

Thank you for the opportunity to give my testimony. These remarks are regarding the recent amendments to the bill presented by Senator Paulson.

We have discovered that Water Districts exist in a legal grey area. Water Districts hold immense power. The few laws that govern them are vague and there is almost no oversight authority, especially when it comes to elections. This bill makes small changes that will ensure that citizens of rural ND have the ability to hold fair elections.

I urge a **DO PASS** for SB 2299.

Water Districts are political subdivisions created under Century Code 61-35. The chapter governing all the business of Water Districts is only about 30 pages long. In those pages is their election law. Water Districts are political subdivisions of the State, but their elections are not conducted like county and city races on a local ballot in June or November. Water Districts hold annual meetings, like a co-op would.

The election laws in Century Code 16.1 that apply to almost every other political race in North Dakota do not apply to Water Districts. The county auditor and the Secretary of State do not have oversight authority of their elections or annual meetings.

The State Auditor, under Section 54-10 has oversight authority over almost all the public funds in the State, except for Water Districts. Water Districts generate millions of dollars of public revenue each year, and provide an essential life substance to thousands of North Dakotans. The current law gives the State Auditor oversight for almost all other critical water infrastructure, such as Water Resource Districts, the Garrison Diversion Conservancy District, Irrigation Districts, the Southwest Water Authority, and the Western Area Water Supply Authority, but not Water Districts.

North Prairie Members had election concerns of varying degrees at the annual meetings held in 2021, 2023, and 2024. We have learned that there is no one in North Dakota government to turn to when the election rules in Century Code 61-35 are not followed, or the laws are liberally interpreted; not the Secretary of State, the Attorney General, the State Auditor, the Water Commission, the State Engineer, nor the Board of Ethics.

The election issues came to a crux in 2024 when North Prairie Regional Water District hired an attorney from Vogel Law to control the direction of the meeting, limit public participation, and limit who could be elected to the board. The attorney started months in advance by drafting a Code of Conduct for the board, which included a provision that is against free speech, open meeting laws, and single party consent laws enshrined in ND century code and the ND constitution. When an otherwise eligible candidate would not agree to sign the document, 2 of the 3 people on the Nominating Committee refused to put his name on the ballot.

The attorney's opinion is that

“the District’s Nominations Committee is to act as a gatekeeper to protect the well being of the District. Besides verifying that all potential nominees meet the requirements in the Bylaws, and that all potential nominees are willing to serve, the committee also should nominate only people who the Committee believe will help further the best interests of the District and its Participating members. I [Monte Rogneby] have found nothing in North Dakota law which requires the nominations Committee to nominate all potential nominees who qualify to serve. As noted in Robert’s Rules, (Section 46:11) “it is not common for the nominating committee to nominate more than one candidate for any office.””

It is the attorney’s opinion that ND law does not have any limits on the authority of a nominating committee to accept or reject potential nominees.

At the 2024 annual meeting, NPRWD did not call for nominations from the floor. Some members wrote in the name of the candidate of their choosing on the ballot, and those votes were not counted.

This amendment is an emergency, because the North Prairie Attorney has indicated they will use the same playbook as last time – the nominating committee will choose the one person they wish to put on the ballot, which will almost certainly be the sitting Chairwoman, who also appointed all the members of the nominating committee. Our election is in June and we need to be able to hold a legitimate election for our representatives in 2025.

Some members of North Prairie wish to see a change in leadership, but will never be given the chance to do so if only one person is ever selected by the nominating committee and allowed on the ballot.

This is not an isolated problem. Vogel Law is the NPRWD attorney, and they have indicated they have other Water District clients as well. What has worked before, will certainly be used again.

This bill makes 2 simple changes that will benefit all Water District users.

- 1) It gives oversight authority of funds to the State Auditor and sets a reasonable petition guideline if an audit of the members is requested.
- 2) It ensures the fundamentals of ND election law are enshrined in Century Code 61-35 governing Water Districts.

Thank you for giving me the opportunity to speak on this bill.

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Disclaimer: I am a Board Member of NPRWD, but the opinions expressed in this letter are my own, and in no way reflect the opinion of the other NPRWD board members.