



Eric Volk, Executive Director

ND Rural Water Systems Association

In Opposition of House Bill 1537

House Political Subdivisions Committee

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Chairman Longmuir and members of the House Political Subdivisions Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. We work with the state's small and rural water/wastewater systems to help increase their technical, managerial, and financial capacity. Today, I am submitting testimony opposing House Bill 1537, which seeks to make 180-degree changes to N.D.C.C. § 6-09.4-22.

Background of State and Federal Laws

North Dakota statute N.D.C.C. § 6-09.4-22 (SB 2086) was overwhelmingly approved by the Legislature in 1997 to protect state government lenders who have loaned money to a North Dakota rural water district and to protect rural communities. The statute prevents neighboring municipalities from taking the collateral pledged to secure the loan (such as taking or encroaching into the territory where the water district provides water service or has made water service available). Loss of territory results in a loss of customers and a loss of the source of revenue to repay loans. Loss of customers and territory also deprives rural residents of the "economy of scale" the statute was intended to create. SB 2086 intent was also "*to encourage rural development by providing a safeguard for the viability and financial security of the rural water system being financed*" (Tom Tudor, Municipal Bond Bank who was the Sponsor of SB 2086).

The North Dakota statute is remarkably similar to a federal statute (Title 7, United States Code, § 1926(b) adopted in 1961). The federal statute was designed to protect the interests of the United States

Department of Agriculture (“USDA”), which loans money to water districts nationwide. The purpose of 1926(b) is to:

1. Encourage Rural Development
2. Spread fixed costs over a large group of users (create an economy of scale)
3. Prevent rural water costs from becoming prohibitively expensive to any particular user
4. Provide fresh and clean water to rural households
5. Protect the federal government as the insurer of the loan

It was evident that the North Dakota Legislature intended to accomplish the same purpose and protection in the state statute that 1926(b) accomplished. SB 2086 testimony also stated, *“This same protection is currently provided under federal law with respect to loans made by USDA Rural Development (formerly FmHA).”*

State Lender Participation in Agreements

It was also very clear through the testimony of the sponsor of SB 2086 that the lending agency must be a party to any agreements between the two political subdivisions, *“SB 2086 expressly prohibits any curtailment or limitation of any Bond Bank-financed services as a result of annexation of all or part of the service area as long as the Bond Bank debt is outstanding unless the two political subdivisions, together with the Bond Bank, negotiate an agreement with respect to payment to the Bond Bank.”* The effect of this bill is to provide financial security for the Bond Bank with respect to loans made to finance facilities providing services as described above Subsection 2, line 21 strips that authority from the lending agency. The current law is designed to preclude/prevent a water district and a municipality from entering into agreements that might impair repayment of the loan, such as the water district selling its territory (which is the bank’s collateral) and leaving the lender uncollateralized or inadequately collateralized. The agreement would be invalid and unenforceable if the public finance authority did not sign off on (approve) the agreement was also removed. There is a similar provision under USDA (Federal) regulations. Also removed in this subsection are the safeguards the agreement must include to ensure that any outstanding bonds issued to fund the loan are secure and paid on time.

Subsection 2 entirely removes the power from the public finance authority to provide financial security for the State with respect to loans made to political subdivisions. The public finance authority or state agency must fully participate in the agreement to ensure the loan is protected and repaid properly.

Subsection 3 is a newly proposed section of law. The new language would mean that only the public finance authority or the state agency that provided the financing has the right to enforce the rules and provisions mentioned in subsection 1 (summary of service area protection). Water districts would have no right to take legal action or make claims based on this subsection. This makes no sense since the statute was designed to benefit the lender, the water district, and rural residents. If your service territory is being limited or restricted, you have no right to defend yourself. The newly proposed subsection 3 is precisely the reverse of what happens under Title 7, United States Code, Section 1926(b) (which is worded almost identically to 6-09.4-22). Federal regulations place the burden of enforcement of the water districts' protection from municipalities seeking to take the water district's customers/territory on the water district, not on the lender. The water district can always re-pay the loan since all it needs to do is increase rates sufficient to produce the required capital – but that is highly detrimental to the interests of rural residents. This right to defend your service area must remain with the water district.

Retroactive Application

Section 2 of HB 1537 attempts to retroactively apply the proposed changes to July 31, 1997. This section is very concerning and problematic. We are here today because of the issues surrounding the East Central Regional Water District and the City of Grand Forks. The retroactive application appears to be an attempt by the City of Grand Forks to change the ND Supreme Court's recent opinion on this matter. The Supreme Court's opinion can be read by following the [link](#). If the Legislature changes the law and makes the law retroactive, an end run on the ND Supreme Court's decision could be made by asking the Federal Court to ignore the previous decision as inapplicable due to the change in the law.

Summary

There are valid reasons for the franchise protection laws. Several early contracts did not have a complete understanding of state and federal protection laws. Many of these contracts allowed the cities to ‘buy out’ an annexation area served by the rural water system. The problem with that is the areas next to metropolitan areas are the cheapest users to serve – high density water users with very little infrastructure between users. So, these agreements the water districts entered into would give away their best revenue-generating areas by contract, unbeknownst to the state or federal lenders. There is a good reason to have the franchise protection laws in place.

HB 1537 seeks to change state law by removing certain rights of rural water districts, ultimately adversely affecting rural water users across the state. HB 1537 also removes authority from the public finance authority to provide financial security for the State concerning loans made to political subdivisions. We strongly oppose HB 1537 and respectfully request a Do Not Pass recommendation.

Thank you for allowing me to provide opposing testimony on behalf of the NDRWSA. If you have any questions, please contact me at ericvolk@ndrw.org.