

2011 SENATE AGRICULTURE

SB 2342

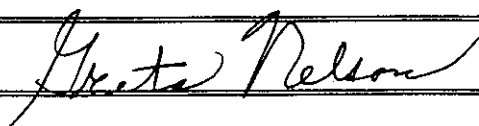
## 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Agriculture Committee**  
Roosevelt Park Room, State Capitol

SB 2342  
February 3, 2011  
13959

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to sustainably grown crops, eligible uses for the agriculture partnership in assisting community expansion fund, sales tax on field tile and drainage permits.

### Minutes:

Attachment #1, #2, #3, #4, #5, #6, #7, #8

**Senator Flakoll:** Introduction of SB 2342 Feb 3, 2011 at 11:00 am

**Senator Miller:** Worked with several people around the state on this bill. Many interested in drain tile and see great economic benefit and we as ND farmers ....we need to pursue avenues to make drain tile easier to conduct and put into our farm practice. Ways through regulation and make more feasible for smaller farmers that may not have the capacity to put in subsurface tile. This is something we see an economic benefit as a way to mitigate over all flooding in the Red River Valley....subsurface tiling allows the land to drain itself when it is a time the rivers to handle the excess water and make it more of a sponge when we are dealing with the spring flooding. Explain the bill: First section goes in the sustainable section....drain tile is really a soil health management as much as economic. We are talking the real part of what we need to grow crops in the soil ...it important language. Second section deals with Ag pace loan...this qualifies subsurface drain tile for the Ag Pace loan....currently bared. I feel we need that because smaller farmers need a secure loan. Section 3-4-5 we need to change because it doesn't mechanically work. Grant a small sales tax cut on the purchase of drain tile what we have to do.....amendments we are working on....have to turn that into a rebate. They can get their sales tax reduced from 5% to 3% if that tile is going into a specially assessed tile district that local water resource boards would set up with own authority. You would have a central ditch that everyone drains into will elevate many issues with people downstream. Get together with neighbors to collaborate to set up this drain district meet with water board to explain the reason for the project. Section 6 has accepted Section 7 new language. Main issue is to allow the tile the flexibility to get the job done quickly, but protect the downstream impact. Language in about control structures at the end of the tile....some might not be needed. Drain tile is not a contributing factor to spring flooding. Most people who have and work with drainage tile believe actually mitigates spring flooding.

**Senator Klein;** Why do we have an issue in ND....MN has been tiling with many more acres in the program. Why are we so far behind....is it because we need to have these incentives like the tax?

**Senator Miller:** We didn't need it as badly in earlier years. Now a wet cycle for 20 years and we need this...people are realizing the economic need of drain tile

**Senator Flakoll;** Do you have amendments?

**Senator Miller:** In the process...the amendments will deal mostly in the sales tax portion and that will turn into a rebate and will clear up confusion of assessed. Still thinking about the last page.

**Senator Belter:** District 22 I am in support of this bill. ND is behind 100 years....our problem is we are going to see more tiling because of the economic benefit of tiling. This has created a paper problem for us ....all permits have to be reviewed by the state water commission. This is an unnecessary step ..... they only need to be involved in of record keeping after local water board has approved your permit. Other reason the state water board included if your local water felt the tiling project was going have of state's significance.....a rare thing to happen. Get back to the local water board for permits and control this issue. Another concern: How do we deal with easements? Situations have caused problems between neighbor or a legitimate concerns. We should not be making it easy for people to stop the tiling projects....lack of understanding.

**Senator Flakoll;** We have a couple tiling relating bills in the senate side .....this one showed a fiscal bill....has to be out this week. We will have a sub committee

**Senator Belter:** We cannot leave this legislative session without expediting the process of tiling. Millions of dollars of destruction to our soils because of salinity and tiling is one of the avenues we can deal with this. Top priority for agriculture and economics of ND

**Senator Flakoll:** That is why we need extra attention on this ... why there are so many parts

**Representative Hedland:** District 29 I am in favor of this bill SB 2341

**Joan Braaten-Gravaski:** Rancher/ farmer (Attachment #1)

**David Hankey:** Farmer Park River, ND (Attachment #2)

**Ross Johnson:** Farmer Mayville, ND; Buxton (Agassiz Drain Tile) (Attachment #3)

**Senator Klein;** MN way ahead of us....sell a lot more.....are their laws more stringent?

**Ross Johnson:** MN has their state rule. You have to go to each water shed district and they may have rules on their boards, but they cannot deny if you follow the criteria. They can restrict how much water comes out in a 24 hour period.

**Senator Klein;** A lot easier to get it covered in MN

**Ross Johnson:** Yes

**Senator Murphy;** Would we have to change the current law to take the state water commission technically out ....we have to go through the water commission now?

**Ross Johnson;** Yes, we have to go through the state water commission if it is over an 80 acre water shed..... caused many problems. Most local boards have the permits sent to the state as to follow law. Most are under 80 acres....takes a very long time at the state water commission. Point out in the bill. There is some easement requirement that could be in place if local water board wants to ....page 4 #1 dumping tile water same as surface water so long as it is farm through. (Refer to)

**Nathan Green:** Pembina County farmer. I support SB 2342 for the reasons as spoken. An additional as risk management, tile bland drains faster in spring heavy down pours .....removes excess water. Most plants can live a couple days in water, after that start to die. Having excess moisture drained before that rain is good to keep the plant from dying. Another hasn't been brought up is the sales tax in the centrally tiled assessed areas.....that is a great was to get land owners to work together...dump to a central area that takes it to a river that will allow it to be rid of without any down stream affects.

**Terry Weckerly:** Farmer and Ag retailer, Hurdsfield, ND (Attachment #4)

**Tom Lilja:** Executive Director of Corn Growers: Support the SB 2342

**Mike Dyer:** Represent ND Water Resource District (Attachment #5)

**Senator Klein;** Do we need some tools for you to move this on quicker? Issues with permitting, time.

**Mike Dyer:** We do need some language. Currently surface drain statute ....we would like to see this provision in the same chapter, but we do need to provide more specific direction for the water resource districts in this issue.

**Senator Klein;** You agree that things are slow when asked for permits as opposed to what MN is doing?

**Mike Dyer:** When issue first came up, we weren't sure if we had a statute that covered it. We had to go through the process....be better if a direct statute covering tile drainage.

**Senator Luick;** Handout (Attachment #6) Information about tiling, summarizing the purpose and reasons for tiling. Put on workshops for MN and ND...started because of all the problems ...high water table. Loans in other states for farm land, the loaner requires it must have drain tile. We need to jump on this very quickly as the soil damage is happening now....huge reduction in the RRV. We need more tiling companies to fulfill the need of tiling.

**Senator Flakoll;** How long will the tile last in this soil?

**Senator Luick:** Pipe estimated to last about 100 years.

**Senator Flakoll;** Briefly tell us what impact the modern combines have had on it?

**Senator Luick** One of the biggest sellers of drain tile process is the new technology that we have as combine monitors. In an area where an individual in the business of installing field tile, they can't sell to the farmer as he doesn't understand. Widen out tile lines so it sounds cheaper per acre....as you combine across the tile lines, your combine monitor spikes as it goes across the tile line as you get in between the line, it goes way down. Spikes again as it crosses....widen out tile lines...years later change the spaces so it evens out the field.

**Senator Flakoll;** Oppositions?

**Gary Peterson:** Traill County Water Resource District....Chairman of the Collin Peterson Ad Hawk Committee. Not opposed to the bill other than ....very expensive if it ends in court. My opinion is to change the \$3 to actual cost as a ceiling. In all the applications we have had .....we have to hire an engineer the 8 questions that the water commission gives to us. I am completely in favor of this going directly to the water resource districts and letting them decide if they want help from the state if they don't have the ability to do this themselves. The downstream effect, we need guidelines as to what would be a downstream effect. The board is reluctant to say no, we will give it to you anyway and then take us to court. We don't see a lot of negative people.

**Senator Luick;** I look forward to working with the NRCS on this problem.....I understand the importance the maintenance of the wetlands

**Gary Peterson:** Another committee is working with the NRCS. The FSA feel there will be much less crop damage.

**Sean Fredericks;** Attorney with Ohnstad Twichell law Firm (Attachment #7)

**Senator Miller:** In my bill, the word "may" page 3....it gives some flexibility to the local water resource boards to make their own determination.....also Mr. Dryer hand out, it has the same liability on the last line. Does that have to be in this section?

**Sean Fredericks;** We don't have an issue with that , but our issue ....is the word "may" giving the contractor the right to argue that it doesn't require a permit? Creates all sorts of difficulties...all kinds of complaints.....problem contractors, land owners see their requirements differently.. If we say "may" assumption that they don't need a permit. Substantial investment for the landowner to install tile.....what we do not want to see is installation of expensive tile project and have the landowners upset ....they come in to see if it is permitted and if not, they file a complaint. We want to see uniformity.

**Senator Miller:** Liability?

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SB 2342  
February 3, 2011  
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**Sean Fredericks:** We took the existing statute and trying to incorporate your language and Rep Belture's language to the extent of what we could. The liability language is in the existing statute and in your statute. We don't have qualms of having that language in there.

**Senator Miller:** My interpretation.....thought the bill said you have to get a permit, from local water board and then they have to decide how to proceed.

**Sean Fredericks:** We can work out the language

**John Paczkowski:** Chief Regulatory Section of the Office State Engineer (Attachment #7)

**(Electricity went out at 12:25 pm)**

Continued on John Paczkowski attachment last paragraph in attachment #7.

**Senator Flakoll;** Adjourned.

## 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Agriculture Committee**  
Roosevelt Park Room, State Capitol

SB 2342  
February 17, 2011  
14665

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to sustainably grown crops, eligible uses for the agriculture partnership in assisting community expansion fund, sales tax on field tile and drainage permits.

### Minutes:

Attachments: #1, #2

**Senator Flakoll:** Committee Meeting called to order at 10:30 am, Thursday, February 17, 2011 for SB 2342.

**Senator Miller;** (Attachments #1, #2) Tiling Bill of SB 2342 If you turn to section 3-4-5 of the bill relate to a sales tax rebate (amendment) for specially assessed drain tile system of 2%....it will reduce your sales tax 2 points....right now is 5....if you buy drain tile equipment the tile, pump, etc is all taxed at 5%. This will reduce it to 3% is you are in a special assessment district for tile which means you have farmers who want to put in tile and create a central trunk line/ditch whatever to drain in. That will qualify these landowners for a reduced rate.....this is to encourage people to pursue that with their local water resource district. It takes a grass roots effort to do that....if we have more resource, special assessed districts for this purpose, you avoid many problems of personal conflicts of other farmers/neighbors. This should provide an initial financial benefit for somebody(s) who is hesitant to get involved with this project. It might be some way to convince them to get pursue a special assessment district. They are controlled by the local water resource board and require engineering plans. Spending \$600,000 to tile a 1,000 acres of ground ....that will be a significant cost savings for that person where they can consider doing through the special assessment district. A rebate so the tax dept can work with it.

**Senator Flakoll:** Any questions ....we need a little time for thought and flexibility before it is moved

**Senator Klein;** Will there not be a cost involved with the rebate?

**Senator Miller;** No.....there is no specialized tiling districts in the state of ND

**Senator Klein;** Districts need to be established before they qualify for the rebate?

**Senator Miller;** Yes

**Senator Flakoll;** If the program were to function, there will be a cost to the state

because of the 2% reduction in sales tax?

**Senator Miller;** Yes and it will function as a rebate ....there will be a penciled cost , but off set by the dramatic increase in tiling because of special assessed districts.

**Senator Flakoll;** Did the tax dept ....is one of the fiscal notes that will be indiscernible which has started as?

**Senator Miller:** Yes.

**Senator Flakoll:** Let's go to the 4001 amendment

**Senator Miller;** The 4001 amendment delete the last two sections of the bill which relate to regulatory provisions on drain tile and replace with a legislative management study of subsurface field tiling. This to be conducted in the interim and the committee felt that is a process we need to continue to look at. We are creating new regulatory language in 2 other bills and could be problems and other benefits that we need to pursue. It is wise to ask for a study in the interim .

**Senator Flakoll;** Questions on the 4001 amendments? Any other amendments coming on this particular bill? The two options....right?

**Senator Klein;** You are removing all that bottom of page 3 and all of page 4. Adding the study to see how we can get to where we want to be through the interim?

**Senator Miller;** Yes.....the deleting starts on section 6 on bottom of page 2 as all that language put in there is not needed. It relates to section 7.

**Senator Flakoll;** Close meeting.



## 2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee  
Roosevelt Park Room, State Capitol

SB 2342  
February 17, 2011  
14687

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to sustainably grown crops, eligible uses for the agriculture partnership in assisting community expansion fund. Sales tax on field tile and drainage permits.

Meeting for SB 2342

**Senator Miller:** Moved the Miller amendment 4001 first. on SB 2342

**Senator Larsen:** Second

**Senator Flakoll;** Moved and second for adoption of 4001 amendments at 11:10 am

**Senator Miller:** We discussed amendments 4001 and they removed the last two section of the bill that pertain to regulatory provisions on drain tile and in insert new section 6 / 6 which will ask for a legislative management study in the interim and report the 63<sup>rd</sup> legislative assembly.

**Senator Flakoll:** Will we have drain tile being unregulated?

**Senator Miller;** The regulation will proceed as currently is now under this bill.....there will be no changes in regulation. Will have no changes to current procedures in drain tile regulation.....it will talk about the soil health management practices, farm business, tax rebate, and management study.

**Senator Flakoll;** Tax rebate is not in 4001

**Senator Miller;** The 4001.....if we adopt all it changes is the back part of the bill starting section 6 and 7 and remove those inserts new sections 6.

**Senator Flakoll;** The reason for taking out of the regulation language...?

**Senator Miller;** Is because we have other bills that are dealing with those ones we already passed out of the Senate and worked on in the House. This regulatory language is not what the consensus has been on for most, so it has been removed entirely.

**Senator Flakoll:** Discussion? Questions:

**Senator Klein;** The long line of people in opposition of Senator Miller's bill by removing the two sections, should have a trust or concern?

**Senator Miller;** Yes, they should not have any worries about the bill any more.

**Senator Luick;** The number of individual on my list for people against were the ones NRCS....since we have gone to the amendment, they are in favor of this now as they were working on my bill 2280 .....which basically took off Senator Miller's bill permitting regulations which address entirely and he added the legislative subsurface management study which is important because it necessary to educate people as to why it is important and to consider.

**Senator Miller;** Mr. Dwyer from Water Resource Council .....he asked in the last hearing for management study. He has reviewed this and approves of it.

**Senator Flakoll:** Motion made to adopt amendment 4001 SB 2342 ....Clerk take roll

**Clerk:** Roll call vote 7-0-1

**Senator Flakoll;** Motion carries

**Senator Flakoll;** Senator Miller do you have another amendment?

**Senator Miller;** Yes, the tax commissioner....I move those amendments now.

**Senator Luick;** Second

**Senator Miller:** these amendments correct the language that was put in the sections 4 &5 of the bill dealing with what was intended to be a tax free rebate of up to 2% points of the 5% that you pay on drain tile and tangible property pertaining to drain tile. This is language that would provide for rebate and handles what the tax dept is concerned about. It is does what I wanted it to do so long as Sections 3-4-5 are amenable to everyone .....these amendments are needed to do what was intended.

**Senator Flakoll;** Move and second ....these are these amendments prepared by the office of Tax Commissioner for Senator Miller; dated Feb 7, 2011.

**Senator Flakoll;** How will the money flow on the rebate....how will that work?

**Senator Miller;** Farmer accrues the money on tax on the parts, tiling part, that puts in the ground ....pays bills including tax and saves the receipt to send to the tax dept (along with proof of living in a tiling district). Reporting how much the initial cost of the bill and requesting the amount of taxes to be returned to him as rebate. Good incentive for farmers to become involved with the tiling process and create tiling districts.

**Senator Flakoll;** To get the money....if they can afford the cost is the rebated going to be enough .....the recoup time in a perfect situation, one year?

**Senator Miller;** Challenge with any tax rebate or sales tax that you five. Initially water resource districts have the authority to do this as it exists. There is language in Senator Luick's bill that makes the year more clear. The Water Resource District is rarely going to take it upon them to set up an assessment district themselves.....going to take people talking to neighbors/ communication within the area/ landowners to make that happen. My idea.....if a money/carrot offered it would more likely to occur. This is a much cleaner way of handling it.

**Senator Flakoll;** A farmer could have it on some of their land, but not all of the land?

**Senator Miller;** Yes.

**Senator Klein;** Without this amendment, does the bill move on without a bargain for the opportunity to get an enhancement .....?

**Senator Miller;** They don't put the amendments on the bill, those two sections 4-5 don't make enough sense that the tax dept would not be able to do it the way they want. It would be difficult for the tax dept to figure it out ...probably wouldn't happen and possibility of a law suit.

**Senator Flakoll;** Discussion?

**Senator Klein;** Work in progress.....if we pass on Senate will be continued work on it ....the sponsor has worked diligently for the tillers

**Senator Flakoll;** Clerk to take roll call vote for the adoption of Miller Amendments Feb 7, 2011 to SB 2342

**Clerk:** 5-2-0

**Senator Flakoll;** Motion Carries

**Senator Flakoll;** Any other amendments?

**Senator Miller;** Move DO PASS for SB 2342

**Senator Larsen;** Second

**Senator Flakoll;** Discussion

**Senator Murphy;** Anyone to comment as to how this would work or not work with the bill we passed already?

**Senator Miller;** It works in conjunction with the bill that passed ....if that bill doesn't pass this can still have beneficial effects ....the bill that pass deals with strictly deals with how it is

permitted and how often and easily, where this bill section one talks about soil health, drain tile being a part of the soil health, and management practice. Section 2 is the most important part of the bill that it opens Ag pace loans for drain tile for the young, new farmers opportunity to increase profitability. The sales rebate part and now the legislative management study will keep this issue alive, analyzing and increasing more ideas.

**Senator Flakoll;** What if there is default on a loan?

**Senator Miller;** Leverage your land as collateral/farm equipment

**Senator Flakoll:** Is it built in?

**Senator Miller;** Reason put in there, with discussions with Bank of ND, the Water Commission had put a stay on the loans for this purpose. The banker said the interest in industrial commission is more favorable to drain tile. The Ag commissioner and Gov are interested in this.

**Senator Luick;** The difference between the two bills, my bill identifies the permitting process and takes it to a local level rather than being state level where they are not working with the local parcel owners as it is.....it is more restrictive in the sense that the local boards actually have a better grasp of how and what the soils and projects are going to be looking like and end product, also. Senator Miller's bill identifies different things.....the possibility of the rebate, soil health issue, the interim study.....which is much needed.

**Senator Murphy;** Can we pass both of them and streamline everything?

**Senator Flakoll;** Discussion. Clerk to take roll for the adoption of motion for DO PASS as amended to SB 2342

**Clerk:** 6-1-0

**Senator Flakoll;** Senator Miller will carry

**Senator Flakoll;** Close hearing

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee  
Roosevelt Park Room, State Capitol

SB 2342.  
March 31, 2011  
Job # 16222

☐ Conference Committee

Committee Clerk Signature

*Dreta Nelson*

## Explanation or reason for introduction of bill/resolution:

Relating to sustainably grown crops, eligible uses for the agriculture partnership in assisting community expansion fund, sales tax on filed tile and drainage permits.

## Minutes:

You may make reference to "attached testimony."

**Senator Flakoll;** Meeting called to order this 31<sup>st</sup> day of March, 2011 Committee meeting at 10:00am. Clerk take roll call.

**Clerk:** Roll call: 7-0-0

**Senator Flakoll:** SB 2342 (6001 version) We need the more recent version.

**Senator Miller;** Change was language for sustainable agriculture that was in there. The study is still there and loan program from the Bank of ND is still on the bill.

**Senator Flakoll;** Are we ok with that?

**Senator Miller;** I am ok with that.

**Senator Flakoll:** Concur on SB 2342

# FISCAL NOTE

Requested by Legislative Council  
03/30/2011

Amendment to: Reengrossed  
SB 2342

**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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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).*

SB 2342, 2nd Eng. with House Amendments makes some changes in the Ag PACE program, and provides for a legislative management study.

**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.*

It is not known if there will be any qualifying field tile projects in the 2011-13 biennium that may impact PACE funds. Therefore, the fiscal impact cannot be determined.

**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>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	03/30/2011

**FISCAL NOTE**  
Requested by Legislative Council  
02/22/2011

Amendment to: SB 2342

**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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 SB 2342 makes some changes in the Ag PACE program, provides for a refund of sales and use taxes for qualifying subsurface field tile systems, and provides for a legislative management study.

**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.*

Section 4 of Engrossed SB 2342 provides for a refund of two percentage points of the sales and use taxes paid on qualifying subsurface field tile systems. It is not known if there will be any qualifying field tile projects in the 2011-13 biennium. Therefore, the fiscal impact cannot be determined.

**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.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/22/2011

## FISCAL NOTE

Requested by Legislative Council  
01/26/2011

Bill/Resolution No.: SB 2342

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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).*

SB 2342 makes some changes in the Ag PACE program.

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.*

Section 5 of SB 2342 reduces the sales tax rate from 5% to 3% on subsurface field tile used in a centrally assessed drain tile project. It is not known if there will be any qualifying centrally assessed drain tile projects in the 2011-13 biennium. Therefore, the fiscal impact cannot be determined.

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.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/02/2011



February 10, 2011

#15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2342

Page 1, line 1, replace the comma with "and"

Page 1, line 2, remove ", and a new section to chapter 61-32"

Page 1, line 4, remove "and subsurface field tiling projects"

Page 1, line 4, remove the second "and"

Page 1, line 5, replace "sections" with "section"

Page 1, line 5, remove "and 61-32-03"

Page 1, line 7, after the first comma insert "and"

Page 1, line 7, remove the second comma

Page 1, line 7, remove "and"

Page 1, line 8, replace "drainage permits" with "; and to provide for a legislative management study"

Page 2, remove lines 28 and 29

Page 3, remove lines 1 through 30

Page 4, replace lines 1 through 15 with:

**"SECTION 6. LEGISLATIVE MANAGEMENT STUDY - SUBSURFACE FIELD TILING.** During the 2011-12 interim, the legislative management shall consider studying the laws and rules relating to subsurface field tiling. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

Date: 2/17/11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2342

Senate Agriculture Committee

Legislative Council Amendment Number 110006.04002 1st Miller 05000

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	✓		Senator Heckaman	✓	
Vice-Chair Oley Larsen	✓				
Senator Klein	✓				
Senator Luick	✓				
Senator Miller	✓				
Senator Murphy	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator

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

PROPOSED AMENDMENT TO SENATE BILL NO. 2342

#2

Page 1, line 4, after "project;" insert "create and enact a new section to chapter 59-39.2 of the North Dakota Century Code, relating to a sales and use tax refund for qualifying subsurface field tile system;"

Page 1, line 5, remove "subsection 45 of section 57-39.2-04, and sections 57-39.5-02"

Page 2, overstrike lines 4 through 7

Page 2, line 8, overstrike "agricultural purposes", and remove "and subsurface field tile used exclusively for a centrally"

Page 2, remove line 9

Page 2, overstrike lines 10 through 14

Page 3, line 15 overstrike "exclusively for agricultural purposes", and remove "and subsurface field tile use exclusively for a centrally"

Page 2, line 16 remove "assessed drain tile project" and overstrike ". Gross receipts from sales at retail of farm machinery or irrigation"

Page 2, overstrike lines 17 through 27 and insert immediately thereafter:

"**SECTION 4.** A new section to 59-39.2 of the North Dakota Century Code is created and enacted as follows:

The owner of a subsurface field tile drainage system within the boundaries of a drainage project authorized by Chapter 61-21 may apply for a refund of a portion of the sales or use tax due and paid on the qualifying subsurface field tile system. The tax eligible for refund includes tax paid by the system owner and tax paid by contractors installing the system and is equal to two percentage points of the sales or use tax imposed under this chapter or Chapter 57-40.2 on tangible personal property incorporated into the subsurface field tile system. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the qualifying drainage project, the purchase and use of the tangible personal property and the sales and use taxes paid."

Renumber accordingly

Date: 2/17/11

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2342

Senate Agriculture Committee

Legislative Council Amendment Number 110006.04002 2nd 05000

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll		✓	Senator Heckaman		✓
Vice-Chair Oley Larsen	✓				
Senator Klein	✓				
Senator Luick	✓				
Senator Miller	✓				
Senator Murphy	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator

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

Date: 2/17/11

Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2342

Senate Agriculture Committee

Legislative Council Amendment Number 11.0006 04002 / 05000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	✓		Senator Heckaman		✓
Vice-Chair Oley Larsen	✓				
Senator Klein	✓				
Senator Luick	✓				
Senator Miller	✓				
Senator Murphy	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Miller

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

**REPORT OF STANDING COMMITTEE**

**SB 2342: Agriculture Committee (Sen. Flakoll, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2342 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "61-32" with "57-39.2"

Page 1, line 4, after the first "and" insert "a sales and use tax refund for qualifying"

Page 1, line 4, replace "tiling projects" with "tile systems"

Page 1, line 4, remove the second "and"

Page 1, line 5, remove ", subsection 45 of section 57-39.2-04, and sections 57-39.5-02 and 61-32-03"

Page 1, line 6, remove "sustainably grown crops,"

Page 1, line 7, remove ", sales tax on field tile, and"

Page 1, line 8, replace "drainage permits" with "; and to provide for a legislative management study"

Page 2, remove lines 4 through 29

Page 3, remove lines 1 through 30

Page 4, replace lines 1 through 15 with:

**"SECTION 4.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

**Sales tax refund for subsurface field tile drainage system.**

The owner of a subsurface field tile drainage system within the boundaries of a drainage project authorized by chapter 61-21 may apply for a refund of a portion of the sales or use tax due and paid on the qualifying subsurface field tile system. The tax eligible for refund includes tax paid by the system owner and tax paid by contractors installing the system and is equal to two percentage points of the sales or use tax imposed under this chapter or chapter 57-40.2 on tangible personal property incorporated into the subsurface field tile system. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the qualifying drainage project, the purchase and use of the tangible personal property, and the sales and use taxes paid.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - SUBSURFACE FIELD TILING.** During the 2011-12 interim, the legislative management shall consider studying the laws and rules relating to subsurface field tiling. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

**2011 HOUSE AGRICULTURE**

**SB 2342**



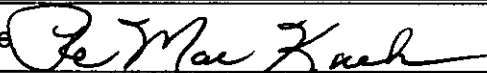
# 2011 HOUSE STANDING COMMITTEE MINUTES

**House Agriculture Committee**  
Peace Garden Room, State Capitol

SB 2342  
March 4, 2011  
Job #14946

☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

(Fiscal note)

Relating to eligible uses for the agriculture partnership in assisting community expansion fund; and to provide for a legislative management study.

## **Minutes:**

**Senator Miller, Co-Sponsor:** (See attached #1)

This bill has been shortened since it started. It defines what soil health management practices are and puts it in the sustainable agriculture section of code. Some parts of Red River Valley have salt and plants don't grow.

**Bob Humann, Senior Vice President of Lending, Bank of ND:** Handout of information on Ag PACE (Agriculture Partnership in Assisting Community Expansion)  
(See attached #2)

Section 2: We have not been able to finance drain tile up to this point. That is what this legislation would do. Ag PACE volume has declined the last two years. What has been driving that volume in the past is: one of the eligible purposes for Ag PACE is when we can finance equity share purchases for a value added processing plant such as Red Trail Energy at Richardton. That hasn't been the case for the last two years. Activity over the last two years has been irrigation projects and some livestock operations.

This Section 2 would open us up to finance drain tile. They would be good loans for the bank. We buy a loan participation from a lead bank between 50 to 80% of loan. On the entire loan amount, the Ag PACE program will reduce the interest rate by up to 5%. So if the bank charges an interest rate of 7%, the state will reduce the rate by up to 5% down to a net rate to borrower of 2%. There is a maximum per biennium. It is \$20,000 of interest buy down to reduce the interest rate. That is not the maximum loan amount. That is the amount that can reduce the interest rate. \$20,000 of interest buy down will reduce a \$100,000 loan by 5% for up to 5 years.

If loans are larger than \$100,000, we can still be involved. The amount of interest buy down would just have to be less. That 5% would be like 3% buy down if it was a \$150,000 or \$200,000 loan. You can see that we have excess funds available. We are looking to get an appropriation this biennium of \$1 million. So we should have funds to add this other eligible purpose.

**Representative Boe:** \$1 million appropriation, is that the sole source of funding for the Ag PACE program?

**Bob Humann:** In some ways, Yes. \$1 million is dedicated to Ag PACE but state law does allow us that if we would run short in Ag PACE we can move funds from our PACE program or from the biofuels PACE program or from the beginning farmer program?

**Representative Rust:** You talked about \$20,000 of interest buy down would reduce \$100,000?

**Bob Humann:** With an Ag PACE loan the state law requires the maximum a borrower can get per biennium is \$20,000 of interest buy down. \$20,000 of interest buy down will reduce a \$100,000 loan for a five-year term up to 5% in interest rate reduction.

**Representative Mueller:** When the bank is involved, do you see a change in other lending institutions attitudes towards tiling. Do you set the pace for the rest of the banking world?

**Bob Humann:** We've had banks asking us to do this for years. We've tried to do it by loan policy without changing the law. We have been able to get approval to do this. We have gone to the State Water Commission to ask about financing drain tiling with Ag PACE and the answer has been "no."

**Representative Trottier:** Is this a secure loan?

**Bob Humann:** Yes, the interest would be in the farm real estate. If there is a mortgage on that land we will look at a second.

**Sandy Clark, ND Farm Bureau:** We are in support of this bill. We need to educate the public about the benefits of drain tiling. We look forward to be a part of that education process.

We would like to talk about Section 1, lines 8-13. When you look at 4-01-23 of the NDCC, that is the section of code that talks about sustainable agriculture. We have no problem with the language. It is good language. We would question whether it needs to be in the section of law dealing with sustainable agriculture. There has been some controversy through the years about the definition of sustainable agriculture. Do we need management practices in century code? This is where the ag. commissioner can label sustainable grown crops. This section would be number 5 under those practices. Drain tiling can be used but we think there is a broader use for drain tiling than simply in that section of the law.

**Representative Mueller:** Where we talk about organic farming in the code is where this would go. You are suggesting that it shouldn't go in there. Where else?

**Sandy Clark:** It is the section of law that talks about sustainable agriculture and the definition. It is the section that allows the Agriculture Commissioner to label sustainably grown crops. Maybe we don't need to start putting management practice into the law. Other management practices aren't in law.

**Scott Rising, ND Soybean Growers Assn.:** We are in support of this bill. Drain tiling capability is long overdue. We are also excited about the expansion of the Ag PACE loan program.

**Opposition:** none

**Chairman Johnson:** Closed the hearing.

**Representative Trottier:** Has the reference of 2 percentage points of sales tax been taken out? It is in the fiscal note.

**Senator Miller:** Yes.

**Representative Boe:** We are on the 600 version of bill. Can you talk about Section 1 with what Sandy Clark talked about? Was that in the bill in the beginning or was it added in later?

**Senator Miller:** That was something I put together from the beginning. I think it fits in the sustainable section. The most important thing to growing crops and sustaining agriculture is important to sustainable soil health. What NDSU is trying to do with educating people on new soil health management practices, it empowers the Agriculture Commissioner to also advocate for that.

**Representative Boe:** You think it is important to have it in there.

**Senator Miller:** Yes, it is a positive statement about the problems we are incurring in the Red River Valley and all over the state. I don't follow Farm Bureau's concern.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee  
Peace Garden Room, State Capitol

SB 2342  
March 24, 2011  
Job #15950

☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Committee Work—relating to eligible uses for the agriculture partnership in assisting community expansion fund; and to provide for a legislative management study.

## Minutes:

**Representative Headland:** The fiscal note references sales and use taxes. That has been stripped out of the bill. This fiscal note is not current.

**Representative Headland:** Moved Do Pass

**Representative Trottier:** Seconded the motion

**Representative Boe:** We had a question whether Section 1 had to be in this bill?

**Vice Chair Kingsbury:** Do you mean Section 1 where we questioned sustainable ag and should it be elsewhere?

## Clerk reads from minutes of March 4, 2011 for review:

**Sandy Clark, ND Farm Bureau:** We are in support of this bill. We need to educate the public about the benefits of drain tiling. We look forward to be a part of that education process.

We would like to talk about Section 1, lines 8-13. When you look at 4-01-23 of the NDCC, that is the section of code that talks about sustainable agriculture. We have no problem with the language. It is good language. We would question whether it needs to be in the section of law dealing with sustainable agriculture. There has been some controversy through the years about the definition of sustainable agriculture. Do we need management practices in century code? This is where the ag. commissioner can label sustainable grown crops. This section would be number 5 under those practices. Drain tiling can be used but we think there is a broader use for drain tiling than simply in that section of the law.

**Representative Holman:** I think we have to be careful of putting something in. The definition of sustainable is something that continues to be argued about. There is a group of organic people that want to use the word "sustainable" to define their business. There are others who see it in a broader context. We have to be careful about where we use the word "sustainable." We might be implying something that we don't want to imply.

**Representative Mueller:** It seems to me the intent of the bill is found in lines 20 & 21 which is "and subsurface field tiling projects." Subsurface field tiling projects would now be eligible for Bank of ND PACE loans. I, too, would question the need for Section 1. What is that doing in terms of securing loans for tiling?

**Chairman Johnson:** It probably would appear as just a definition. Do you want to withdraw your motion and second?

**Representative Headland:** No. The bill sponsor believes that reduced soil salinity, excess water, and increased organic matter are important to soil health. It is proper to have that language in our definition of sustainable ag. I would prefer to go forward with that language in there.

**Representative Boe:** If we put this into sustainable language, is the nonuse of subsurface drainage not considered sustainable if you don't use that practice?

**Representative Headland:** I agree with Representative Mueller. The big part of this bill is the interest buy down through Ag. PACE. If this language keeps this legislation from moving forward, I would give some ground if that is the wishes of the majority of the committee.

**Representative Headland:** I will withdraw the motion.

**Representative Trottier:** Withdraws second.

**Representative Mueller:** Moved that Section 1 is taken out and renumbered accordingly.

**Representative Boe:** Seconded the motion.

**Representative Boe:** We can do the amendment in order to get this bill taken care of. This will land it into a conference committee and hopefully by that time we will be able to answer the questions that are raised.

**Chairman Johnson:** Unless the Senate concurs.

**Voice Vote taken on amendment.** Passed.

**Representative Holman:** Moved Do Pass as amended.

**Representative Boe:** Seconded the motion.

A Roll Call vote was taken. **Yes: 12, No: 0, Absent: 2,**  
(Representatives Belter and Schatz)

**DO PASS as amended carries.**

**Representative Holman will carry the bill.**

Date: 3/18/11

Roll Call Vote # 1

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** SB 2342

House **Agriculture** Committee

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

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Headland Seconded By Representative Trottier

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair			Tracy Boe		
Joyce Kingsbury, Vice Chair			Tom Conklin		
Wesley Belter			Richard Holman		
Craig Headland			Phillip Mueller		
David Rust					
Mike Schatz					
Jim Schmidt					
Wayne Trottier					
John Wall					
Dwight Wrangham					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

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

**Motion withdrawn**

March 24, 2011

YR  
3/24/11

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2342

Page 1, line 1, remove "a new subdivision to subsection 5 of section 4-01-23 and"

Page 1, remove lines 8 through 13

Renumber accordingly

Date: 3/18/11

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2342

House Agriculture Committee

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

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended

☐ Rerefer to Appropriations

Amendment

Motion Made By Representative Mueller Seconded By Representative Boe

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair			Tracy Boe		
Joyce Kingsbury, Vice Chair			Tom Conklin		
Wesley Belter			Richard Holman		
Craig Headland			Phillip Mueller		
David Rust					
Mike Schatz					
Jim Schmidt					
Wayne Trottier					
John Wall					
Dwight Wrangham					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

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

Remove Section 1, lines 8-13



Date: 3/24/11

Roll Call Vote # 3

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** SB 2342

House **Agriculture** Committee

Legislative Council Amendment Number 11.0006.06001

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Holman Seconded By Representative Boe

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	X		Tracy Boe	X	
Joyce Kingsbury, Vice Chair	X		Tom Conklin	X	
Wesley Belter	AB		Richard Holman	X	
Craig Headland	X		Phillip Mueller	X	
David Rust	X				
Mike Schatz	AB				
Jim Schmidt	X				
Wayne Trottier	X				
John Wall	X				
Dwight Wrangham	X				

**Total**    **Yes** 12                      **No** 0

**Absent** 2

**Bill Carrier** Rep. Holman

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

**REPORT OF STANDING COMMITTEE**

**SB 2342, as reengrossed: Agriculture Committee (Rep. D. Johnson, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
Reengrossed SB 2342 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new subdivision to subsection 5 of section 4-01-23 and"

Page 1, remove lines 8 through 13

Renumber accordingly

2011 TESTIMONY

SB 2342

## TESTIMONY IN SUPPORT OF SB 2342

#1

My name is Joan Braaten - Grabanski and I am here to speak on behalf of myself and my husband, Ray Grabanski, in support of Senate Bill 2342 and the problems which this bill is designed to solve.

Most people familiar with tiling and the tiling process understand that tiling can improve the productivity of farmland AND reduce the susceptibility to flooding due to the nature of operation of tile drainage. Tile drainage is a slow process that drains the soil, not the surface water, over a very long period of time through drain pipes buried below the soil. This process drains the excess soil water so that plants can grow in optimum soil moisture conditions.

Surface drainage occurs first, and is typically the only type of drainage where rapid runoff can occur. If flooding damage occurs, it is typically due to surface water drainage. Tile drainage is a slow process, with typically an 8" diameter pipe draining an entire 160 acres of land, which can take weeks to drain the excess water from the soil. Typically, if a season is wet, tile drainage will drain the excess water from the soil in the fall to early winter, draining the excess water from the soil and making it possible for additional water to be absorbed by the soil during spring runoff. This type of drainage has the potential to reduce the severity of spring flooding.

As Dr. Hans Kandel, NDSU Extension Agronomist has said repeatedly, tile drainage does not increase the amount of water that drains (but it can decrease it), nor does it change the direction that the water will drain. If anything, tile drainage may decrease overall the amount of water drained from the total rainfall, as the whole goal of tile drainage is to increase the productivity of the soil, which can only be accomplished if it utilizes more of the water that naturally falls in rainfall. It drains excess water from the soil so the plants can grow faster and more robustly, allowing higher yields which also means greater utilization of rainfall. If more water is used by the plants, it only goes to reason that less water is available to runoff the land.

However, under current ND law tile drainage is treated the same as surface drainage due to an Attorney General's opinion that NDCC 61-32-03 applies to tile drainage. Therefore, most water resource districts require flowage easements to

be obtained before any tile project can be completed. My husband, Ray, personally knows many farmers in Cass, Richland, Traill, Grand Forks, and Walsh counties who want to tile, but cannot mainly because they cannot get the flowage easements required by most water resource districts to obtain a permit for tiling – even though the tile drainage will not materially impact the downstream landowners.

Senate bill 2342 is meant to take care of the two greatest problems in ND under current procedure for tile drainage:

1. People who want to tile but cannot because someone will not give them a flowage easement. This happens repeatedly even though there is negligible or no adverse impact to downstream landowners. Landowners may be reluctant to give a perpetual, unlimited flowage easement because they aren't certain if there will be any impacts in the future, or they may just simply not like the person doing the tiling or want him to 'get ahead'. This is perhaps the biggest problem for ND, as it inhibits development and progress (improved land values, increased tax revenues, increased productivity from the land forever, increased use of rainfall that falls on the land if a better crop can be grown with tiling).

2. Situations where a permit was approved (a person got the easements, for example) and then a downstream landowner discovers that there were adverse impacts. There is no recourse for a downstream landowner once he grants a perpetual easement, even if he is damaged considerably after the easement is granted. It is probably this fear that makes many landowners reluctant to grant perpetual easements, with no recourse if adverse impacts develop. Landowners who 'hear' about these problems via hearsay may be the biggest problem with inhibiting the state's tiling progress.

Any law introduced to the legislature must address these problems, or it is not doing enough to improve the climate for tiling in ND. It is my understanding that this bill does address those issues, as well as the opportunity to decrease flooding problems.

We would encourage the Committee to vote a "Do Pass" for SB 2342 to solve these problems, and allow more tiling which will improve the productivity of ND soils, reduce flooding concerns, and increase the overall tax base in ND.

#2

Esteemed Committee members,

My name is David Hankey and I am a farmer from Park River, ND. I am an advocate of drain tile.

Elwyn Robinson from the Department of History at UND wrote a book in 1966 called the "History of North Dakota" which is considered the most comprehensive book on the history of our great state. On page 165 he makes reference to the bitter rivalry that developed between Park River and Grafton early in our state's history as a result of athletic contests.

I would contend that the bitterness between Park River and Grafton which still exists today is also related to the fact that Park River's airport sits at an elevation of 1104 feet above sea level and Grafton's sits at 824 feet. In the Red River Valley that is a huge difference.

What does all this have to do with drain tile. About 4 years ago I bought some low quality land east of Grafton with the intention of drain tiling this land. It was a good plan to take land with a productivity index of 65 and convert it into land that would have a productivity index of 93 a couple years after the tile was installed. I drove over to Grafton to meet with one of the downstream land owners in the hopes of securing a flowage easement. His exact response to me was "we already have enough of your damn Park River water and now you want to buy land over here and pump more water on us."

I have often wondered if the flowage easement was not given to me just because I was from Park River. To add injury to insult the land in question is in the drainage assessment area for the Oakwood legal drain so we are paying an additional land tax assessment to pay for a legal drain that we cannot access without the permission of our neighboring land owners. An analogy I have come up with is paying taxes to build and maintain State Highway 17 and then having to ask permission of the landowners between my house and highway 17 to get to the highway. I ask the committee members "how would you like to pay taxes on a highway and then have to ask permission of all the landowners between you and the

highway if you could get access to it. What if they could just say no without any reason given. You better hope that one of those people who just likes the word **No** better than the word **Yes** doesn't control your fate"

Currently our local water board as a routine practice requires flowage easements from downstream land owners. In my opinion, the water boards are ignoring their responsibilities to be the arbiter of water disputes and just leaving the decision to the downstream land owners. Our local water board states that flowage easements are required because of the adverse affects on the downstream landowners. I have asked several times for a listing of these adverse affects so that I could develop a management plan that addresses them. I have gotten nothing. The downstream landowners can use any number of biases to decline to give flowage easements. In my experience the reasons almost never have to do with real adverse effects on their property. The reason the water boards were formed is to allow drainage to happen without the personal biases entering into it.

I have calculated out that the tiling projects I have done to date have a payback of less than 4 years as long as the current wet cycle continues. This quick payback and the increased output is a good thing. I am buying more fertilizer and seed and hauling more production to the local elevator in town. I will have more stable production year in and year out. Drain tile works and it is not going away. My father who is 75 and retired still comes out to the farm every day during the summer. He watched us tile for a couple years including putting some tile on land that he owned. One day he came to me and said, "Dave why don't you see if you can find some land suitable for tiling that I can buy. I don't trust the stock market and would rather have my money in land and tile"

I always understood North Dakota to be a "property rights" state meaning that you have the right to improve your property as long as you don't harm anybody else. You certainly shouldn't need to get the permission of your neighbors to improve your property. Granted if you harm them then you should

compensate them. I feel this bill allows both scenarios. You can improve your property and yet the downstream landowners can rest easy knowing they are protected.

On a side note two falls ago I had my fields pumped out. In the spring I waited until the Red River crested at Drayton before I started my pumps. I calculated that I pumped over 5 million gallons of water off my land. All of it was pumped after the crest in Drayton. This is why Minnesota Representative Collin Peterson of Minnesota has touted tiling as a solution for the persistent flooding in the Red River Valley. The ability to store water in the land is immense. Tiling is smart from an agronomic standpoint, it makes sense from a farmer's financial standpoint, and it is part of the solution to our persistent flooding problems.

Thank you for your time.

ATTACHED – Fargo Forum Article from 8/27/2010 on Colin Peterson



Peterson: No stopping diversion

Ryan Bakken, Forum Communications Co. - 08/27/2010



EAST GRAND FORKS, Minn. — Rep. Collin Peterson, D-Minn., suggested Thursday that an additional \$1 billion be devoted to flood protection for the Red River Valley, over and above the \$1.5 billion needed for the Red River diversion. The \$1 billion, spent over 10 years, would be used for various methods of water retention, he told several audiences, including county, township and city elected officials at East Grand Forks City Hall. Peterson said building dikes higher “is a waste of money and time,” adding that he’s “given up” on building big dams. He said his plan also would help rural properties, not just the cities that qualify for federal help, because of the cost-benefit formula in use. Instead, the money would go to 400 to 500 smaller projects that would hold back water during the spring runoff. His goal is to annually store 1 million acre-feet of water. Before he could pitch his plan, he needed to allay fears that the F-M diversion would create major flooding problems in the northern valley. “Under the law, the corps can’t build a project that puts more water on other people. It won’t happen,” he said. But he added that there’s no stopping the diversion, either. “Fargo is too big of a political force. It will happen,” he said. As chairman of the House Agriculture Committee, he seemed confident he could get a \$50 million annual contribution to the project, which would be in next year’s farm bill. The two states and watershed

districts perhaps would need to contribute the matching \$500 million over 10 years under his plan. As Exhibit A in his plan, he held up the water retention project that, combined with a diversion, has stopped flooding in Warren. A dynamic part of his plan would be to "tile the entire Red River Valley." Farmers would be offered low-interest loans to place drain tile to hold the water underground. He said tiling experiments have doubled field yields. More water could be retained, he said, by:

- Draining wetlands in the fall.
- Keeping lake levels high in the spring.
- Using a scaled-down version of the waffle plan. "If we can store 1 million acre-feet, there would be no effect from the diversion anywhere in the Red River Valley," he said. "We'd make the biggest dent in water issues we've ever made. "This stuff is not cheap. But it's cheaper than a flood."

---

Bakken writes for the Grand Forks Herald

#3

Senate bill 2342  
Testimony by  
Ross Johnson  
Mayville, ND

Mr. Chairman and members of the committee, thank you for your time. My name is Ross Johnson. I'm the owner of Agassiz Drain Tile LLC located in Buxton, ND. I have been in the business for 6 years. I'm here to testify today in support of SB 2342.

Here is what drain tile has done to date for North Dakota:

Approximately 60,000 acres pattern tiled.

X 30% increase in yield  
= and additional 18,000 acres in production.

18000acres x 150 bushels corn x \$4.00 = \$10.8 million

18000acres x 40 bushels soybeans x \$13.00 = \$9.4 Million

18000acres x 25 ton sugar beets x \$45 = \$20.25 Million

In ten years I conservatively expect 500,000 acres to be tiled

That would be \$90 million per year coming into ND.

- ❖ This is money that is being spent on Seed, chemical, Fertilizer, Fuel, new machinery, houses, sales tax and higher income tax.
- ❖ If \$10.8 million is spent times 5% sales tax = \$540,000
- ❖ Bottom line more money into ND from China, Japan, Mexico, Russia, all over the world.
- ❖ This could be the oil boom of the eastern side of the state.

Drain Tiling has the potential to greatly reduce flooding in the RRV. Drain Tile reduces the water in the soil profile in the fall. Therefore allowing room in the Spring for absorption, and then flowing out in a controlled fashion when the frost comes out.

The problems I see in the industry is the permitting process. This process is extremely slow and it has no uniformity from County to County. This bill will unify every county and give equal rights to all land owners, regardless of their location.

- In 2 years I see the amount of drain tile permits increasing ten fold. This will over tax the current permitting system.
- The current requirement for a flowage easement is not working. Put the responsibility or liability on the person engaging in tiling. If they feel comfortable enough that they are not adversely affecting their neighbor, then go ahead and put in your tile system.
- If every permit has to be looked at by an engineer to determine any adverse effects, we will be going backwards. This will only delay permits more because of the number of permits being applied for. A farmer I know has been waiting for over a year for his downstream study .
- Minnesota law in a nut shell states that; a land owner has the right to tile his or her land, they also have the right to drain across their neighbor but the neighbor has the right to collect damages caused by that water flow. Lets not reinvent the wheel, take a look at what is working for other states who have experience in tile.

Mr. Chairman and members of the committee, this is a real problem that needs to be addressed. We can't wait to study this problem. A lot of people have been studying this problem for several years already, this is why we are here today with a solution. We can't be making it more difficult to tile, but rather encouraging farmers to do more.

Mr. Chairman and committee members, I urge you to recommend a "do pass" to this bill with the following amendments.

1. Page 4 Eliminate number 4
2. Page 4 Change 5 to \$3 per acre
3. Page 4 Eliminate 6
4. Page 4 Change 7 to read. All permits may be approved by the local water resource board unless they feel it is of statewide or inter-district significance, and anything within the Devils Lake watershed must first be reviewed by the State Water Commission.

Mr. Chairman and member of the committee, I will be happy to answer any questions.



#4

Your voice for wheat and barley. [www.ndgga.com](http://www.ndgga.com)

North Dakota Grain Growers Association  
Testimony of SB 2342  
Senate Agriculture Committee  
February 3, 2011

Mr. Chairman, members of the Senate Appropriations Committee, for the record my name is Terry Weckerly; I am a fourth generation farmer and ag retailer from Hurdsfield, North Dakota. I appear here today on behalf of the North Dakota Grain Growers Association in support of SB 2342.

Orderly water management is critically important to agriculture. Present day land values and soil health are among the many factors dictating the need for the proper control of water on agricultural soils. Hindering the tiling process are inconsistencies in state and federal law; various interpretations of tiling rules and regulations on the local, state and national levels often leave farmers confused and frustrated with the paperwork process of tiling. These inconsistencies lead to delays in tiling projects to the detriment of landowners and the property they make their living from.

Mr. Chairman, members of the Senate Agriculture Committee, SB 2342 is a good first step in clearing up state statutes that impact tiling projects. Section 7 of the bill distinctly outlines the criteria necessary to begin and complete a tiling project in the state. Placing the authority of the water resource district to permit tiling projects allows for more local control and better administration of the project itself. Placing a time certain for a water resource district to act on a drain tile proposal will smoothen out the permitting process. Placing liability for downstream impacts on the person engaged in the tiling project helps to ensure that tiling proposals are well planned and well thought out. Finally, Sections 4 and 5 of the bill allowing for a sales tax exemption for subsurface field tile is proper given the agricultural nature of tiling projects.

Mr. Chairman, members of the Senate Agriculture Committee, proper water management is a vital part of North Dakota's agricultural industry. When done properly, tiling is an important aspect in the water management process. As landowners face continued soil health issues, it is important that they be given a regulatory process that isn't complicated and is locally controlled. SB 2342 is a good step in the right direction.

Therefore, the North Dakota Grain Growers Association supports SB 2342 and would ask the Senate Agriculture Committee for a Do Pass recommendation.

Mike Sawyer

#5

**Section 1.** A new section to Chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

**Permit to drain subsurface waters required - Permit form.** Installation of an artificial subsurface drainage system requires a permit. The state engineer shall develop an application form for a permit for subsurface drainage of water. Any person who seeks to construct an artificial subsurface drainage system must submit an application to the water resource district or districts within which is found a majority of the drainage area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit. Water resource districts will forward copies of all approved permits to the state engineer. Water resource districts may refer permit applications to the state engineer for consideration and approval if applications propose drainage of statewide or interdistrict significance.

A permit may not be granted until an investigation discloses that the subsurface drainage will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. Any person who installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by any person caused by the draining, and is guilty of an infraction.

# Reasons To Consider Tiling

# 6

By: Larry Luick  
Phone: 701-474-5959

1. **Increased net profit** - It costs virtually the same to farm 120 bu/acre farm land as it does 170 bu/acre. Why not "net" the extra yields?
2. **Removes harmful toxins** - By improving aeration with the removal of excess water, certain toxic substances and disease organisms are removed from the soil. (Such as iron and manganese.)
3. **More consistent seed stands** - By improving the seedbed environment there is less rotting of seeds before germination and a decreased chance of needing to replant. The seeds need to germinate uniformly to receive top yields. Perfect stands are more likely when seeds are planted into warm, dry soil and not into mud.
4. **Post-harvest maintenance** - Because tiled fields are usually harvested earlier, there is more time for field maintenance such as surface ditch maintenance and rock picking for the next year's field preparations.
5. **One-Time Expense** - A one-time expense that begins paying itself back the first year. Payback could take 3-10 years depending on system, weather, crops, etc.
6. **Better soil structure** - Promotes better soil tilth since the soil is not worked when it is wet. Increased soil granulation allows better water and air interaction with the roots.
7. **Increases yields in dry years** - Deeper root development helps plants withstand summer droughts better. Roots usually penetrate to within 15 inches of the water table. High water tables in spring due to poor drainage cause shallow root development which in turn decreases the soil volume from which plants can obtain moisture and nutrients throughout the remainder of the summer. Tiled crops tend to be planted earlier, grow more quickly, and mature before late summer stress sets in.
8. **Allows earlier planting** - A longer growing season allows early planting for higher yields. Crop varieties with longer growing seasons for optimum production may become a possibility.
9. **Faster soil warm-up** - The soil temperature in tiled fields can be as much as 5-15 degrees warmer. A wet soil is a cold soil, which hinders seedling development.
10. **Larger, deeper roots** - By lowering the water table in the spring the roots continue to go down seeking moisture. Tiling creates air and water channels to encourage better root growth and soil penetration. A large fast growing root mass relates directly to yield performance.
11. **Less yield variation for a more dependable cash flow** - In a university study, yields varied 46% on non-tiled soil versus 18% on tiled soil - yields were consistently higher on tiled fields.
12. **Lowering of salt content in soil** - Salt is carried with the water through the tile and away from the growing root zone. Barren areas can regain productivity.
13. **Total field farming** - by lowering the amount of excess water in the field, fields can be farmed from end to end. No waiting for wet areas to dry up or the need for replant travel.
14. **Better livestock production** - By giving the root zones of pasture grass more air and the benefit of aerobic bacteria, plant growth improves.
15. **Water retention** - Because of the sponge effect created by tiling, fields become a reservoir during a large rainfall. The field now has storage capacity to lessen the initial run off and spread the excess flow over the next few days instead of all at once.
16. **Less compaction** - By drying out faster so the ground is not worked when wet, fields experience fewer compaction problems.



17. **More favorable environment for beneficial soil micro-organisms and earthworms.** - Opening the soil to breathe allows microorganisms and earthworms to thrive. These aerobic organisms make the nitrogen and sulfur in the soil more available.
18. **Allows more days of machinery operation** - With faster dry-up and warmer soils, farmers can get in the field earlier in the spring and perform fall operations later in the year when cool temperatures slow down soil drying.
19. **Dry soils allow more timely chemical applications** - With chemical costs rising, apply herbicides and pesticides at the optimum time.
20. **Less erosion** - Soil erosion is reduced by increasing the capacity to hold rainfall and let it percolate through the soil instead of running off. This allows the fertility level and soil structure that has been built-up to stay intact, and allows for less runoff of nutrients such as phosphorus.
21. **Lower drying costs** - Tiled field crops grow and mature faster allowing Mother Nature to dry the crop.
22. **Lower machinery costs** - Tiled fields are workable for more days throughout the year allowing farmers to get more done with less equipment.
23. **Lowers breakeven price per bushel** - With the same input and fixed costs, the breakeven costs per bushel are lowered. If the market should retreat a little, the profit margin is still there.
24. **Better soil aeration** - Tiled soil percolates better allowing water and air to reach the root zone. The channels created from water and air moving down through the soil let it breathe.
25. **Higher yields and improved crop quality** - Yields from field to field will vary. However, drainage experiments have shown some impressive yield improvements such as: Corn up 34%, Alfalfa up 42%, Soybeans up 29%, Wheat up 79%. These increases are dependent on location, soils, growing conditions, etc. and are bound to differ from one area to another.
26. **Lessens the need to farm more acres** - By creating farmland that can grow a more substantial yield consistently, the need to "volume" farm is lessened, freeing up capital to give to Luick Backhoe Service, Inc. for tiling more acres of your farm.
27. **Raises farmland values** - In areas where tiling is "old business," farmland values increase because of the previous installation of tile.
28. **Wider selection of crops** - Because of a more favorable root zone, high value crops or new crop choices may become a possibility. For example, edible beans and potatoes do not like wet soil but do well on tiled ground.
29. **Higher rental rates are possible for "Owners"** - Rental rates should increase since the tiled land results in higher production for the renter.
30. **Health** - Lessens stress for the farmer and banker from spring planting to post-harvest fieldwork.
31. **Possibility of subsurface irrigation** - Depending on elevation differences within the field, it may be possible to establish a tiled field system that doubles as an underground irrigation system. This type of system is called controlled drainage, which reduces the loss of nitrates into downstream waterways.

\*\*\*Compiled From A Variety Of Sources By Larry Luick Of Luick Backhoe Service, Inc. February 4, 2003\*\*\*

# 1

**Testimony by Sean M. Fredricks  
Ohnstad Twichell, P.C.  
Counsel for Red River Joint Water Resource District  
and Cass County Joint Water Resource District**

**Before the Senate Agriculture Committee  
In Opposition to SB 2342**

**North Dakota Legislature  
Bismarck, North Dakota  
February 3, 2011**

Chairman Flakoll, members of the Committee, I appreciate the opportunity to testify before you today to identify our concerns regarding SB 2342. My name is Sean Fredricks, and I am an attorney with the Ohnstad Twichell Law Firm in West Fargo. I represent the Red River Joint Water Resource District, the Cass County Joint Water Resource District, and several individual water resource districts in the state, including the Southeast Cass, Maple River, North Cass, Rush River, Sargent County, Ransom County, Richland County, and Dickey County Water Resource Districts.

The Red River Joint Water Resource District, and its member districts, fully supports tile drainage; in their capacity as water managers, our board members support tile drainage because they recognize the substantial water management benefits tile drainage provides. In their capacity as farmers and landowners, our water managers support tile because they recognize the tile drainage can increase their ag production and their overall property values. Many of our water managers have obtained tile permits and have installed tile on their own farm operations. The volume of tile permits that our water resource districts have approved is staggering, and our water managers have developed an efficient and effective procedure for processing and approving tile permits. In short, we support tile drainage, and we support reasonable permitting

procedures to ensure a fair process for all parties who have a stake in tile drainage, including landowners who seek to install tile to improve their land; downstream landowners who might be adversely impacted; and other related parties (e.g., townships and other road authorities); and contractors who install tile.

We do not oppose SB 2342 in its entirety; we have no objection or position regarding the tax provisions contained in Sections 1 through 5 in the bill. Rather, we oppose Sections 6 and 7 of the bill as those sections relate to tile drainage permitting criteria and procedures. We agree the tile permitting system could improve, and we want to play a role in that process.

Senator Miller's intentions behind improving the efficiency of the tile drainage permitting procedures under Section 7 of SB 2342 are admirable; similarly, we appreciate the efforts of Representative Belter (HB 1459) and Senator Luick (SB 2280) to improve the efficiency of the tile permitting process. To the extent the legislature can expedite permitting, we support those efforts. We are primarily concerned about the bills' elimination of reasonable protections for downstream landowners, and the elimination of water resource districts' ability to attach reasonable conditions to tile permits (e.g., protections for downstream roads and highways).

Under current law, downstream landowners can rely on water resource districts to consider and potentially address downstream impacts in the permitting process; passage of Section 7 will virtually eliminate water resource districts' ability to require safeguards to protect downstream lands. Instead, the only remedy for downstream landowners who are losing tillable land and property value will be private lawsuits, an expensive endeavor with a questionable likelihood of success.



Our objective is not to reduce tile drainage, nor is it to endorse a cumbersome and unnecessary tile permitting process. Rather, we seek a reasonable permitting system that accommodates all related parties, and our water resource districts have done their part to develop an effective and efficient procedure for processing and approving tile permits. The water resource districts procure engineers to review each permit and to offer recommendations regarding potential adverse impacts. The water resource districts confer with their engineers and examine any potential impacts downstream; the districts have the ability to require applicants to obtain flowage easements from downstream landowners *only* if the tile discharge will result in adverse impacts. Not every project requires flowage easements, and generally speaking, water resource districts would prefer not to require flowage easements. *The districts do not automatically require flowage easements.*

If our water resource districts, following consultation with their engineers, conclude tile discharge will not have any adverse impacts on any downstream properties, the water resource districts approve those tile permits without requiring any flowage easements. For example, tile projects that discharge directly into existing legal drains, rivers, or natural watercourses typically result in negligible impacts, if any, on downstream landowners. In those instances, water resource districts do not typically require any easements; rather, they quickly approve the permits, and the landowners are free to install their tile, subject to other reasonable conditions (e.g., permission from road authorities to drain into their ditches).

If a water resource district, following consultation with its engineer, concludes a tile project will discharge over any neighboring properties, and that the discharge will adversely impact those properties, *only then* will the water resource district require any flowage easements,



prepared by Sean M. Fredricks

and then only over those properties that will be adversely impacted. For example, if a tile project will discharge at the corner of the applicant's property, and it will then flow over a neighboring property for half-a-mile before it reaches a river or other existing outlet, our water resource districts will next consider what impacts, if any, the additional water will have on the neighboring property. If the tile discharge will cause the property to be wet for longer periods, for example, our boards will typically require a flowage easement over that property. If the tile discharge over a neighboring property will take a portion of property out of production, that is clearly an adverse impact that will require a flowage easement. If the tile discharge water will interfere with a farmer's access to a field, that is an adverse impact that will likely require an easement. These procedures are reasonable and necessary to protect downstream landowners.

Section 7 of SB 2342 will virtually eliminate those reasonable safeguards. Under this proposed process, water resource districts will not have any discretion to require an easement if a tile discharge will take a portion of a neighbor's property out of production. Instead, the downstream landowner will have to either live with the additional water, or hire an attorney and attempt to sue their neighbor for reducing their property value or taking a portion of their land out of production.

As a practicing attorney, I can tell you these types of lawsuits will be expensive for downstream landowners, and they will be difficult to win. Suing an upstream landowner to recover damages for loss of production capability or property value will be a highly fact-specific task, and those types of suits will require a great deal of discovery in the course of litigation. The litigation process can be lengthy in these discovery-intensive cases, with all sides paying attorneys' fees, regardless of the outcome.

The second concern we have regarding Section 7 of SB 2342 is the lack of any statutory authority for water resource districts to attach other reasonable conditions to tile permits. For example, under Section 7 of SB 2342, water resource districts would lack the authority to require tile applicants to obtain permission from downstream road authorities. If a tile project will discharge into a road ditch, the discharge could create hazardous conditions that could place the road authority at risk. Our water resource districts frequently require applicants to seek permission from downstream road authorities, and to our knowledge, no applicant has ever encountered difficulty in obtaining the requisite approvals. Road authorities work with these applicants and grant them the requisite permission, after developing reasonable safeguards with the applicants to protect their roads and ditches. We strongly urge the Committee to amend SB 2342 to permit water resource districts to attach reasonable conditions.

My clients do not seek to hinder progress in the tile drainage industry. They view tile drainage as an important tool to increase the production and property values, and they want tile drainage development to prosper, just not at the expense of innocent downstream landowners. Water resource districts want efforts to improve the permitting process to incorporate reasonable safeguards for those downstream, including downstream road authorities. We absolutely agree we could improve the existing tile permitting process. But we ask that the Committee examine all of the various proposals in a sensible manner.

My clients and I urge amendments to SB 2342 that will permit water resource districts to attach flowage easements when necessary to reduce adverse impacts, and to permit water resource districts to attach other reasonable conditions.

Thank you for your consideration.



prepared by Sean M. Fredricks

**TESTIMONY ON SENATE BILL 2342**

#8

**Senate Agriculture Committee**

**John Paczkowski, Chief  
Regulatory Section  
Office of the State Engineer**

**February 3, 2011**

Chairman Flakoll and members of the Senate Agriculture Committee, my name is John Paczkowski and I am Chief of the Regulatory Section of the Office of the State Engineer (OSE). On behalf of the State Engineer, Todd Sando, I am testifying in opposition to Senate Bill 2342 as it is currently written.

The concerns of the OSE are limited mainly to subsection 1 of Section 7 of this bill. But first let me say that the intent of this bill and other bills that will be considered later in the Senate and House streamlining the process to obtain a drainage permit and the seriousness of the problems that have led to that intent are clearly understood. The OSE is willing to cooperate in fulfilling that intent; however, we believe that it is important that this be done in a way that assures a coherent and effective regulatory process that includes due diligence while avoiding unnecessary loss of time. Senate Bill 2342, as currently written, lacks both coherent process and due diligence.

The structure of Section 7 of Senate Bill 2342 separates the permitting of tile drainage from surface drainage, which is regulated under N.D.C.C. § 61-32-03. It is the opinion of our assistant attorney general that permit processes described in N.D.C.C. § 61-32-03 would no longer apply to the permitting of tile drainage. The problems with this are:

1. Surface drains and subsurface drains represent different methods for accomplishing the same task, which is lowering water tables and facilitating drying of soils. While each has its own advantages and disadvantages, and while tile drainage is more appropriately used to avert certain problems, like salinization, their potential liabilities are similar; that is, both remove water through outflows that have possible impacts on those receiving the water. In this respect, it makes little sense to treat them differently. It may be argued that expediting the permitting processes for both surface and subsurface drains may make more sense than separating subsurface drains for an entirely different process. We believe they both belong under the same regulatory process.
2. If N.D.C.C. § 61-32-03 is circumvented, Section 7 of Senate Bill 2342, while preempting N.D.C.C. § 61-32-03 for tile drains, offers no substitute process at all. Lines 29 and 30 on page 3 of Senate Bill 2342 provide that: "[a] subsurface field tiling project may be permitted by the board of the water district ... pursuant to the following criteria." The language "may be permitted" indicates that permitting is optional for the board. Separate from N.D.C.C. § 61-32-03,

there is no apparent requirement that the landowner file for a permit with the state or the district. It could, in fact, be interpreted to mean that the board may allow tiling to proceed without a permit in some cases. In addition, Senate Bill 2342 provides for time limits, fees, and authorities, but there is no apparent description of a filing process as provided under N.D.C.C. § 61-32-03. We believe that the language of Section 7 either needs to be expanded to cover a process similar to N.D.C.C. § 61-32-03, but with the desired modifications, or the relationship between Section 7 and N.D.C.C. § 61-32-03 needs to be clarified and integrated.

3. N.D.C.C. § 61-32-03 requires a determination of potential statewide or inter-district impact by the State Engineer. Section 7 of Senate Bill 2342 requires no determination of potential statewide or inter-district impact by the State Engineer or by a qualified professional engineer or natural resource specialist employed by the district. Given that impacts are certainly no less likely with tile drainage than with surface drainage, we question if this is desirable. We ask, does the state wish to do away with this assessment for tile drainage?
4. Subsection 1 of Section 7 appears to grant the draining landowner a right of unrestricted outflow across the property of others. The subsection says, in effect, that public entities have no control over their ditches and the type and amount of water added to them. This undermines the authority of local entities, and may cause some structural problems and difficulties maintaining vegetative cover for some township, county, and state road ditches.

Subsection 1 of Section 7 implies that the draining landowner has a right to drain across a shallow ditch, or even a grass waterway of neighboring landowner. Subsurface drainage waters are often very saline, particularly during the early phases of drainage. Research in North Dakota has shown that salty waters in shallow road ditches have been able to salinize neighboring fields for distances as great as 300 feet from the ditch. In this respect, drainage for salinization reclamation by one landowner could simply be transferring the problem to a receiving landowner downstream.

Although Subsection 6 of Section 7 assigns liability to the draining landowner, it would be very difficult for the receiving landowner to prove damage unless a pre-assessment of salinity along the drainageway – and a later reassessment were performed. This is expensive. Is it right for a landowner receiving waters but having no benefit from the drain to incur the expenses of damage assessment required to demonstrate harm? We believe that the rights of road authorities and receiving landowners need to be more thoroughly considered.

5. Subsection 2 of Section 7 authorizes the "local water resource district board" to "require a control structure on the subsurface field tile project in order that water may be shut off to alleviate spring flooding and for ditch maintenance." The boards may already have the implied authority to make this requirement. But it



may be worthwhile for the state to require a control structure where pumping to lift water to drainageways is not part of the design. This would preempt concerns over tile drainage contributions to flooding. While the actual effects are unknown, the presence of a control structure would assure that a "no adverse impact" control mechanism is in place and can be employed, if necessary.

To summarize the OSE concerns, we believe that the outcomes of surface and tile drainage and their potential impacts are sufficiently similar to warrant their regulation under the same state standards and processes. Senate Bill 2342 not only separates the two drainage methods, but in doing so describes no coherent alternative process for district permitting of subsurface drains, and effectively eliminates a need for assessment of potential statewide or interdistrict impact by the state or the district. The bill, as written, also seems to under-protect the interests of downstream landowners and road authorities.

Having reviewed this bill, we must emphasize that we understand the seriousness of the problems presented by high water tables and salinization for producers and for North Dakota's agricultural economy, and we understand the problems presented by delays in permitting. We believe that, should the state wish to retain the determination of statewide and interdistrict significance, the current process can be streamlined with amendments to North Dakota Administrative Code § 89-02-01-08. Most promising would be a suggestion by Representative Headland that the OSE make its determination of interdistrict and statewide significance concurrently with the water resource district's permitting process rather than sequentially. This amendment alone would substantially decrease the processing time for the vast majority of drain applications that have no inter-district or statewide significance. Additional amendments that could be considered would be prioritization of tile drainage over surface drainage when workloads are heavy; and contracting state determinations to engineering firms, or authorizing the districts to hire their own water resource professionals to make the determinations, if applications are temporarily heavy. These amendments would warrant further discussion.

In conclusion, the objective, as we understand it, is to speed the permitting process for tile drainage, while assuring due diligence in avoiding or defining adverse impact through an effective and timely permitting process. The Office of the State Engineer will cooperate in any way it can to help achieve these objectives.



## NORTH DAKOTA SENATE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



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District 16  
P.O. Box 151  
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#1  
COMMITTEES:  
Finance and Taxation, Vice Chairman  
Agriculture

# Testimony before House Agriculture

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### *Senate Bill 2342*

Mr. Chairman and members of House Agriculture, it is my pleasure to introduce to you SB 2342. The application of this bill will aid and assist the expanded uses of subsurface tile in North Dakota.

I have provided an article I wrote that was printed in the Agweek farm magazine, as well as, Farm and Ranch Guide and the Fargo Forum. This article is something I encourage you to read at your leisure as it highlights the attributes of subsurface tile. Some of those are:

- Proven practice
- Soil Health improvements
- Flood Reduction contributions
- Long term environmental improvement

This bill does three things:

1. Defines soil health management practices in the sustainable Ag section of code
  - a. Highlights subsurface tile
  - b. Empowers the Ag commissioner to advocate for soil health
2. Enables farmers to seek Ag PACE loans through the Bank of North Dakota for tile
  - a. Currently a prohibition on this particular loan
  - b. Capital intensive process
3. Authorizes continued study of tile laws and rules in the interim
  - a. As more tile goes into the ground, there may be need for different rules
  - b. Current law is based on surface water drainage

I appreciate your consideration of this bill and would take any questions.

# AGWEEK

## Subsurface tile has benefits

PARK RIVER, N.D. — There have been some fantastic years recently in the agriculture industry in North Dakota and throughout the United States. We have record prices, record yields and new technologies that are increasing our profitability and promoting better farming and stewardship practices. As a farmer, I am excited for the years ahead. We have hope, yet we have challenges.

By: Sen. Joe Miller,

PARK RIVER, N.D. — There have been some fantastic years recently in the agriculture industry in North Dakota and throughout the United States.

We have record prices, record yields and new technologies that are increasing our profitability and promoting better farming and stewardship practices. As a farmer, I am excited for the years ahead. We have hope, yet we have challenges.

North Dakota never has been more important to world food production as it is today; however, nearly two decades of unrelenting rainfall has taken its toll on our soil. Ph levels in the soil are increasing because of saturated ground, cutting yields and creating environmental issues. The need for strong and quick movement on this issue is important.

### Proven practice

For more than 200 years, farmers in this country and beyond have been using subsurface tile to control excess water in the soil profile.

North Dakota farmers have been behind the curve for various reasons. The greatest has been a lack of education on the issue.

Subsurface tile utilizes a technique of placing plastic perforated pipe 3 to 4 feet under the surface of the earth in a pattern that is based on the topography of the land and other factors. The discharge pipe usually is about 8 inches in diameter with a project 100 acres or fewer. The discharge goes into a ditch or a natural waterway.

### Improved soil profile

By removing excess water in times when rivers and streams are not flooding, the soil profile is open to accept more water when heavy rains and flooding occurs.

It also allows for deeper root development so plants properly can access nutrients and water. As a result, organic matter levels eventually increase in the soil. More organic matter means better plant growth, more water absorption and increased yields and profits.

Soil only is capable of so much saturation. Tiling removes only what the soil cannot hold. Nutrients such as phosphorous become "trapped" in heavily saturated soils, requiring larger application of fertilizers which, in turn, can end up in a body of water.

By removing excess water, phosphorous is more readily available to the plant and fewer fertilizer applications are required. If land is tiled and not saturated with water, nitrogen applications can be done in smaller, timelier manners to avoid large single applications, which often leach into the water.

Chemical leaching and overall soil health is vastly improved by tiling applications.

The naturally occurring bacteria and other microorganisms found in the soil benefit from added air and reduced salinity. These organisms contribute to the breakdown of harmful chemicals and beneficial organic matter, turning the soil profile into a live, healthy environment. The net result is better crop quality and less risk of ground water contamination by farm chemicals.

The impacts on spring flooding and heavy summer rains generally are opposite of what one may think. Tiling creates a "sponge effect" on the land, preparing soil to absorb waters that normally would become "runoff."

The net effect is reduced flooding. Water is drained over days and weeks as opposed to hours. During the crop season, tiled land will, in fact, reduce the gross amount of water that flows downstream. This is caused by the increased crop production because of the elimination of poor crop ground. Healthier crops use more water.

#### Flood relief

The possibility of avoiding large, expensive flood relief projects by utilizing tile is real. Imagine eliminating the need to place taxes on the people or lobby Washington for funds to build dikes or diversions and instead allow farmers to pay for the projects themselves. Farmers will get a tremendous profit increase and city dwellers will see the need for costly flood insurance disappear. That cost savings most certainly will help drive up local economies.

Critics should be aware that tiling is regulated by the Natural Resources Conservation Service. NRCS sets rules that prevent wetlands from being drained and the proximity that a tile line can be to a wetland or river.

The process of tiling has been cumbersome to permit in the past.

Currently, the North Dakota Legislature is pursuing legislation to address this process. The intent is to remove erroneous processes and bottlenecks and to protect landowners. There also is legislation to assist with the capitalization of tiling projects, promote the expansion of these projects and properly define the benefits of subsurface tile.

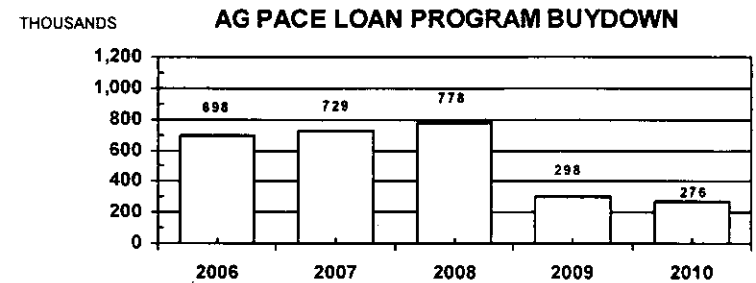
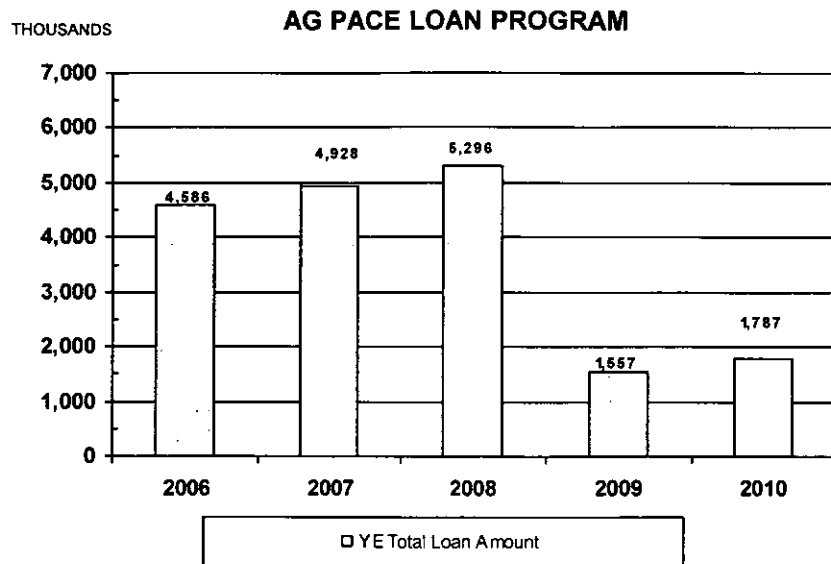
Needless to say, the Legislature is being proactive this session to advance this technology that will increase our productive edge by approximately 30 percent. That means better food supplies, better food quality, more tax revenue and a stronger economy.

The future for sustainable agriculture in the Red River Valley of eastern North Dakota and northwest Minnesota and beyond is wholly dependent upon the expanded use of subsurface tile.

Editor's Note: Miller represents District 16 in the North Dakota Senate. He farms near Fordville, N.D., with his family.

# PACE PROGRAM HIGHLIGHTS

## 2006 – 2010



### 2009-2011 Biennium Ag PACE Buydown Fund

Total Available Funds (\$1.4 Million Appropriation)	\$ 1,663,068
Buydown Funds - Funded/Committed Loans	\$ <u>323,506</u>
Remaining Buydown Funds	\$ 1,339,562

A total of 18 Ag PACE loans were funded during 2010 of which 1 loan was Disaster AgPACE. This compares to 19 loans funded during 2009 with 2 as Disaster AgPACE. The majority of the loans funded in 2009 and year to date in 2010 were for irrigation purposes.

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