

2013 HOUSE ENERGY AND NATURAL RESOURCES

HB 1341

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1341

February 7, 2013

18484

☐ Conference Committee



Relating to financing water resource district projects

Minutes:

1-2 Attachments

Rep. Porter: We will open the hearing on HB 1341

Rep. Kreun: HB 1341 is in relation to financing of the water districts and resource water forks. The majority of the bill is clarifying and detailing some of the districts and some political subdivisions. There are two issues that would help finance the water resource districts and they would be found on line 22 of page 3 (Attachment 1)

Rep. Damschen: Would the initial vote be based on the dollar amount of the assessment?

Rep. Kreun: It is a clarification that the dollars are involved and show that. yes

Rep. Damschen: If one county or subdivision votes out of it and its continued by the county that starts the project that assessment for that county will change, if they adopt the expense that would have to be re-voted than wouldn't it?

Rep. Kreun: I did ask that question and I think I leave that up to Sean Fredricks to explain that.

Rep. Keiser: What was the reason for going from 30-50 years?

Rep. Kreun: With the projects becoming so large and lasting over a long period of time the thought process was to spread that out because of the large amounts of money and some of that that utilize these new construction projects would then pay for them over that longer period of time.

Rep. Schmidt: On the bottom of page one starting with line 18" estimated costs prepared by an engineer" but I don't see any identification of benefits in order to establish a cost benefit analysis which is different than the cost benefit ratio. It seems to me that with all millions of

dollars of the taxpayer's money we are spending on these projects that would it not be better to have a cost benefit analysis to ensure that we are getting our money back from what we are putting in?

Rep. Kreun: That is a good suggestion. I would not personally be opposed to an amendment that we could add to that.

Sean Fredricks: Counsel for Red River Joint Water Resource District; and several water resource districts in the state. This is a housekeeping bill that is the way we view it and is an effort to clean up some of the language and to eliminate some inconsistencies to make the process more efficient. (Attachment 2) It is not an effort to overhaul our assessment process or landowners.

Rep. Silbernagel: on line 21 and 22 on page 3 doesn't that change the process in a sufficient way where you have the ability to stop a project now as opposed to prolonging the project?

Sean Fredricks: When we construct larger projects the way that is operated is we are going to get so much from the State Water Commission and so much from the Red River Joint Water Resource District and we are going to get all of this outside funding. From our perspective that number is sufficient but relative to the full project it is not from our prospective the deciding factor as to whether we should build the project.

Rep. Keiser: With your new language here the special assessment district has base of one million you identify a special assessment district and so used all of the formulas and 50% of the people say no but with the entire extra funding out there your argument is; we can go ahead with the project. Who do you assess?

Sean Fredricks: If 50% vote no that is a block on the assessments. We can't assess anybody so we have to find our funding elsewhere.

Rep. Damschen: We are assuming the vote is on the assessments if there is opposition to the project beyond the assessment is that to the vote?

Sean Fredricks: What this bill would not do is give one county the authority to step in and assess landowners in another county without the consent of the other county.

Rep. Damschen: I think that is clarifying the other section. If one county doesn't want it and the other one does they can go ahead with the project if they fund it themselves?

Sean Fredricks: Depending on the permitting issues and issues like that. From the financing perspective they could still build it but they couldn't assess anybody in the county.

Rep. Damschen: In the \$80,000 project. If one of the political subdivision voted it down and the other political subdivision seemed to be in favor of it and voted in support it would it have to be voted on again in that political subdivision because the assessment is always part of the vote.

Sean Fredricks: I think you are right; if you had two separate votes and the first county voted it down and the second county voted it in. I don't think you can assess in to the first county without their permission through the vote.

Rep. Damschen: I am wondering if it was a \$5.00 an acre assessment if both counties approve one county is out and the county that has approved it could it be an \$10.00 an acre assessment.

Sean Fredricks: If the first county voted no and the second county voted and it passed what do we do with the extra dollars? We can't change that more than 20% based on the construction cost.

Rep. Damschen: So then you don't know if it was approved by then even if there was a higher assessment?

Sean Fredricks: That is right because you can't assume that if someone is willing to pay a \$5,000 assessment you would have to send that for a revote if you wanted them to pay for that.

Rep. Hofstad: Let's assume that Burleigh County is benefited by this project and Burleigh has a number of properties in it so they are assessed and they are part of that vote. What happens if Burleigh County happens to have 51% of assessment value within the county?

Sean Fredricks: I need to understand the question.

Rep. Hofstad: Let's say the project all lies within Burleigh County and Burleigh County is benefited also. Burleigh County has property and are assessed they have a benefit ratio assigned to their property and let's say that that benefit assignment exceeds the 50% level of the entire project so they can vote the project in or out. What are the provisions on that?

Sean Fredricks: You are describing where you would tax the commission itself and they are part of the assessment district and that is one thing that we are able to do now and we would still be able to do under the new statute if it were to pass.

Rep. Keiser: There is a value to having assessment districts and using the assessment process, if there isn't perceived value the property owners are not going to support it and if there is they will support it and move forward. This creates the opportunity for individuals to influence. This takes away an important check and balance.

Sean Fredricks: If what you are referring is on page 3 where the assessment vote fails but you still build a project. If a landowner is going to loan grant the money I never encountered that. From one perspective the permitting would become difficult.

Rep. Porter: By says other political subdivisions in the bill we have in front of us last session we had irrigation districts that we made tighter than this and now you are loosening it up.

Sean Fredricks: We couldn't assess the state and still can't we can't assess the federal government and this can't we couldn't assess housing authorities but we want to make sure (for example) that if there is an irrigation district out there and they will benefit from drainage they should pay their share and not fall on the next door neighbor.

Rep. Keiser: This language would allow the development of a plan to appoint to where it would be fully developed because that is very expensive but it would give you valid numbers. What happens if someone misses a decimal point and some people vote on it and believe the assessment is one amount and suddenly after it is approved by a vote on they get to come back and revote based on the final numbers?

Sean Fredricks: On page 7 lines 8-12 that is what we are addressing here.

Rep. Keiser: If it is a culvert I don't find the 20% too much if the project and the local assessment is \$100,000.000 and you are 20% off now we are paying \$20,000.000 and that I can't support.

Sean Fredricks: I understand that concern I think that is something that we can address and deal with.

Rep. Silbernagel: Those estimates have a contingency fee built into the project. Those are usually 15-20% so not only do we have the contingency but now another 20% over and above that.

Sean Fredricks: The other changes are pretty technical what you see is the mailing of the assessment list.

Rep. Damschen: Some of the landowners started assessment districts requiring petitions and then a bond from the landowners to cover some of the work; on page 3 of your change where it says "50% or more of the total votes constitute the bar against collecting special assessments under this chapter". I am wondering if this is too broad.

Sean Fredricks: We are trying to say for this project we can't collect special assessments against you

Rep. Keiser: On page 7 the suggestion to go from 30 to 50 years that relative to the benefiting party. Explain how the benefiting party is benefiting. Do you pay the amount of the principal but the interest is extended? Why should we change this from 30-50 years?

Sean Fredricks: In any project that you build I am surprised how many landowners want you to extend the assessments as long as you can.

Rep. Keiser: That is true as long as the people stay there. If you make my 50 years I wouldn't have to pay it. I would get the benefit and not the liability.

Sean Fredricks: Our process is much fairer than the city process.

Michael Barenrude: I am the Chairmen of the North Cass Water Resource District and a member of the Cass County Joint Water Resource District. As a resource district and an individual I support HB 1341. We rely on the water districts to finance our water projects for the benefit of the landowners in our districts.

Rep. Porter: We will close HB 1341.

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1341

February 14, 2013

18949

☐ Conference Committee

Minutes

Relating to financing water resource district projects

Minutes:

Rep. Porter: We will of HB 1341

Rep. Damschen: I had hopes that they could come up with something that would make this bill work. I do have 3 different sets of amendments drafted; the problem is the most significant part of bill is on page 3 section 3 line 22 which decouples the vote for the assessment from the vote of the project. These are hard to separate we don't know when the vote is taken if the person voting is voting for or against the project.

I would move a do not pass on this bill

Rep. Porter: We have a motion for a do not pass to HB 1341 from Rep. Damschen and a second from Rep. Hofstad. Motion Carried.

Yes 12 No 0 ABSENT 1 Carrier Rep. Damschen

Date: 2-14-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO H/B 1341

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Damschen Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh	✓	
Rep. Jim Schmidt	✓		Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser					

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Damschen

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

REPORT OF STANDING COMMITTEE

HB 1341: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1341 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HB 1341

Introduced by

Representatives Kreun, Frantsvog, J. Nelson, Boe

Senators Burckhard, Laffen, Sorvaag

1 A BILL for an Act to amend and reenact sections 61-16.1-17, 61-16.1-18, 61-16.1-19,
2 61-16.1-20, 61-16.2-21, 61-16.1-22, 61-16.1-24, and 61-16.1-28 of the North Dakota Century
3 Code, relating to financing water resource district projects.

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

5 **SECTION 1. AMENDMENT.** Section 61-16.1-17 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-16.1-17. Financing of special improvements - Procedure.**

8 When it is proposed to finance in whole or in part the construction of a project with funds
9 raised through the collection of special assessments levied against lands and premises
10 benefited by construction and maintenance of such project, the water resource board shall
11 examine the proposed project, and if in its opinion further proceedings are warranted, it shall
12 adopt a resolution and declare that it is necessary to construct and maintain the project. The
13 resolution shall briefly state the nature and purpose of the proposed project and shall designate
14 a registered engineer to assist the board. For the purpose of making examinations or surveys,
15 the board or its employees, after written notice to each landowner, may enter upon any land on
16 which the proposed project is located or any other lands necessary to gain access. The board
17 shall direct its engineer shall to prepare profiles, plans, and specifications estimates of the total
18 costs of the proposed project and estimates of the total cost thereof. The estimate of costs
19 prepared by the engineer shall include acquisition of right of way and shall be in sufficient detail
20 to allow the board to determine the probable share of the total costs that will be assessed
21 against each of the affected landowners in the proposed project assessment district.

22 **SECTION 2. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **61-16.1-18. Hearing - Notice - Contents.**

2 Upon the filing of the engineer's report provided for in section 61-16.1-17, and after
3 satisfying the requirements of section 61-16.1-21, the water resource board shall fix a date and
4 place for public hearing on the proposed project. The place of hearing must be in the vicinity of
5 the proposed project and must be convenient and accessible for the majority of the landowners
6 subject to assessment for the project or whose property is subject to condemnation for the
7 proposed project. The board shall cause a complete list of the benefits and assessments to be
8 made, setting forth each county, city, school district, park district, township, or city~~other political~~
9 subdivision assessed in its corporate capacity as well as each lot, piece, or parcel of land
10 assessed, the amount each is benefited by the improvement and the amount assessed against
11 each; however, the board may only assess land, counties, townships, and cities in North
12 Dakota. At least ten days before the hearing, the board shall file with the county auditor of each
13 county or counties in which the project is or will be located the list showing the percentage
14 assessment against each parcel of land benefited by the proposed project and the approximate
15 assessment in terms of money apportioned thereto. ~~Notice of the filing must be included in the~~
16 ~~notice of hearing; the list will indicate each landowner as shown by the tax rolls of the county or~~
17 counties in which the affected property is located Notices of the hearing must contain a copy of
18 the resolution of the board as well as the time and place where the board will conduct the
19 hearing. The notice of hearing must specify the general nature of the project as finally
20 determined by the engineer and the board. The notice of hearing must also specify when and
21 where votes concerning the proposed project may be filed. The board shall mail notice of the
22 filing of the assessment list showing the with the county auditor of each county or counties.
23 ~~along with notice to each landowner of their percentage assessment against each parcel of land~~
24 ~~benefited by the proposed project and the their approximate assessment in terms of money~~
25 ~~apportioned thereto, along with a copy of the notice of the hearing, must be mailed to each~~
26 affected landowner at the landowner's address as shown by the tax rolls of the county or
27 counties in which the affected property is located. The board may send the ~~assessment list and~~
28 notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of
29 the board. The board shall cause the notice of hearing to be published once a week for two
30 consecutive weeks in the newspaper or newspapers of general circulation in the area in which
31 the affected landowners reside and in the official county newspaper of each county in which the

1 benefited lands are located. The date set for the hearing must not be less than twenty days
2 after the mailing of the notice. A record of the hearing must be made by the board, including a
3 list of affected landowners present in person or by agent, and the record must be preserved in
4 the minutes of the meeting. Affected landowners, and the governing body of any county, city,
5 school district, park district, township, or city or other political subdivision to be assessed, must be
6 informed at the hearing of the probable total cost of the project and their individual share of the
7 cost and the portion of their property, if any, to be condemned for the project.

8 **SECTION 3. AMENDMENT.** Section 61-16.1-19 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-16.1-19. Voting on proposed projects.**

11 At the hearing, the affected landowners, and any county, city, school district, park district,
12 township, or city or other political subdivision to be assessed, must also be informed when and
13 where votes concerning the proposed project may be filed. Affected landowners, and the
14 governing body of any county, city, school district, park district, township, or city or other political
15 subdivision to be assessed, have thirty days after the date of the hearing to file their votes with
16 the secretary of the water resource board concerning the project. Once the deadline for filing
17 votes has been reached, no more votes may be filed and no person may withdraw a vote. Any
18 withdrawal of a vote concerning the proposed project before that time must be in writing. When
19 the votes have been filed and the deadline for filing votes has passed, the board shall
20 immediately determine whether the project is approved. If the board finds that fifty percent or
21 more of the total votes filed are against the proposed project, then the vote constitutes a bar
22 ~~against proceeding further with the project~~ collecting special assessments under this chapter
23 61-16.1. If the board finds that the number of votes filed against the proposed project is less
24 than fifty percent of the votes filed, the board shall issue an order establishing the proposed
25 project and may proceed, after complying with the requirements of sections 61-16.1-21 and
26 61-16.1-22, to contract or provide for the construction or maintenance of the project in
27 substantially the manner and according to the forms and procedure provided in title 40 for the
28 construction of sewers within municipalities. In addition, the board may direct its engineer to
29 prepare profiles, plans, and specifications of the project. The board may enter into an
30 agreement with any federal or state agency under the terms of which the contract for the project
31 is to be let by the federal agency, the state agency, or a combination thereof. In projects in

1 which there is an agreement that a party other than the board will let the contract, the board
2 may dispense with all of the requirements of title 40. Upon making an order establishing or
3 denying establishment of a project, the board shall publish notice of the order in a newspaper of
4 general circulation in the area in which the affected landowners reside and in the official county
5 newspaper of each county in which the benefited lands are located. Any right of appeal begins
6 to run on the date of publication of the notice. As used in this section, "board" means water
7 resource board.

8 **SECTION 4. AMENDMENT.** Section 61-16.1-20 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-16.1-20. Voting right or powers of landowners.**

11 In order that there may be a fair relation between the amount of liability for assessments
12 and the power of objecting to the establishment of a proposed project, the voting rights of
13 affected landowners on the question of establishing the project are as provided in this section.
14 The landowner or landowners of tracts of land affected by the project have one vote for each
15 dollar of assessment that the land is subject to or one vote for each dollar of the assessed
16 valuation of land condemned for the project, as determined in accordance with title 57. The
17 governing body of any county, city, school district, park district, township, or city or other political
18 subdivision to be assessed also has one vote for each dollar of assessment against such
19 county, city, school district, park district, township, or city or other political subdivision. There may
20 be only one vote for each dollar of assessment, regardless of the number of owners of such
21 tract of land. Where more than one owner of such land exists, the votes must be prorated
22 among them in accordance with each owner's property interest. A written power of attorney
23 authorizes an agent to protest a project on behalf of any affected landowner or landowners.

24 **SECTION 5. AMENDMENT.** Section 61-16.1-21 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-16.1-21. Assessment of cost of project.**

27 Whenever the water resource board proposes to make any special assessment under the
28 provisions of this chapter, the board, prior to the hearing required under section 61-16.1-18,
29 shall inspect any and all lots and parcels of land, which may be subject to assessment and shall
30 determine from the inspection the particular lots and parcels of lands which, in the opinion of the
31 board, will be especially benefited by the construction of the work for which the assessment is

Sixty-third
Legislative Assembly

1 made and shall assess the proportion of the total cost of acquiring right of way and constructing
2 and maintaining such improvement in accordance with benefits received but not exceeding
3 such benefits, against:

4 1. Any North Dakota county, city, school district, park district, township, or ~~city~~other
5 political subdivision, in its corporate capacity, which may be benefited directly or
6 indirectly thereby.

7 2. Any lot, piece, or parcel of land in North Dakota which is directly benefited by such
8 improvement.

9 In determining benefits the board shall consider, among other factors, property values, degree
10 of improvement of properties, productivity, and the water management policy as expressed in
11 section 61-16.1-15. Property belonging to the United States shall be exempt from such
12 assessment, unless the United States has provided for the payment of any assessment which
13 may be levied against its property for benefits received. Benefited property belonging to
14 counties, cities, school districts, park districts, ~~and~~ townships, and other political subdivisions
15 shall not be exempt from such assessment and political subdivisions whose property is so
16 assessed shall provide for the payment of such assessments, installments thereof, and interest
17 thereon, by the levy of taxes according to law. Any county, city, school district, park district,
18 township, or ~~city~~other political subdivision assessed in its corporate capacity for benefits
19 received shall provide for the payment of such assessments, installments thereof, and interest
20 thereon from its general fund or by levy of a general property tax against all the taxable property
21 therein in accordance with law. No tax limitation provided by any statute of this state shall apply
22 to tax levies made by any such political subdivision for the purpose of paying any special
23 assessments made in accordance with the provisions of this chapter. There shall be attached to
24 the list of assessments a certificate signed by a majority of the members of the board certifying
25 that the same is a true and correct assessment of the benefit therein described to the best of
26 their judgment and stating the several items of expense included in the assessment.

27 **SECTION 6. AMENDMENT.** Section 61-16.1-22 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of**
2 **assessments - Confirmation of assessment list - Filing.**

3 After entering an order establishing the project, the water resource board shall cause ~~the~~
4 ~~assessment list~~notice of the filing of the assessment list with the county auditor of each county
5 or counties in which the project is or will be located to be published once each week for two
6 successive weeks in the newspaper or newspapers of general circulation in the district and in
7 the official county newspaper of each county in which the benefited lands are located together
8 with a notice of the time when, and place where, the board will meet to hear objections to any
9 assessment by any interested party, or an agent or attorney for that party. The board also shall
10 ~~mail a copy~~notice of the filing of the assessment list with the county auditor of each county or
11 counties, along with notice to each landowner of their percentage assessment and their
12 approximate assessment in terms of money; the board will mail the notice to each affected
13 landowner at the landowner's address as shown by the tax rolls of the county or counties in
14 which the affected property is located. The date set for the hearing may not be less than twenty
15 days after the mailing of the notice. At the hearing, the board may make such alterations in the
16 ~~assessments, and may add or excluded properties,~~ as in its opinion may be just and necessary
17 to correct any error in the assessment but must make the aggregate of all assessments equal to
18 the total amount required to pay the entire cost of the work for which the assessments are
19 made, or the part of the cost to be paid by special assessment. An assessment may not exceed
20 the benefit as determined by the board to the parcel of land or political subdivision assessed.
21 The board shall then confirm the assessment list and the secretary shall attach to the list a
22 certificate that the same is correct as confirmed by the board and shall file the list in the office of
23 the secretary.

24 **SECTION 7. AMENDMENT.** Section 61-16.1-24 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-16.1-24. When assessments may be made.**

27 After the requirements of this chapter have been satisfied and a contract and bond for any
28 work for which a special assessment is to be levied have been approved by the water resource
29 board, the board may direct special assessments to be levied for the payment of appropriate
30 costs, and the secretary shall certify to the board the items of total cost to be paid by special
31 assessments so far as they have been ascertained. The certificate shall include the estimated

1 construction cost under the terms of any contract, a reasonable allowance for cost of extra work
2 which may be authorized under the plans and specifications, acquisition of right of way,
3 engineering, fiscal agents' and attorney's fees for any services in connection with the
4 authorization and financing of the improvement, cost of publication of required notices, and
5 printing of improvement warrants, cost necessarily paid for damages caused by such
6 improvement, interest during the construction period, and all expenses incurred in making the
7 improvement and levy of assessments.

8 In no event shall ~~any contract or contracts be awarded~~ the board assess the land benefited
9 by the proposed project an amount which exceeds, by twenty percent or more, the
10 ~~estimated cost of the project as presented to and~~ assessments contained in the final
11 assessment list approved by the affected landowners board in accordance with section
12 61-16.1-22.

13 **SECTION 8. AMENDMENT.** Section 61-16.1-28 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16.1-28. Certification of assessments to county auditor.**

16 When a water resource board, by resolution, has caused special assessments to be levied
17 to cover the cost of constructing a project, the board shall determine the rate of interest unpaid
18 special assessments shall bear, which rate shall not exceed one and one-half percent above
19 the warrant rate. Interest on unpaid special assessments shall commence on the date the
20 assessments are finally confirmed by the board. Special assessments may be certified and
21 made payable in equal annual installments, the last of which shall be due and payable not more
22 than ~~thirty~~ thirty-five years after the date of the warrants to be paid. The secretary of the district shall
23 certify to the county auditor of the county in which the district is situated, or if the district
24 embraces more than one county, to the county auditor of each county in which district lands
25 subject to such special assessments are situated, the total amount assessed against such
26 lands in that county and the proportion or percentage of such amount assessed against each
27 piece, parcel, lot, or tract of land. The secretary of the district shall also file with the county
28 auditor of each county in which district lands lie a statement showing the cost of the project, the
29 part thereof, if any, which will be paid out of the general taxes, and the part to be financed by
30 special assessments. Funds needed to pay the cost of maintaining a project may be raised in
31 the same manner as funds were raised to meet construction costs. If the project was financed in

Sixty-third
Legislative Assembly

- 1 whole or in part through the use of special assessments, the water resource board shall prorate
- 2 the costs of maintaining projects in the same proportion as were the original costs of
- 3 construction or, in the event a reassessment of benefits has been adopted, the costs shall be
- 4 prorated in accordance with the reassessment of benefits as authorized by section 61-16.1-54.

**Testimony by Sean M. Fredricks
Counsel for Red River Joint Water Resource District**

**Before the House Energy and Natural Resources Committee
In Support of HB 1341**

**North Dakota Legislature
63rd Legislative Assembly
Bismarck, North Dakota
February 7, 2013**

Chairman Porter, members of the Committee, I appreciate the opportunity to testify before you today in support of HB 1341. My name is Sean Fredricks, and I work for the Red River Joint Water Resource District and several individual water resource districts in the State.

The Red River Joint Water Resource District and our member districts fully support HB 1341 as a bill that will essentially modernize the water resource district assessment district procedures *and* will save taxpayer dollars. The changes proposed in HB 1341 are not significant substantive changes; rather, they are almost exclusively procedural changes intended to clarify certain steps in the assessment district process; to ensure consistency within the assessment statutes themselves, in Chapter 61-16.1; and to revise simple verbiage, revisions that will save members of assessment districts thousands of dollars in some instances, savings that will ensure efficient use of taxpayer dollars. I will provide a brief explanation of each proposed change, but a brief explanation of the water resource district assessment process will put the proposed changes in context.

Water Resource District Assessment Process

Water resource districts have authority to construct, own, operate, and maintain water projects, including drainage and flood protection projects. Water resource district projects provide a significant lifeline for farmers who seek adequate drainage so they can maximize their yields and maximize the full *potential* of their land. They construct important flood protection projects for communities in all corners of the State. If a community or a group of landowners approaches a water resource district seeking solutions to water problems, water resource districts have the unique legal authorities to construct projects to resolve those water problems.

However, water resource districts have limited general funds available to them and they cannot simply construct projects on a whim with their general fund dollars. Instead, they rely upon the special assessment district process to finance water projects. Unlike cities and other political subdivisions in the State, water resource districts must submit a project to a vote of benefitted landowners *before* they can assess those landowners for the project. In other words, they cannot assess based on the “protest” method; instead, they must first present a proposed project to landowners who will benefit from the project, and who will ultimately pay the assessments to finance the project, and a majority of proposed assessment district members who vote must vote ‘yes’ before a WRD can create an assessment district. This is not a protest process that requires landowners to affirmatively petition a government entity; instead, it is an up-front, vote-first process where landowners who would pay for a project (and who would benefit from a project) must support the project by voting for it; if the landowners vote ‘no,’ there is no assessment district.

As you know, other political subdivisions may employ a “protest” process whereby the political subdivisions can proceed with creation of an assessment district simply by ordinance or resolution; there is no vote of benefitted landowners, and objecting parties may only prevent assessments if over 50 percent of landowners *affirmatively file protests* with the political subdivision to oppose the project. The water resource district process is landowner-driven; the process requires a majority vote, up-front, to proceed with assessments.

The water resource district assessment statutes, in Chapter 61-16.1 of the North Dakota Century Code, require compliance with a detailed and incremental process that includes preparation of cost estimates, preliminary plan development, landowner benefit analysis, tax parcel research, notice requirements, meeting requirements, and other steps intended to ensure transparency and landowner engagement at every stage of the process. If more than 50 percent of the landowners who will benefit from the project vote “no” on a project, the water resource district cannot assess the landowners to finance the project; this vote-first process differs significantly from the assessment procedures of other political subdivisions. Fairness and transparency are statutory requirements for water resource districts as they create assessment districts.

Proposed Changes to the Process

The changes proposed under HB 1341 do not seek sweeping substantive changes to the process. Instead, the changes are largely procedural in nature, but they would save water resource districts significant cost and time, which in turn will save landowners significant costs.

The following is a synopsis of each proposed change:

- Currently, the various statutes throughout Chapter 61-16.1 identify political subdivisions water resource districts may assess for benefits as a result of a water project. In some statutes, the political subdivision list includes “cities, counties, school districts, park districts, townships, and other political subdivisions”; in other instances, the statutes include a truncated list of only cities, counties, and townships. The intent is to include all of the same political subdivisions in each list, and HB 1341 simply clarifies that and ensures consistency.
- Under Chapter 61-16.1, water resource districts must assess all property that will benefit from a water project. However, of course, North Dakota water resource districts do not have authority to assess land outside of the State. With that in mind, we simply seek clarification that water resource districts will include all lands that will benefit from a project in the proposed assessment district, but only those lands in North Dakota. This is a housekeeping item, but it also deflects any arguments that a water resource district cannot proceed with a project unless it assesses all land benefitted, including land outside the State, something water resource districts cannot do.
- In the early phases of the project, directing the Board’s engineer to prepare detailed profiles, plans, and specifications of the proposed project is not reasonable since the effort requires significant costs, pre-vote; if the vote is not successful, detailed plans and specs are not necessary. Further, the Board cannot recover those costs and the Board’s general fund must finance those costs (taxes from all landowners in the County). Under HB 1341, in the early phases of the project, the Board will want a general plan or concept for a project along with a reasonable estimate of the total costs; landowners will obviously want the proposed costs and enough detail regarding the project for purposes of the assessment district vote. Then, *following a successful vote*, water resource districts can direct their engineers to prepare more detailed and final plans and specifications for the project, with the knowledge the project will proceed. If a board proceeded with detailed plans and specs before a vote and the vote failed, those would be significant costs the Board could not recover through assessments. The process requires enough project development pre-vote to present a plan and an estimate to the voters, but should not require extensive and expensive plans and specifications pre-vote.
- Currently, water resource districts must mail a copy of the full assessment list to all landowners in the proposed assessment district along with their ballots; for large assessment districts, the assessment list can include thousands of parcels and landowners. In fact, on a recent project, a water resource district spent over \$5,000 on copying and mailing costs simply to provide a copy of the full assessment list to everybody in the assessment district. HB 1341 would require water resource districts to notify each landowner of their specific proposed assessment, along with notice that the full

assessment list is on file with the County Auditor, but would not require mailing of the entire list to every landowner in the proposed district; this way, landowners will see their proposed assessment and may vote on that assessment, but if they want to see the full assessment list (i.e., everyone else's proposed assessments), they can certainly do so by viewing it at the County Auditor's office. Water resource districts conducting large assessment votes would not need to mail a voluminous assessment district list to every landowner in the proposed district, at significant expense to the districts and to the landowners in the districts.

- Currently, the language in Section 61-16.1-19 suggests that if an assessment district vote fails, the failing vote "constitutes a bar against proceeding further with the project. . . ." At the time the legislature drafted this language, the assumption was likely that if a vote failed and a water resource district could not assess landowners for a project, the water resource district would not have any money to proceed with construction of the project. However, thanks to cost-share opportunities with various federal agencies, the North Dakota State Water Commission, and the Red River Joint Water Resource District, the local share for a project may not be overwhelming in many cases, and even if a special assessment district vote fails, a water resource district may be in a position to construct a project with other cost-share funds. Under HB 1341, if a special assessment district vote fails, obviously the water resource district cannot assess landowners for the costs of the project; but HB 1341 simply clarifies that a failing vote is not a bar against constructing the project with other cost-share funds.
- Language in Section 61-16.1-24 of the Century Code suggests a water resource district cannot award a contract that exceeds the amount of the assessment district vote by more than 20 percent. If you apply that language in its most literal form, if landowners vote on \$100,000 worth of assessments, a water resource district cannot award a construction contract of more than \$120,000. This interpretation would not allow a water resource district to utilize other cost-share dollars to build a substantially larger project than the \$100,000 assessment vote would finance. In other words, if a water resource district project will cost \$1,000,000 to construct and the water resource district has secured other cost-share funds in the amount of \$900,000, obviously the water resource district will award construction contracts that exceed \$120,000. HB 1341 makes it clear that a water resource district cannot assess landowners more than 20 percent over the estimated amount of assessments, but clarifies that they may award construction contracts that exceed the proposed assessment amount by more than 20 percent to allow water boards to construct projects with outside cost-share funds.

- The final revision in HB 1341 would permit water resource districts to assess landowners over 50 years as opposed to 30 years. The rationale for this requested change is water resource districts can sometimes take advantage of low interest rates and may refund or refinance their bonds for the benefit of their assessed landowners. Also, some water resource districts can leverage their assessments to reduce the actual amount landowners will pay. Generally speaking, the more flexibility water resource districts have in terms of the length of assessments, the more likely they are to secure lower rates or more favorable payback terms for landowners. In addition, water resource districts have the ability to reassess following the initial certification of assessments; therefore, stretching the assessments for a longer period allows water resource districts to assess newly developed properties that benefit from a project, so those property owners pay their fair share; reassessments allow WRDs to spread assessments more equitably, and to reduce the remaining assessments for other landowners in the district. The change from 30 to 50 years will not cost landowners more; rather, the flexibility will give water resource districts more options to save taxpayers money.

In conclusion, HB 1341 does not propose any earth-shaking changes to the special assessment district process for water resource districts. Chapter 61-16.1 provides a fair and transparent manner of proposing special assessment districts where landowners have the final say on whether or not they are willing to pay assessments to finance a water project, and HB 1341 will not change that. Rather, HB 1341 simply modernizes some of the procedures and will ultimately save taxpayers money. With that in mind, we strongly urge passage of HB 1341, and we thank you for your consideration.