

The logo for the North Dakota Water Resource Districts Association is a dark blue silhouette of the state of North Dakota. Inside the silhouette, the text "North Dakota Water Resource Districts Association" is written in white, sans-serif font, stacked in four lines.

North Dakota Water Resource Districts Association

**Senate Energy and Natural Resources Committee
Hearing for S.B. 2118
January 16, 2025**

Testimony of Jack Dwyer on behalf of the ND Water Resource Districts Association

Chairman Patten and members of the committee, my name is Jack Dwyer, and I serve as the Executive Secretary of the North Dakota Water Resource Districts Association (WRDA).

N.D.C.C. 24-03-08, in its current form, provides an important tool for road authorities, water boards, and landowners. Under that statute, a road authority, water board, or majority of landowners may request the Department of Water Resources (DWR) to calculate the flow the stream crossing (culvert or bridge) would need to carry to meet North Dakota's Stream Crossing Standards. Once the DWR determines the design flow, the applicable road authority then has a duty to install a stream crossing of sufficient capacity to meet the design flow to permit the water to flow freely and unimpeded.

S.B. 2118 was identified as a "Red Tape Reduction Initiative" bill. Based on communications with the DWR, the main purpose of the proposal was to remove the DWR from the obligation of calculating the flow a stream crossing would need to carry to meet North Dakota's Stream Crossing Standards when requested by a road authority, local water board, or a majority of landowners. The idea was that the DWR would instead serve in a review capacity. Our group did not challenge the intent communicated by the DWR, but the wording of this bill as it stands today is problematic.

First, despite what I believe to be the intent from the Department, this bill would not reduce DWR's workload. Instead, the DWR's analysis becomes more complicated, in that it must first perform an analysis to determine whether the requesting party is "aggrieved." Most importantly, this bill effectively grandfathered all existing stream crossings (by replacing the words "has been or will be constructed" with "is newly constructed or reconstructed"). Lastly, this bill removes altogether the enforcement language that requires road authorities to satisfy the design flow determination, which renders the determination meaningless. In addition to not alleviating a workload issue, this bill will reduce the ability of locals to convey water through our road and ditch system.

The WRDA does recommend alternative language, which is attached to my testimony. This is a very straightforward proposal. This proposal would substitute the local water board for the DWR. In practice, when a road authority, water board, or majority of landowners requests a stream crossing determination, that request would instead be directed at the local water board. This would not only reduce the DWR's workload, but it would also

provide more local control. These determinations take the DWR months to compute, but local water boards would likely be able to turn these out within a few weeks, if not sooner. This amendment offers a process that is very similar to DWR's proposal for watercourse determinations set forth in [S.B. 2044](#), which this Committee reviewed this morning.

Additionally, WRDA's suggested language allows the DWR to serve in a review capacity if there is a disagreement with the determination made by the local water resource board. This provides an appropriate failsafe to resolve disputes. There is also language to allow for input from the Agriculture Commissioner for highways under the jurisdiction of the Department of Transportation, recognizing that appropriate water conveyance is a high priority for the agriculture community.

We believe that this alternative language meets the needs expressed by the DWR to reduce workload, offers the ability of local boards to provide this important information in a timely manner, and provides for a dispute resolution process if there are local disagreements. It is our hope that this language satisfies the concerns of all parties. We'd ask for your support of this amendment.

Thank you, Mr. Chairman. I'd be happy to stand for any questions.

PROPOSED AMENDMENT

24-03-08. Determinations of surface water flow and appropriate highway construction. Whenever and wherever a highway under the supervision, control, and jurisdiction of the department or under the supervision, control, and jurisdiction of the board of county commissioners of any county or the board of township supervisors has been or will be constructed over a watercourse or draw into which flow surface waters from farmlands, the ~~department of water resources~~ water resource district, upon petition of the majority of landowners of the area affected or at the request of the board of county commissioners, township supervisors, or a water resource board, shall determine as nearly as practicable the design discharge that the crossing is required to carry to meet the stream crossing standards prepared by the department and the department of water resources. When the determination has been made by the ~~department of water resources~~ water resource district, the department of transportation, the board of county commissioners, or the board of township supervisors, as the case may be, upon notification of the determination, shall install a culvert or bridge of sufficient capacity to permit the water to flow freely and unimpeded through the culvert or under the bridge. The department, county, and township are not liable for any damage to any structure or property caused by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the department of water resources.

A person aggrieved by a stream crossing determination made by a water resource district may request the department of water resources review the determination of the water

resource district. Upon request, the department of water resources shall review the water resource district's determination and determine as nearly as practical the design discharge that the crossing is required to carry to meet the stream crossing standards. In the case that a determination of a design discharge has been made impacting a highway under the supervision, control, and jurisdiction of the department of transportation, the director of the department of water resources and the director of the department of transportation shall consult with the agriculture commissioner on the request by the aggrieved party. A person aggrieved by a department of water resources determination may file an appeal under section 61 - 03 - 22.