

1999 HOUSE AGRICULTURE

HB 1248

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1248

House Agriculture Committee

Conference Committee

Hearing Date 1-21-99

Tape Number	Side A	Side B	Meter #
ONE HB 1248		x	03-to 20.6
Committee Clerk Signature <i>Arden Haner</i>			

Minutes:

Bill Summary: Relating to drainage of sheetwater.

Arden Haner: Ward County Water Resource board. Testifying on behalf of State Water Resource board. Sheetwater is defined as being shallow water from any source that floods land not normally subject to standing water. Sheetwater usually occurs in abnormal weather conditions.

Rep Dekrey: Changed law in 95 or 97 I believe and inadvertently removed definition of sheetwater and ability to drain sheetwater out of the law. What this bill does is put law back to what it originally was.

Rep Mueller: I know we have definition of Sheetwater, are you satisfied with this definition?

Aden Haner: Yes this was the same as before 97 and we were satisfied with that.

Jim Harmon: Pres ND FB, in favor of HB 1248 want some consistency and common sense with law. Not uncommon for some farmers have \$1200 per acre into crop then this happens.

Page 2

House Agriculture Committee

Bill/Resolution Number Hb 1248

Hearing Date *Click here to type Hearing Date*

Bill Pfeifer: North Dakota Chapter of the Wildlife Society. Doesn't oppose bill but would like to an amendment. Page 2 line 5, after shallow water include "in those non depressional areas that does not include wetland habitat"

Gary Puppe. Does not oppose bill.

Mark Gate: In favor of bill.

Wes Tossett: Landowners Assoc., in favor of bill.

Opposition: Dave Spry, State Water Eng and State Water Commission. Opposed to bill. State law in permissive enough. (Testimony attached)

Motion by Rep Renner for Do Pass Second by Rep Mueller motion carried.

Yes 13 No 1 Absent 1

Rep Stefonowicz carry on the floor.

Date: 1-21-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1248

House Agriculture Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Renner Seconded By Rep Mueller

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chaiman	✓		Bob Stefonowicz	✓	
Dennis E. Johnson, Vice Chm	✓				
Thomas T. Brusegaard	✓				
Earl Rennerfeldt	✓				
Chet Pollert	✓				
Dennis J. Renner	✓				
Michael D. Brandenburg	✓				
Gil Herbel	✓	✓			
Rick Berg	0				
Myron Koppang	✓				
John M. Warner	✓				
Rod Forelich	✓				
Robert E. Nowatzki	✓				
Phillip Mueller	✓				

Total (Yes) 13 No 1

Absent 1

Floor Assignment Rep Stefonowicz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 25, 1999 2:11 p.m.

Module No: HR-15-1126
Carrier: Stefonowicz
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1248, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends **DO PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed HB 1248 was placed on the Eleventh order on the calendar.

1999 SENATE NATURAL RESOURCES

HB 1248

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1248

Senate Natural Resources Committee

Conference Committee

Hearing Date February 12, 1999

Tape Number	Side A	Side B	Meter #
1	x		0-5310
1	x		341-1115
Committee Clerk Signature <i>Sylvia A. Hagen</i>			

Minutes:

SENATOR TRAYNOR opned the hearing on HB1248: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 61-32-03 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO DRAINAGE OF SHEETWATER.

MIKE DWYER, ND Water Resource Districts Ass'n. testified in support of HB1248. This bill includes what the law said before. (See attached proposal)

SENATOR HEITKAMP asked if the permit would be for lands that don't involve federal.

MIKE DWYER replied each farmer is responsible to deal with the federal government on its own. This does not affect federal.

SENATOR HEITKAMP asked why the Water Resource Districts want to shirk their responsibility and put it on the State Engineer and the Game and Fish Dept.

MIKE DWYER replied there is no requirement in the law for mitigation.

SENATOR HEITKAMP asked if we are going to change the law to look at drainage, shouldn't that be handled at the local level by the Water Resource Districts, rather than going to the State Engineer or Game and Fish Dept.

MIKE DWYER replied we are not changing the law in terms of permits. The Water Resource Districts would still have to issue their permits.

SENATOR HEITKAMP asked aren't we changing the law in regard to permits because now we are not going to have to go to one.

MIKE DWYER replied this does not change the permit law.

SENATOR HEITKAMP asked if nothing happens, and the irrigators want to do this, they will have to get a permit.

MIKE DWYER replied yes. Under current law, anyone that wants to drain more than 80 acres as to go to the Water Board. That still is in place and will not change. That permit also goes to the State Engineer and is in place and will not change.

SENATOR HEITKAMP stated if SB2432 passes, and this bill passes, we have circumvented the permit process in relation to this and the State Engineer is the one dealing with the permit on the type of grounds you are talking about.

MIKE DWYER replied SB2432 only deals with consolidating wetlands so that bill, if it were to pass, would provide situations where a permit would not be required. For drainage, where you are not consolidating wetlands, but where you are actually draining, you still have to get a permit under the old law and if all of these bills pass.

SENATOR TRAYNOR asked if we adopt this amendment, will the bill work in conjunction with SB2432, assuming that passes.

MIKE DWYER replied this amendment would not affect SB2432 and would not affect this bill.

It is a totally separate thing, whether you have to have a permit or not, an irrigator could go to the State Engineer and Game and Fish director and ask them to work with the irrigator who wants to drain and mitigate.

SENATOR TRAYNOR asked under what circumstances would an irrigator need a permit.

MIKE DWYER replied you need a permit under the current law. The local Water Resource Board has to approve it and the State Engineer, if you want to drain more than 80 acres.

ARDEN HANER, Ward Co. Water Resource Board and ND Landowners Ass'n testified in support of HB1248. Sheetwater is caused by an abnormal weather condition. There's a fantasy that farmers cannot manage their land and someone else has to come in and manage it. Farmers do well, planting crops, planting trees, raising wildlife, among many other things. If you can try to prevent the regulation on sheetwater and manage the flow with each Water Resource District on its own, this is the best scenario.

GARY PUPPE, ND Ass'n of Soil Conservation Districts testified in support of HB1248. The intent of the bill is to provide flexibility for farmers to protect their crops.

SENATOR REDLIN asked about sheetwater being that which extends around a permanent slough, so you feel you shouldn't need a permit to drain off enough water in that slough to get it back to its normal boundaries.

GARY PUPPE, replied if it affects cropland the majority of the years, there ought to be a flexibility of the landowner to not have to have a permit.

SENATOR REDLIN stated the local resource district and the farm program committee has to be involved in this some way when you get a multiple group of neighbors who are all going to be affected. This bill allows the farmers to do as they wish without a permit.

WES TOSSETT, Bottineau Co. testified in favor of HB1248. Most sheetwater is ½ to 1 inch deep, and are small areas. If a farmer can himself out, without getting in trouble with the regulators and if the farmer is going to go wholesale on this, then there are recourses. The average farmer in the average situation wouldn't have any trouble and would not impact adversely on anybody.

SENATOR TRAYNOR stated the bill says sheetwater means shallow water. Do you interpret that to mean an inch or inch and a half.

WES TOSSETT, replied there is natural drainage on most land in ND, but every now and then due to various rare events, you do have instances where you drain this sheetwater into wetlands that may be of your own that could hold 10 times what you are going to drain into it.

KEN BERTSCH, ND Farm Bureau testified in support of HB1248 as it reads and prefer that it not be amended.

SENATOR TRAYNOR asked does HB1248 restore the law as it used to be.

KEN BERTSCH replied it references back to no net loss. That deserves its own discussion and own bill.

BILL PFEIFER, ND Wildlife Ass'n testified neutral on HB1248 because we think this decision should be made to people knowledgeable about sheetwater and to the State Engineer. (See attached testimony) We are requesting an amendment as stated in the testimony which would give a very distinct description of sheetwater. Only the water on the top could be drained off. If

the intent is to just take the sheetwater, this shouldn't hamper that operation at all. To help keep people out of the court system we believe the definition of sheetwater should be included so there is no doubt as to what is sheetwater so everyone is playing by the same rules.

SENATOR TRAYNOR stated some of the witnesses said that sheetwater would be created if you had a slough with clearly defined boundaries and you had a large rain so the slough expanded onto cropland, how would that tie in with your definition.

BILL PFEIFER replied if it is in the stubble it isn't going to be in the wetland depression, and that would be a nondepressional area.

PAUL CRARY, Cass Co. Wildlife Club testified in opposition to HB1248.

DAVID SPRYNCZYNATYK, State Engineer testified in opposition to HB1248 and recommended a DO NOT PASS. (See attached testimony)

SENATOR REDLIN asked isn't it difficult to define sheetwater.

DAVID SPRYNCZYNATYK replied it is difficult. The interpretation in my testimony is what has been used by the State Engineer office and by most Water Resource Districts, because the districts will contact the State Engineer office so the definition is relative.

SENATOR TRAYNOR asked if there is an objection to the definition on line 6, page 2, shallow water from any source.

DAVID SPRYNCZYNATYK replied no. The heart of the definition is shallow water that floods land, not subject to standing water. The source is insignificant. The only problem is with the line before where it states that a permit is not required to drain sheetwater.

SENATOR TRAYNOR closed the hearing on HB1248.

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Senate Natural Resources Committee
Bill/Resolution Number Hb 1248
Hearing Date February 12, 1999

COMMITTEE ACTION-March 4, 1999-(Tape 1, Side A, Meter# 341-1115) SENATOR

FISCHER moved for a DO NOT PASS, seconded by SENATOR HEITKAMP. Roll call vote indicated 4 YEAS, 2 NO, 0 Absent and not voting. SENATOR FISCHER volunteered to carry the bill.

Roll Call Vote #: 1

Date: 3-4-99

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1248

Senate Natural Resources Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number DO NOT PASS

Action Taken _____

Motion Made By Fischer Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr		✓			
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann		✓			
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Fischer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 4, 1999 4:39 p.m.

Module No: SR-39-4078
Carrier: Fischer
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1248: Natural Resources Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1248 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

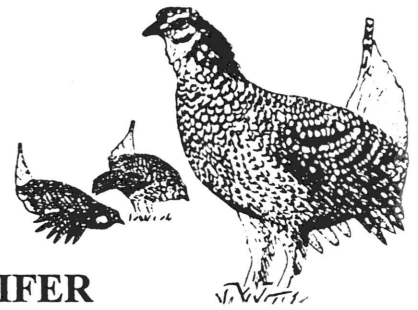
HB 1248



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF WILLIAM K. PFEIFER
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO THE HOUSE AGRICULTURE COMMITTEE
ON HB 1248, JANUARY 21, 1999**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Bill Pfeifer, I'm speaking on behalf of the North Dakota Chapter of The Wildlife Society, an organization of several hundred professional natural resource managers having biological and resource backgrounds.

The Chapter of The Wildlife Society has no major problem with HB 1248 as it relates to the drainage of sheetwater. We do, however, suggest inserting a sentence which does not change the intent of the Bill, but more clearly defines the word "sheetwater".

On page 2, line 5, after the words "shallow water", insert the phrase "in a nondepressional area that does not include wetland habitat." This sentence is consistent with the definition of sheetwater that has been in North Dakota drainage law for many years. It also helps landowners to avoid possible conflicts with Federal wetland regulations.

The Chapter believes that without a clear definition of what is sheetwater, there will be a multitude of conflicts between local landowners, County Water Resource Districts, the State Engineer's office and the federal agencies that also deal with wetland issues. By adding this phrase, we believe the definition of sheetwater and the intent of this legislation will be much clearer.

Thank you for the opportunity to present our suggestions.

Proposal

1. Irrigators want to eliminate, not consolidate wetlands - irrigators want to drain cultivated land that is being irrigated.
2. Irrigators are willing to mitigate this drainage, because of the costly consequences of not draining irrigated land.
3. Irrigators would like to have both the State Engineer and the Game and Fish Director approve proposed mitigation, to make sure it is supported by both sides.
4. This is not a requirement, there are no rules, permits or restrictions. It is strictly voluntary.

New Section to Drainage Law

Wetlands Mitigation. Any person or irrigation district may apply to the State Engineer and the Game and Fish director to mitigate wetlands which are drained or adversely affected by irrigation development.

SB 2432 was introduced as an irrigation drainage bill, but it does not address the irrigation issue. Since SB 2432 is supported by farm groups, irrigators do not want to interfere with SB 2432. Thus, the above language would be added to another bill or introduced as a delayed bill, so that SB 2432 can be supported separately.



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF BILL PFEIFER
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO THE SENATE NATURAL RESOURCES COMMITTEE
ON HB 1248, FEBRUARY 12, 1999**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Bill Pfeifer, I'm speaking on behalf of the North Dakota Chapter of The Wildlife Society, an organization of several hundred professional natural resource managers having biological and resource backgrounds.

The Chapter of The Wildlife Society has no major problem with HB 1248 as it relates to the drainage of sheetwater. We do, however, request an amendment be made by inserting a sentence which does not change the intent of the Bill, but more clearly defines the word "sheetwater".

On page 2, line 5, after the words "shallow water", insert the phrase "in a nondepressional area that does not include wetland habitat." This sentence is consistent with the definition of sheetwater that has been in North Dakota drainage law for many years. It also helps landowners to avoid possible conflicts with Federal wetland regulations. *Bill is not certain about this.*

The Chapter believes that without a clear definition of what is sheetwater, there will be a multitude of conflicts between local landowners, County Water Resource Districts, the State Engineer's office and the federal agencies that also deal with wetland issues. By adding this phrase, we believe the definition of sheetwater and the intent of this legislation will be much clearer.

If this Bill passes, it would take a degree of oversight away from the County Water Resource Districts.

Thank you for the opportunity to present our suggestions.

TESTIMONY ON HOUSE BILL 1248

Senate Natural Resources Committee

**David A. Sprynczynatyk, State Engineer
and Secretary to the State Water Commission**

February 12, 1999

Mr. Chairman and Members of the Committee, my name is David Sprynczynatyk. I am the North Dakota State Engineer and Secretary to the State Water Commission.

House Bill 1248 amends section 61-32-03 of the North Dakota Century Code relating to drainage permits. This would change current law so as to not require a permit to drain sheetwater under any circumstances. Current law defines sheetwater as "shallow water that floods land not normally subject to standing water." Because of the potential for downstream impacts as a result of uncontrolled drainage, I recommend a "do not" pass on House Bill 1248.

It is important to understand fully the definition of sheetwater and to appreciate fully the potential impact the drainage of sheetwater has to downstream areas. The sketch attached to my testimony shows both an area of a wetland and sheetwater. The darker area is a normal wetland, or low-lying area, holding water. After a heavy rainfall or after spring runoff, the land adjacent to the normal wetland can be flooded and covered by sheetwater; shallow water that floods land not normally subject to standing water. Although draining just the fringe area of sheetwater may not in itself cause a downstream impact, the consequence of draining the sheetwater area is that all of the water above the normal wetland area is also drained. This greater volume of water resulting from unpermitted drainage can potentially cause downstream impacts.

This bill would allow for uncontrolled drainage of sheetwater. Current law requires a drainage permit any time anyone proposes to drain a wetland with a watershed of more than 80 acres. This limit was set years ago, and is recognition that a watershed of 80 acres or more can cause downstream impacts and thus should be controlled. This is a reasonable limit.

In cases where drainage of sheetwater consists of large quantities of water, considerable damage to downstream landowners and roads could occur. Such releases could also increase impacts to areas already under extreme pressure from excess waters. Without proper control of released water, excessive flooding may occur across a larger area and result in a greater economic loss from flooding, particularly in communities.

The 1997 Legislature authorized the State Engineer to grant temporary emergency drainage permits in areas of temporary flooding. With this authorization, the Office of the State Engineer has issued temporary emergency permits; in some cases, in a matter of hours. In other instances, because of downstream concerns, permits have been denied.

If House Bill 1248 becomes law, downstream landowners adversely affected by drainage of sheetwater would have to bring a court action to stop the drainage. Under current law, if the watershed of the area drained exceeded 80 acres, a landowner adversely affected could appeal to the water resource district or the State Engineer for relief. This would be less expensive than going to district court. From past experience, these cases have been lengthy, complex and expensive because of the factual matters that must be proved. This expected cost may prevent some landowners from bringing action against someone adversely affecting their property.

Finally, I believe it is fair to treat all drainage of water equally and fairly. If the watershed of any proposed drainage exceeds 80 acres, then it is appropriate to require a permit from the state.

I would ask your consideration for a "do not" pass on House Bill 1248.

