

**Testimony for SB 2208**  
**Presented to the Agriculture Committee**  
**January 28, 2021**  
**Jason Benson, Cass County Engineer**

Chairman Luick and members of the Senate Standing Agriculture Committee, I am Jason Benson, the Cass County Engineer, and I oppose Senate Bill 2208. I understand an update of Water Resource District (WRD) policies will positively streamline several WRD functions, I am concerned with several changes that will impact my County's ability to maintain or reconstruct bridges due to changes in the definition of "Maintenance" to be "repairing a structure or otherwise bringing a structure back to the structure's original design". This definition is a problem because Section 32 amends the North Dakota Century Code Section 61-16.1-45 to limit funding raised through drain assessment districts to be only used for maintenance. That means any project outside of the new definition of maintenance will need to go to a full assessment vote to receive funding.

In Cass County roughly 220 of our 500 bridge structures are constructed on legal drain crossings. Many of these bridges were built in the 1940s to 1970s. That means these are old structures designed to hold the trucks and farm equipment of the era when the bridge was built, not the semis and equipment of today. Currently the Cass County Highway Department works closely with all four of the WRDs in Cass County. We collaborate to coordinate drain projects and bridge projects to reduce duplicative efforts and maximize cost savings and to efficiently use local, state, and federal funding.

The Cass County Highway Department currently replaces around five bridge structures on legal drains every year. These bridge replacements may have the WRD as the lead agency or the Highway Department as the lead. When the Highway Department has the lead, we coordinate with the WRDs, design, bid, and construct the new bridge. We communicate with the WRD regarding the cost and work to ensure the best replacement structure is built at the best price. Most importantly, we rebuild the new bridge structure to meet current Federal Highway standards, to meet current geotechnical factors of safety, or to meet changes in hydrology. This often results in bridges being lengthened to meet geotechnical bank slumping issues or larger structures being replaced with a much cheaper concrete box culvert.

Based on the ND Century Code Section 61-16.1-43, the Highway Department picks up 40% of the bridge cost and we send a bill to the WRD for their 60% cost share. Currently the WRD pays their 60% cost share out of the drain assessment district maintenance fund. My experience is that most of our bridge replacements result in a significant improvement to the local landowners that are part of the WRD drain assessment district. This is because new structures eliminate load restrictions, are often wider, may eliminate guard rail or bridge rails, and provide a safer crossing of the drain.

Overall, the language of this bill leads to two key issues. The change in the definition of “Maintenance” and restricting the use of drain assessment district maintenance funds to only be used for maintenance projects. This will result in one of the following choices:

1. The County Highway Department rebuild the bridge, sends the 60% cost share to the WRD. The WRD spends \$10,000-\$30,000 taking this cost share to a new assessment vote for the bridge.
  - a. The assessment district is approved by the voters, and the WRD sends the Highway Department the 60% funding.
  - b. If the assessment district vote fails, then this bill doesn't provide a remedy for the County Highway Department to be reimbursed it's 60% resulting in the County Tax Payer picking up the cost of legal drain bridge that is designed for the legal drain, not the natural waterway that may have been there back before the drain was constructed.
2. Instead of sending the 60% bill to the WRD after the bridge is reconstructed, the County Highway Department may request the WRD to take the estimated cost to an assessment district vote. After the WRD expends \$10,000-\$30,000 for an assessment vote,
  - a. If the assessment is approved, the Highway Department would go ahead with construction.
  - b. If the vote fails, the County Highway Department would be left with the option of further restricting, closing, or removing the bridge.
3. The last option is to leverage the language of this bill to use maintenance funds by rebuilding the new bridge to the standards of the existing bridge. I have done this after a FEMA flood disaster where we had to reconstruct an old, wooden bridge to its pre-disaster condition and this, in my opinion, is a waste of taxpayers' money.

Overall, this change in the definition of “Maintenance” and the restricting the use of drain assessment district maintenance funds to only be used for maintenance projects will add administrative costs and result in the County Highway Department closing or removing old bridge structures.

The second reason I am opposing this bill is the elimination of using maintenance funds for clearing and snagging. Most of the clearing and snagging in Cass County occurs on the Wild Rice River and the Sheyenne River. Taking a clearing and snagging project to a vote would result in a vote of nearly all landowners in Horace, West Fargo, Fargo, and rural areas within the Southeast Cass WRD. The administrative cost of this size vote would be in the hundreds of thousands of dollars. In addition, I know that clearing and snagging projects are not very flashy, easy to explain projects, the fact that I would have to use my own personal time and money campaign for a “yes” vote, this type of vote would be a huge waste of taxpayers' dollars and would likely result in a “no” vote.

For years, the WRD has worked to conduct clearing and snagging along these rivers. The result has been to eliminate significant tree and debris build up on County bridges and portions of the river. This results in

reduced flood risk and reduced hydraulic scouring around bridges. When the ND Legislature limited State Water Commission funding of clearing and snagging in 2017 it had almost immediate impacts.

During the spring flood of 2019 there were several tree and debris jams along the Sheyenne River between Kindred and Horace that resulted in rapid rises on the river and breakout flows. The 2019 spring flood also piled massive amounts of trees and debris on a County bridge south of St. Benedict. When severe rain events occurred in the fall of 2019, runoff from these rains ran around the debris and scoured the west abutment causing over \$100,000 in damage. While we know the benefits of clearing and snagging, it does not seem an appropriate use of taxpayers' money to spend several hundred thousand dollars for local taxpayers to approve a \$50,000 clearing and snagging project.

I believe in being a good steward of the tax payers money and have been committed to developing projects that provide real cost savings such as our Cass County Highway Recycling and Reconstruction program that was awarded by the National Association of Counties for saving over \$12 million in construction costs over five years. I truly believe that communication and coordination between my Highway Department and the WRDs will continue to result in efficient use of taxpayers' money without wasting legal drain funds on taking these maintenance projects to a full assessment district vote.

Again, I oppose Senate Bill 2208 and I would be happy to talk more about these issues or address any questions you may have.