanation why our culvert was no longer handling the flow of water that was coming downstream. But that information did not seem to make a difference to our township board.
- On Aug 14, 2018, we finally filed a complaint of unauthorized construction of a dike or dam with the Stutsman County Water Resource Board. We were told it was a township issue and they do not have any control over a township road. We again contacted the Township in 2019 and they denied there was a problem so we hired Interstate Engineering to conduct a hydrology study (copy upon request) that backed our claim that the current 18" culvert needed to be replaced with at least a 30" culvert to comply with the stream crossing standards. Again, they denied our request.
- After even more research we discovered that the township could order their own ND State Engineer Stream Crossing Determination at NO CHARGE. They refused to request the report.
- We then contacted the Stutsman County Water Board and the Stutsman County Commission to help us with this issue and request a ND State Engineer stream crossing determination and was told it is a township issue and the only way we can get action is to hire an attorney at our expense and sue the township, which we did not want to do.

- So, in 2019 my mother paid her real estate taxes under protest and it was only then that we got the attention of the Stutsman County Commissioners. They requested the Stutsman County Water Board order a "FREE" stream crossing determination.
- On Feb 10, 2020 the request was made and on September 1, 2020 the Stutsman County Water Board received the determination (Copy of State Engineering Determination upon request) stating that a culvert needs to be installed that will carry 46 cfs, or cubic feet of water per second, which coincides with Interstate Engineering's determination. Stutsman County Water Board then forwarded the report to the township citing the Century Code and the township still took no action to correct the problem. In the meantime the township replaced the culvert in question on 8/20/2020 with the same size and not with the required size. I did text the chairman and informed him the state engineer's determination was in review and they had already received the independent study but the township still installed a new incorrect 18" culvert.
- My family has gone through many hoops to try and get a correct size culvert installed to no avail. Not to mention how frustrating this has been.
- We have now hired two attorneys which has cost us money besides paying for our own engineering report and still we have had no action from our township which leaves us no recourse except to sue at our expense. One of my attorneys has told me that the current law rewards the township for compliance but does not punish the township for **non-compliance**, so there is very little incentive for the township to comply with the law, and this makes it expensive to enforce the law against the township. I want the law to be enforceable and not put upon the tax payer to have to enforce the law or at least be able to recoup expenses incurred including attorney fees.
- That is why I am requesting that you support SB 2324 to change the language to make this an enforceable law that actually punishes townships for failing to comply with the law that is currently written. We are not asking to change the law in regards to Century Code 24-03-08 just to amend it so the tax payer has recourse to make the current law enforceable when the township will not obey the law and fulfill their duties as a township board. This is a mandated law in the books now we need to make the township perform their duties as the current law is written and amend it to make it enforceable. This would not be an unfunded mandate if the township complies with the current law it just makes them accountable. To suggest that we can vote out an elected official is not realistic in most townships due to the small population and the few people who are willing to serve.
- Do you have any questions?

Thank you for listening. I appreciate your time and consideration.



















