

March 1, 2023

Senate Energy & Natural Resources Committee
c/o Senator Dale Patten, Chair
State Capitol
600 East Boulevard Avenue Bismarck,
ND 58505

Re: House Bill 1462 – Opposition

Dear Chairman Patten & Senate Energy & Natural Resources Committee Members:

Thank you for the opportunity to submit this testimony in opposition to House Bill 1462. My name is Clifford Issendorf. I am a lifelong farmer in Bottineau County, a landowner, and currently the Bottineau County Water Resource Board Chair. I have served on the Bottineau County Water Resource Board for over 40 years.

H.B. 1462 adds four new requirements to every water resource board decision or order:

1. The Board (or its engineers or lawyers) must determine who is all affected by the decision or order and their last reasonably ascertainable address.
2. Prepare a notice directed to all persons affected by the decision or order, listing them by name.
3. Publish the notice once a week for three successive weeks in the newspaper.
4. Mail the notice no later than 14 days after the first publication.

The Bottineau County Water Resource Board can certainly understand why some landowners want to be specifically notified of water resource board decisions that impact them and their land. Fortunately, current laws already provide a way for those who want specific notice to request it without creating additional costs which will be passed down to taxpayers. If asked, a public entity must provide any requester with notice of meetings regarding topics of specific concern. The proponents of this bill only need to request notice in advance of all meetings at which decisions affecting his or her land will be made.

For example, the source of this bill was displeasure with a water resource board decision impacting land in the Sargent County Drain 11 assessment district. Current law allows landowners in that assessment district to request the water resource board notify them in advance of all meetings in which Drain 11 will be discussed. This avoids incurring additional expense to complete steps 1-4 above, which would ultimately be passed on to landowners in the Drain 11 assessment district. The requester need not attend every meeting of the water resource board. The requester will be notified of which meetings he or she should attend and can request a copy of minutes from those meetings. Speaking of meeting minutes, H.B. 1391, if passed, will require the water resource board to post or publish minutes within 10 days of a meeting, providing further easy access to information without burdening other taxpayers in the assessment district.

Proponents of H.B. 1462 do not think compliance with Rule 4 requires much additional effort, especially for new assessment projects where notices of public hearings are already required. The fact is that H.B. 1462 requires the board to do much more than is required under current law. Current law allows notice to landowners using the name and address as shown by the tax rolls of the county in which the affected

property is located and when there are multiple property owners, the tax rolls typically list just one name. Rule 4 requires that names and addresses of all landowners be listed in the notice, requiring much more research and effort by the water resource board and its consultants.

Worse, inadvertently missing the name of a landowner in the notice may result in the appeals period for a decision or order to never expire.

H.B. 1462 broadly applies to all decisions and orders, not just orders for new assessment projects. Water resource boards will need to complete steps 1-4 above on orders to repair existing projects, regardless of repair costs; orders to levy an annual repair assessment; and decisions on complaints regarding water-related issues, like noncomplying drains. These are all examples of water resource board decisions or orders in which Bottineau County landowners have not complained about lack of notice. Compliance with H.B. 1462 will impose thousands of dollars in new costs that will be passed on to landowners in assessment districts in some cases and to general taxpayers of the county's mill levy in others.

Because H.B. 1462 references Rule 4, we are concerned whether Rule 4(e)(7) applies. Rule 4(e)(7) allows an affected person to re-open a decision or order for litigation months or years after notice is mailed. If this is the case, how will purchasers of water resource district bonds react to H.B. 1462? Will they now shy away from bond purchases since there will be uncertainty as to whether the appeals period has expired?

I submit this written testimony to make record that the Bottineau County Water Resource Board is opposed to House Bill 1462. We urge the Committee to vote "Do Not Pass" on this bill.

Sincerely,

Clifford Issendorf
Board of Managers Chair,
Bottineau County Water Resource District