

2009 SENATE NATURAL RESOURCES

SB 2316

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2316

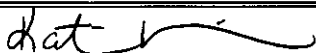
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8772

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the hearing on SB 2316, to provide state cost-sharing for flood control projects. All the committee members were present.

**Senator Tom Fischer**, District 46 Fargo, introduced the bill (see attached testimony #1).

**Representative Chuck Damschen** district 10, voiced his support for the bill. Also, submitted an amendment (see attachment #2).

**Senator Triplett** asked what the cost share policy for the State Water Commission is now.

Representative Damschen replied it is 35%.

**Robert Thompson**, member of State Water Commission, spoke in favor of the bill (see attached testimony #3.)

**Jeffery Volk**, President and CEO of Moore Engineering, Inc, spoke in favor of the bill (see attached testimony #4).

**Senator Hogue** asked if the Water Commission had the discretion to vary from the 50% standard. Can you give us an idea of what percent of the total cost are the administrative and attorney fees?

**Jeffery Volk** yes it is in policy for them to vary from the 50 % standard. The flood control projects tend to take larger tracks of land to get them constructed. The costs of the projects vary with each one and they have relatively high land costs and add they up fast.

**Senator Triplett** asked Jeffery to elaborate more on point 2 of his testimony.

**Jeffery Volk** the general trend is to try to reduce the cost share available for the projects that they (water districts) support. It is becoming more and more difficult to get projects approved and to continue to get a reasonable cost share for them. It continues to change so it is difficult to tell where you will be from one project to the next.

**Dale Frink**, North Dakota State Engineer, spoke in opposition to the bill (see attached testimony #5). We have the 35% for flood control for many years. The Water Commission is in the process of reviewing our cost share policies. We do fund land, but on a case by case bases. One of the issues we have deals with the engineer costs. We have been looking at ways to make things more stable.

**Senator Hogue** the sponsor of the bill said the fiscal note was not accurate and it is intentionally inaccurate because you want to kill the bill and I want to hear your response to that comment. Secondly, we heard that you do not cover land costs and legal fees and I would like to hear the rationale behind that.

**Dale Frink**, fiscals notes are based on assumptions. The bill is written for flood control projects and right now we have the Fargo South project. It is a \$160,000,000 project and \$150,000,000 of it is non federal. \$23,000,000 is what we would be paying for that project. We cover land costs on a case by case base. The legal fees are an issue with the Attorney General's office.

The Attorney General represents the State Water Commission and if you get into a dispute with the Water Resource District you end up funding both sides.

**Senator Triplett** you said in some of your projects you had engineering costs as high as 40%.

Are you suggesting 40% of an entire project or 40% of what?

**Dale Frink** we have had some cases where the total cost of the project is 40% engineering or higher.

**Senator Triplett** is there a situation where that seems justified to you?

**Senator Lyson** closed the hearing on SB 2316.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2316

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8824

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the discussion on SB 2316, to provide state cost-sharing for flood control projects. Senator Fischer gave me an amendment and told me that the water department is in agreement with it.

**Senator Triplett** This sets up false expectations because it says we recommend the water department to pay, not that they have to or will pay.

**Senator Hogue** I agree, I don't think legislative bodies make recommendations. They pass laws. They direct the executive branch or judicial branch to implement certain laws. The legislative assembly should not be in the business of making recommendations except through resolutions.

**Senator Schneider** it is a good point that legislatures don't make recommendations. This is not the place to make a recommendation either. This is a benign change; it may somehow serve as guidelines for these local leaders coming to the Water Commission for funding.

**Senator Lyson** asked Dale Frink for his opinion on the amendment.

**Dale Frink** I don't especially like the bill in general. As long as the amendment uses terms like recommends and not shall, I can live with it. It changes the language from flood control, which is very broad, to just water retention. We work closely with water coalition and try to allocate

the money to keep everyone pleased. This bill says to forget all that. It is an indication to the Water Commission. We have a cost share policy that states how much we give and you're pulling one of those items out and setting it for us, but you have that right.

**Senator Triplett** so you would interpret this recommendation as a policy change in the sense saying that flood control would have priority in every case over water supply.

**Dale Frink** no, I think recommended would mean something that the Water Commission should strongly consider.

**Senator Triplett** if we just killed this bill you would still consider that you have flexibility for alternating the policy on a case by case bases on any of these types of projects?

**Dale Frink** absolutely, I told Mr. Thompson that the Water Commission could do that and he indicated that he was a minority on the Water Commission. We do have nine Water

Commissioners so every one of them would be a minority. For the most part we give a lot of unanimous votes. The people from the east have a little higher priority for flood control and the west has a higher priority for water supply. We have never had a water retention project presented to us asking for 65%.

**Senator Triplett** recommends a Do Not Pass on the amendment.

**Senator Erbele** seconds the motion.

Voice vote was taken. The motion received a Do Not Pass on a vote of 7 to 0.

**Senator Triplett** moved a Do Not Pass on SB 2316

**Senator Erbele** seconds the motion.

The bill received a Do Not Pass on a vote of 5 to 2.

**FISCAL NOTE**  
**Requested by Legislative Council**  
04/23/2009

Amendment to: Engrossed  
SB 2316

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed Senate Bill 2316 with Conference Committee Amendments requires the State Water Commission to develop policies, including cost-sharing guidelines, which further the development of water retention projects for flood control and report back to the next Legislative Assembly.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill has no material fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	David Laschkewitsch	<b>Agency:</b>	ND State Water Commission
<b>Phone Number:</b>	328-2750	<b>Date Prepared:</b>	04/23/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/10/2009

Amendment to: SB 2316

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This amended bill recommends the Agency change the current cost share policy for water retention projects to a 65 percent cost share. It also mandates that eligible cost share expenses include legal fees, engineering fees and acquisition of land.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The difference between the current cost share policy and the recommended percentage contained in Senate Bill 2316 applied to the future projects identified in the State Water Plan are estimated to increase the cost share by \$17,247,750 over the next two biennium. Existing agency cost share policy does not include cost share on land and legal whereas the recommended language does. Because the language in the bill does not mandate the 65 percent cost share the actual fiscal impact is unknown.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	David Laschkewitsch	<b>Agency:</b>	ND State Water Commission
<b>Phone Number:</b>	(701) 328-2750	<b>Date Prepared:</b>	02/10/2009



# FISCAL NOTE

Requested by Legislative Council

01/26/2009

**REVISION**

Bill/Resolution No.: SB 2316

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>				\$43,384,260		\$43,384,260
<b>Appropriations</b>						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill changes the Agency developed cost share policy reimbursement percentages to a statutory 65 percent cost share for all flood control projects.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This is the difference between the current cost share policy and the percentage contained in Senate Bill 2316 applied to the future projects identified in the State Water Plan. The agency cost share policy does not include cost share on land and legal whereas the statutory language does.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	David Laschkewitsch	<b>Agency:</b>	ND State Water Commission
<b>Phone Number:</b>	(701) 328-2750	<b>Date Prepared:</b>	01/26/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/20/2009

Bill/Resolution No.: SB 2316

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>				\$43,384,260		\$43,384,260
<b>Appropriations</b>						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill changes the Agency developed cost share policy reimbursement percentages to a statutory 65 percent cost share for all flood control projects.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This is the difference between the current cost share policy and the percentage contained in Senate Bill 2317 applied to the future projects identified in the State Water Plan. The agency cost share policy does not include cost share on land and legal whereas the statutory language does.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	David Laschkewitsch	<b>Agency:</b>	ND State Water Commission
<b>Phone Number:</b>	(701) 328-2750	<b>Date Prepared:</b>	01/23/2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2316

Page 1, line 1, after "provide" insert "a recommendation concerning" and replace "flood control" with "water retention"

Page 1, line 3, replace "**Flood control**" with "**Water retention**" and after "**cost-share**" insert "**Recommendation**"

Page 1, line 4, replace "state water commission shall provide" with "legislative assembly recommends that the state water commission fund water retention projects at" and remove "of the funding for"

Page 1, line 5, remove "any flood control project eligible for state cost-share or matching funds"

Renumber accordingly

Date: Feb 05-2009

Roll Call Vote #: 2312 #1

# 2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number 90893, 0102

Action Taken  Do Pass  Do Not Pass  Amended  Amendment

Motion Made By sen. Triplett Seconded By sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Amendment only voice vote

Date: Feb 05-09

Roll Call Vote #: #2 2316

## 2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate \_\_\_\_\_ Natural Resources \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Amendment

Motion Made By Sen. Triplett Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider		/
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg		/			

Total (Yes) 5 No 2

Absent \_\_\_\_\_

Floor Assignment Sen Triplett

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

**REPORT OF STANDING COMMITTEE**

SB 2316: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2316 was placed on the Sixth order on the calendar.

Page 1, line 1, after "provide" insert "a recommendation concerning" and replace "flood control" with "water retention"

Page 1, line 3, replace "**Flood control**" with "**Water retention**" and after "**cost-share**" insert "**- Recommendation**"

Page 1, line 4, replace "state water commission shall provide" with "legislative assembly recommends that the state water commission fund water retention projects at" and remove "of the funding for"

Page 1, line 5, remove "any flood control project eligible for state cost-share or matching funds"

Renumber accordingly

2009 HOUSE NATURAL RESOURCES

SB 2316

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2316

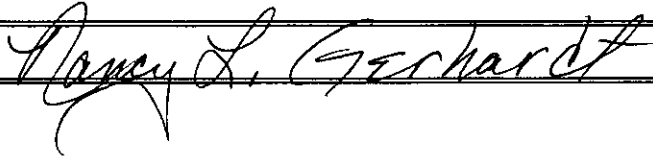
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 10269

Committee Clerk Signature



Minutes:

Chairman Porter – Open the hearing on SB 2316.

Senator Tom Fischer – This is a concern we've had for some time, that's the cost share for water retention projects. What this bill does the state water commission fund water retention projects at 65%. I would like to suggest an amendment – to add construction, See

**Attachment # 3.** Questions?

Rep. Nottestad – You said the bill was amended in the Senate?

Senator Fischer – Yes, the original bill pretty much mandated 65% cost sharing.

Vice Chairman Damschen – The way this is written it wouldn't be subject to individual review by the state water commission?

Senator Fischer – It would have to meet the criteria of water retention.

Robert Thompson – State Water Commission – See **Attachment # 1.** We can't put together a funding package the way the state funding is going right now. There just aren't the local funds available. We need to make a state effort to hold water back. After the '79 flood the corp. of engineers came up and said it takes 1100 small water shed dams to control a flood. If we put in bigger dams and built them we would do a lot of good. We need to keep this project going and keep building these projects. Questions?



Rep. Hofstad – If we take the discursion away from the water commission are we in jeopardy of not having as many funds and not dispersing those funds as wide as we should across the state?

Mr. Thompson – This is a recommendation, the water commission still sets what it's going to be. What's happening now is the legislature directs the state water commission from the SW Pipeline. They don't do anything for water retention. There is no commitment by the state that we need to hold the water back in the large amounts that reduce the flooding.

Jeffry Volk – See **Attachment # 2**. I'm of the opinion this will allow dams to get built.  
Questions.

Rep. Hofstad – If you turn the clock back and assume we do cost share at 65% and land is one of those costs, if you go back to the Maple River Dam project what would those costs have added to the state?

Mr. Volk – Generally Maple River Dam was one that got an exception and we were able to get 50% cost share for almost all the costs except administration. With that as the basis we had almost a 30 million dollar project. Going to 16% would have added a 15% cost share on 30 million which would have been just shy of 4 ½ million additional funding for that project. It wasn't quite a 30 million dollar dam.

Rep. Hofstad – Land was part of that?

Mr. Volk – At the end yes, we did get land as an eligible cost item.

Rep. Hofstad – As a percentage of the project, in most projects, what is the percentage of land to the cost?

Mr. Volk – That is an impossible question to do in generalization. For Maple River Dam, I'm trying to remember, I think we spent almost 10% of the total cost for the land rights. I've seen projects where it's more than that and I've seen projects where it's considerably less. It is all

over the board. Depending on where you're at, if it is crop land verses pasture land, there's all kind of things. The price of land has gone up faster than the cost of construction. The land rights have been ramping up the project costs dramatically.

Chairman Porter – Further testimony in support of SB 2316? Opposition? Seeing none we will close the hearing on SB 2316.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2316

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 10270

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – Pull out SB 2316.

Rep. DeKrey – Move add the word “construction” at the end of line 8.

Chairman Porter – We have a motion from Rep. DeKrey to add the word “construction” at the end of line 8. Is there a 2<sup>nd</sup>?

Rep. Clark – 2<sup>nd</sup>

Chairman Porter – 2<sup>nd</sup> from Rep. Clark. We will remove the “and” from line 7 after the word fees and then on line 8 after the word land add “construction”. Any discussion? All those in favor – Unison voice vote – opposed – none – motion carries. We have an amended bill in front of us.

Rep. Clark – I move a Do Pass As Amended.

Chairman Porter – We have a motion from Rep. Clark for a Do Pass As Amended.

Rep. Myxter – 2<sup>nd</sup>.

Chairman Porter – A 2<sup>nd</sup> from Rep. Myxter. Any discussion?

Rep. Hofstad – I’m going to speak against the bill. I’m just a little apprehensive about taking

that descrion away from the commission. There are different situations in different

communities. I think it is important to allow that commission to have that discession. Another

one of my concerns is we only have a certain pool of money to work from. If we take that cost share and ratchet it up, my fear is there are projects that won't be built. Are there problems the way we do things now? Probably there are. There just is never enough money in the small communities. There are problems raising funds in those small communities. The tax base just isn't there. I think it's important for that commission to have the descretion to ratchet that % up and down and to treat different communities differently. I'm going to vote against the bill.

Vice Chairman Damschen – My thinking was that each project was still subject to approval by the state water commission. The way this engrossed bill is written it is simply a recommendation at this point. I understand Rep. Hofstad's concern, I'm a little less concerned being it is just a recommendation. I would like to have seen it at 50% of a drainage project.

Chairman Porter – Further discussion? Seeing none the clerk will call the roll for a Do Pass As

Amended on SB 2316.

Yes 8 No 4 Absent 1 Carrier Rep. Kelsh

March 5, 2009

VR  
3/5/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2316

Page 1, line 7, after the second underscored comma insert "construction."

Renumber accordingly

Date: 3-5-09  
Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SR 2316

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By Clark Seconded By Myxter

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson		
Vice Chairman Damschen	✓		Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal		✓	Rep Pinkerton	✓	
Rep Hofstad		✓			
Rep Keiser		✓			
Rep Nottestad		✓			

Total (Yes) 8 No 4

Absent 1

Floor Assignment Kelsh

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

**REPORT OF STANDING COMMITTEE**

SB 2316, as engrossed: Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2316 was placed on the Sixth order on the calendar.

Page 1, line 7, after the second underscored comma insert "construction."

Renumber accordingly

2009 SENATE NATURAL RESOURCES

CONFERENCE COMMITTEE

SB 2316



# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2316

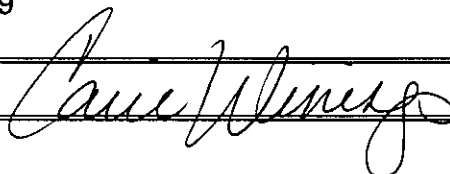
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: 04/16/2009

Recorder Job Number: 11919

Committee Clerk Signature



Minutes:

## Conference Committee

Members Present:

Senator Lyson – Chairman

Representative Hofstad

Senator Hogue

Representative Nottestad

Senator Triplett

Representative S. Kelsh

**Senator Lyson:** Opened the conference committee on SB 2316.

**Representative Hofstad:** Explained the amendment that the House passed.

**Senator Lyson:** Reminds the committee that the amendment is just a one word amendment.

**Discussion:** A discussion occurred among the members on the language used, recommending, in the bill that normally is in a resolution form. They also discussed if the bill passes as is what the ramifications would be. They discussed ways to amend the bill and what language should be used to do so.

**Senator Triplett:** Moved for the Senate to accede to the House amendments and further amend to "shall provide" and re-refer to Appropriations.

**Senator Hogue:** Seconded.

**Senator Lyson:** Asked if there was any further discussion.

**Discussion:** The committee then proceeded to discuss what would happen in both Houses if it went to the floor in that form.

**A Roll Call Vote Was Taken: Yea 2, Nay 4, Absent 0.**

**Motion failed.**

**Senator Lyson:** Suggested that they come up with what amendments they would like to see and come back next week on the bill. Closed the discussion.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2316

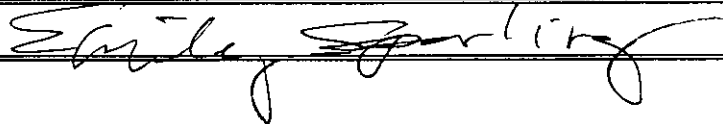
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: 04/21/2009

Recorder Job Number: 12066

Committee Clerk Signature



Minutes:

**Chairman Lyson** Opened the hearing on SB 2316. All members were present.

**Senator Triplett** Introduced the amendment. See attachment #1. This is an amendment that hog houses the bill and asks the water commission to develop policies, including cost-sharing guidelines. My understanding after talking with Rep. Hofstad that the water commission is already in the process of doing that but this clearly states that the legislature has an interest in them doing that.

**Representative Kelsch** Have you run this by the prime sponsor?

**Senator Triplett** I have not run this amendment specifically but I did have a long conversation with Senator Fischer and he said that while he still likes his bill, he isn't going to make a fuss over this.

**Chairman Lyson** I also talked to him and he said he's not married to it right now.

**Senator Triplett** I will move the unofficial proposed amendment to version 200 of engrossed bill 2316.

**Representative Nottestad** Second

**Representative Hofstad** I do think this is a good compromise. Spoke about not wanting to micromanage the state water commission which the original bill was in danger of doing

**Representative S. Kelsch** I will support this amendment but I do want to go on record as a cosponsor, that I would like to see the original bill stand but I won't fall on my sword for it. I do want to go on record that these types of projects are very expensive and it is very difficult to get local jurisdictions to get together and decide on funding structures. I would like the water commission to take a very hard look at the water commission funding these at a higher portion.

**Chairman Lyson** Don't you think with this amendment it is really going to push them to come back next session?

**Representative S. Kelsch** I hope so.

**Senator Hogue** I support this as a good compromise, how would the water commission develop policies? Would they go through administrative rules, etc.?

**Representative Hofstad** They do have in place policies right now. There are within the state water commission several categories that are funded. They are all funded at different levels. They also have the discretion to change that funding level depending upon circumstances. I believe this would be policy within the code.

**Senator Triplett** One of the concerns that Senator Fischer raised is that in his opinion the state water commission has sometimes changed their policies with such frequency that people involved could not keep up with the changes in policy. There need to be clear policies and they need to be consistent but their needs to be some room for flexibility. I think people are looking for some level of consistency.

**Chairman Lyson** Next session could we not come and say this is the rule and you can't change it?

**Representative Nottestad** In defense of the water commission, the demands that come to them vary so much that I respect the decisions they have to make based on variations of percentages.

The Clerk called the role on the motion to **Move the amendment. Yes: 6, No: 0, Absent: 0.**

**Senator Triplett will carry the bill.**

Date: 04/16/09

Roll Call Vote #: \_\_\_\_\_

**2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 2316 as (re) engrossed

Senate \_\_\_\_\_ Committee \_\_\_\_\_

Check here for **Conference Committee**

- Action Taken  SENATE accede to House Amendments
- SENATE accede to House Amendments and further amend
- HOUSE recede from House Amendments
- HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) \_\_\_\_\_ -- \_\_\_\_\_

**Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Senators				Y	N	Representatives				Y	N	
				e	o					e	o	
				s						s		
Sen	4/16					4/16						
Senator Lyson	✓					Representative Hofstad	✓					
Senator Hodge	✓					Representative Nottestad	✓					
Senator Triplett	✓					Representative S. Kelsb	✓					

Vote Count \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Absent

Senate Carrier \_\_\_\_\_ House Carrier \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

Date: 04/16/09

Roll Call Vote #: \_\_\_\_\_

**2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 2316 as (re) engrossed

Senate Natural Resources Committee

Check here for **Conference Committee**

- Action Taken
- SENATE accede to House Amendments
  - SENATE accede to House Amendments and further amend
  - HOUSE recede from House Amendments
  - HOUSE recede from House amendments and amend as follows

*shall provide*

Senate/House Amendments on SJ/HJ pages(s) \_\_\_\_\_

**Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

Motion Made By Senator Triplett Seconded By Senator Hogue

Senators				Representatives			
	Y	N			Y	N	
	e	o			e	o	
	s				s		
Senator Lyson - Chair	✓			✓	Representative Hofstad	✓	
Senator Hogue	✓			✓	Representative Nottestad	✓	
Senator Triplett	✓			✓	Representative S. Kelsh	✓	

Vote Count 2 Yes 4 No 0 Absent

*failed*

Senate Carrier \_\_\_\_\_ House Carrier \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

Date: 4/21

Roll Call Vote #: \_\_\_\_\_

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB 2316** as (re) engrossed

Senate Political Subdivisions Committee

Check here for **Conference Committee**

- Action Taken
- SENATE accede to House Amendments
  - SENATE accede to House Amendments and further amend
  - HOUSE recede from House Amendments
  - HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) \_\_\_\_\_ -- \_\_\_\_\_

**Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

Motion Made By S. Triplett Seconded By Rep. Nottestad

Senators				Representatives			
	4/21	Y e s	N o		4/21	Y e s	N o
Senator Lyson	✓	✓		Rep. Hofstad	✓	✓	
Senator Hogue	✓	✓		Rep. Nottestad	✓	✓	
Senator Triplett	✓	✓		Rep. S. Kelsh	✓	✓	

Vote Count 4 Yes 0 No 0 Absent

Senate Carrier Triplett House Carrier Rep. Hofstad

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_



**REPORT OF CONFERENCE COMMITTEE**

**SB 2316, as engrossed:** Your conference committee (Sens. Lyson, Hogue, Triplett and Reps. Hofstad, Nottestad, S. Kelsh) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 874-923, adopt amendments as follows, and place SB 2316 on the Seventh order:

That the House recede from its amendments as printed on page 874 of the Senate Journal and page 923 of the House Journal and that Engrossed Senate Bill No. 2316 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to direct the state water commission to develop policies regarding water retention projects.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. State water commission - Policies for water retention projects.** The state water commission shall develop policies, including cost-sharing guidelines, which further the development of water retention projects for flood control. The commission shall provide a report regarding the policies to the sixty-second legislative assembly."

Renumber accordingly

Engrossed SB 2316 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2316

**SB2316**

**Mr. Chairman, members of the Natural Resources Committee**

**For the record, my name is Tom Fischer state Senator, District 46, Fargo.**

**SB 2316 Increases the cost share for flood control projects from 50% to 65% as well as the costs eligible to reflect some equity in funding in the State.**

**The fiscal note needs to be explained since it is my belief that the state engineer would like to kill this bill and is attempting to do so with this fiscal note.**

**There are many projects that are not getting done because the state cost share is so low. The facts are that flood control is as important to the state as other projects and should be equally funded.**

**Mr. Chairman, I would ask the committee to pass this bill. There are others who would like to testify so I thank you and will stand for questions.**

90893.0101  
Title.

Prepared by the Legislative Council staff for  
Representative Damschen  
February 4, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2316

Page 1, line 1, after "control" insert "and drainage"

Page 1, line 3, after "control" insert "and drainage"

Page 1, line 5, after "project" insert "and fifty percent of the funding for any drainage project"

Renumber accordingly

Date: February 5, 2009  
To: North Dakota Senate Natural Resources Committee  
From: Robert Thompson  
State Water Commissioner  
Subject: Support for Senate Bill No. 2316

This bill should be amended to read the State Water Commission shall provide sixty-five percent state funding for all Water Retention Projects and fifty percent funding for Flood Control Projects. All costs shall be shared at the applicable percentage except administration costs.

Water Retention Projects are high priority projects necessary to minimize flood damages. The projects require large capital investments before and during construction and the local funds in the benefited area are not adequate at the current funding policy.

Water Supply Projects are currently funded at 65%, 70%, and higher when considering repayment.

Testimony supporting SB 2316  
January 16, 2009

Senate Natural Resources Committee  
Chairman Lyson and committee members

My name is Jeffrey Volk. I currently serve as President and CEO of Moore Engineering, Inc and I am a Professional Engineer and Registered Land Surveyor in North Dakota. I have spent my entire professional career as an engineering consultant in North Dakota. My primary field of practice has been in water resources, more specifically surface water management. My testimony today is on behalf of Moore Engineering, Inc. and the numerous Water Resource Districts Moore Engineering, Inc. has represented over the past 30 years.

My testimony today is in support of SB 2316.

I encourage you to support the concept of placing state water commission cost share standards for flood control projects into the century code. Currently cost share standards for various types of water projects are established by policy of the State Water Commission. The latest policies for flood control projects pay for eligible costs at 50%.

Local sponsors of flood control projects generally have several issues with the current cost share practices of the SWC.

- 1) Eligible items do not include all project expenses. Specifically land costs, legal costs and administrative costs are not eligible unless special consideration is given by the SWC.
- 2) The cost share policies seem to be in a steady state of flux.
- 3) Administration and disbursement of the SWC funds after projects are approved for funding has become cumbersome and frustrating.

SB 2316 as introduced suggests a 65% cost share for flood control projects including legal costs, engineering costs and land acquisition costs. These costs are specifically identified to address the concerns outlined above.

In my opinion, a reasonable approach to providing state water commission funding for flood control projects is to include all project costs associated with the development and construction of the project except the costs associated with the project sponsors general office administration expenses.

With regards to the level of cost share by the state water commission for flood control projects, I think a justifiable level of funding would be 65% for floodwater retention projects (flood control dams) and 50% for other flood protection projects. The basis for these funding levels is as follows:

- 1) Floodwater retention projects generally provide flood damage reduction benefits to large geographic areas downstream of the flood control dam site. Many times these benefits include properties in numerous political subdivisions and include agricultural lands. While these benefits are measurable it becomes difficult for all of the downstream jurisdictions to justify a financial contribution to the project. In addition, local funding options are very limited for flood control dams, generally limited to mill levies available to the project sponsor. Projects of this nature do not have any opportunity to create a new revenue stream so selling bonds is not an option. With the high costs associated with these projects and the reasons stated above, at least a 65% cost share is necessary to allow many of these projects to get constructed. Floodwater retention structures have demonstrated their effectiveness for flood damage reduction.

- 2) Other flood control projects, dikes, diversions, levees, etc, are generally constructed to protect already developed properties and higher value properties. These projects normally provide flood protection to smaller geographic areas, relative to flood control dams. This allows the project sponsor to work closely with those benefitted and to finance the local cost of these projects by creating special assessment districts. These projects are more capable of absorbing a larger local share so the existing 50% cost share seems to be reasonable, provided all project costs are considered eligible.

Thank you for considering my testimony.

Jeffry J. Volk, PE & RLS  
ND Reg # PE & LS 2524  
President & CEO  
Moore Engineering, Inc.  
925 10<sup>th</sup> Ave East  
West Fargo, ND 58078



**TESTIMONY ON SENATE BILL 2316**

**Senate Natural Resources Committee**

**Dale L. Frink  
North Dakota State Engineer, and  
Chief Engineer-Secretary to the  
North Dakota State Water Commission**

**February 5, 2009**

Mr. Chairman and members of the Senate Natural Resources Committee, I am Dale Frink, North Dakota State Engineer, and Chief Engineer-Secretary to the North Dakota State Water Commission.

I am appearing before you today regarding Senate Bill 2316.

Senate Bill 2316 states "the State Water Commission shall provide 65 percent of the funding for any flood control project eligible for state cost share or matching funds. ..." I have the following concerns:

- 1) This language is very problematic in that it seems to give flood control the highest priority for funding. Projects including the Southwest Pipeline Project, the Northwest Area Water Supply Project, and other projects may not get funds until flood control projects are funded.
- 2) The State Water Commission's current cost share policy for flood control projects is 50 percent. Although the State Water Commission can change its cost share policy, the Commission cannot change the percentages cited in code.
- 3) The language in the bill is not clear whether flood control includes rural flood control. In the past, the State Water Commission had a category for drainage projects, which is now referred to as rural flood control. The Commission's policy is to cost share rural flood control projects at 35 percent. I would not recommend increasing the cost share percentage for rural flood control projects.

As you are aware, the majority of our project funding is generated from oil extraction taxes and deposited into the Resources Trust Fund. If the price of oil remains low, these revenues will be dramatically reduced at a time when the need for water project funding is very high. The State Water Commission needs the flexibility to fund the highest priority projects during the biennium.

For these reasons, I recommend a do not pass on Senate Bill 2316.

*Attachment #1*

Date: March 5, 2009  
To: North Dakota House Natural Resources Committee  
From: Robert Thompson  
State Water Commissioner  
Subject: Support for Senate Bill 2316

The North Dakota Legislature has not given direction to the State Water Commission on funding Water Retention Projects. Senate Bill 2316 recommends a workable plan over what is not working now.

The Southwest Pipeline, NAWs, and Devils Lake Projects are State projects directed by the North Dakota State Legislature to complete these projects. They are funded at 65% to nearly 100% funding. State Projects are not subject to indemnity issues like political subdivisions such as Water Boards.

Water Retention Projects are high priority projects necessary to minimize flood damages. The projects require large capital investments before and during construction and the local funds in the benefited area are not adequate at the current funding policy.

The Federal Government doesn't build or fund Water Retention Dams. State funds are necessary at an adequate amount before the local sponsor would be willing to start the planning process for Water Retention Projects.

Please pass Senate Bill 2316.

Testimony supporting SB 2316  
March 5, 2009

House Natural Resources Committee  
Chairman Porter and committee members

My name is Jeffry Volk. I currently serve as President and CEO of Moore Engineering, Inc and I am a Professional Engineer and Registered Land Surveyor in North Dakota. I have spent my entire professional career as an engineering consultant in North Dakota. My primary field of practice has been in water resources, more specifically surface water management. My testimony today is on behalf of Moore Engineering, Inc. and the numerous Water Resource Districts Moore Engineering, Inc. has represented over the past 30 years.

My testimony today is in support of SB 2316.

I encourage you to support the concept of 65% North Dakota State Water Commission (SWC) funding level for flood retention projects. Currently cost share standards for various types of water projects are established by policy of the SWC with no input from the legislature. The current SWC policy for flood control projects, including retention projects, is to pay for 50% of eligible costs.

Local sponsors of flood control projects generally have several issues with the current cost share practices of the SWC.

- 1) Eligible items do not include all project expenses. Specifically land costs, legal costs and administrative costs are not eligible unless special consideration is given by the SWC.
- 2) The cost share policies seem to be in a steady state of flux.
- 3) Administration and disbursement of the SWC funds after projects are approved for funding has become cumbersome and frustrating.

SB 2316 as amended suggests a 65% cost share for floodwater retention projects including legal costs, engineering costs and land acquisition costs. These costs are specifically identified in SB 2316 to address some of the concerns outlined above.

With regards to the level of cost share by the state water commission for flood control projects, I think it is justifiable to fund floodwater retention projects (flood control dams) at 65% while funding other flood protection projects at the current 50% level. The basis for these funding levels is as follows:

- 1) Floodwater retention projects generally provide flood damage reduction benefits to large geographic areas downstream of the flood control dam site. Many times these benefits include properties in numerous political subdivisions and include agricultural lands. While these benefits are measurable it becomes difficult for all of the downstream jurisdictions to justify a financial contribution to the project. In addition, local funding options are very limited for flood control dams, generally limited to mill levies available to the project sponsor. Projects of this nature do not have any opportunity to create a new revenue stream so selling bonds is not an option. With the high costs associated with these projects and the reasons stated above, a minimum of 65% cost share is necessary to allow many of these projects to get constructed. Floodwater retention structures have demonstrated their effectiveness for flood damage reduction.
  
- 2) Other flood control projects, dikes, diversions, levees, etc, are generally constructed to protect already developed properties and higher value properties. These projects normally provide flood protection to smaller geographic areas, relative to flood control dams. This allows the project sponsor to work closely with those benefitted and to finance the local cost of these projects by creating special assessment districts. These projects are more capable of absorbing a larger local share so the

existing 50% cost share seems to be reasonable, provided all project costs are considered eligible.

Examples of existing Corps of Engineers constructed floodwater retention projects (flood control dams) are Garrison Dam on the Missouri River above Bismarck, Baldhill Dam on the Sheyenne River above Valley City, Homme Dam on the Park River upstream of Park River, and White Rock Dam on the Bois de Sioux River upstream of Wahpeton. Also the NRCS has helped construct numerous smaller floodwater retention dams throughout North Dakota. To demonstrate the effectiveness of these structures, I would challenge you to suggest that any one of these existing dams be removed and measure the public outcry. From my observations, with today's demanding federal project development process, none of these existing larger flood control dams would be constructed by a federal agency. With the current state cost share policy of funding 50% of some costs, the ability to construct floodwater retention projects has become extremely difficult for local Water Resource Districts. Their ability to develop a local financing plan for new sites and bring them to construction is almost impossible without a significant cost share contribution from the state.

Thank you for considering my testimony.

Jeffry J. Volk, PE & RLS  
ND Reg # PE & LS 2524  
President & CEO  
Moore Engineering, Inc.  
925 10<sup>th</sup> Ave East  
West Fargo, ND 58078

90893.0200

FIRST ENGROSSMENT

*Proposed  
Amendments #2*

Sixty-first  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2316

Introduced by

Senators Fischer, Flakoll, Robinson

Representatives Damschen, Kaldor, S. Kelsh

1 A BILL for an Act to provide a recommendation concerning state cost-sharing for water  
2 retention projects.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Water retention projects - State cost-share - Recommendation.**

5 Notwithstanding any other provision of law, the legislative assembly recommends that the state  
6 water commission fund water retention projects at sixty-five percent. Costs eligible for state  
7 cost-share or matching funds include expenses for legal fees, engineering fees, and acquisition  
8 of land. + construction

**UNOFFICIAL PROPOSED AMENDMENTS TO  
.0200 VERSION OF ENGROSSED BILL 2316**

That the House recede from its amendments as printed on pages 874 of the Senate Journal and page 923 of the House Journal and that Senate Bill No. 2316 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to direct the State Water Commission to develop policies regarding water retention projects.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. State Water Commission – Policies for water retention projects.**  
The State Water Commission is directed to develop policies, including cost-sharing, which furthers the development of water retention projects for flood control, and to report such policies to the Sixty-second Legislative Assembly.

Renumber Accordingly