

2017 HOUSE POLITICAL SUBDIVISIONS

HB 1393

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee Prairie Room, State Capitol

HB 1393
2/3/2017
27905 and 27906

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Donna Whesham

Explanation or reason for introduction of bill/resolution:

Relating to assessments by water resource districts.

Minutes:

Testimony 1,2,3,4,5.

Chairman Klemin: Opened the hearing HB 1393.

Rep. Ertelt, District 26: (See Testimony #1) Introduced HB 1393. 00:36-5:10

Rep. Zubke: You talk about this is not a doubling of tasks when you hire a neutral party to do the assessments as opposed to the Water Resource District Board. Do the Boards typically charge for that?

Rep. Ertelt: Who do you mean is charging and who is charged?

Rep. Zubke: if you hire a neutral party to do the assessment formula they are going to charge so those costs would be added into the project, correct?

Rep. Ertelt: They would and they typically are today when you go out and assess the parcel of land and determined how much benefit would be assigned to each parcel of land. That generally takes engineering services already so I believe it would not be additional cost but this would be a shift of costs from the current engineering to a neutral party.

Chairman Klemin: Under the section 1 the existing language of the statute says the Water Resource Board is to designate an engineer to assist the board. When we get to section 2 this neutral party are we then changing from the engineer that was designated by the board to some other one?

Rep. Ertelt: It would be a different party, that is the intent of that section of the bill. So there should still be that engineer in preparing the plans for the project but when it comes to assessing or determining the assessment formula by which you develop the voting rights for that should be done by the neutral party that does not have interest in the project.

Chairman Klemin: This chapter talks about financing and special improvements and you talked about drains, are there other kinds of projects that would be financed besides drains?

Rep. Ertelt: The Chapter 61-16.1 is for drainage assessment projects.

Chairman Klemin: So it is limited to drainage projects.

Rep. Ertelt: Yes.

Rep. M. Johnson: The underscored language on page 1 suggests that the board presents a resolution to the Board of Commissioners in the affected county, however some Water Resource districts converse county lines and there may be more than one affected county. Which county gets to pick?

Rep. Ertelt: Both.

Rep. M. Johnson: Maybe you should amend this into the plural, "affected counties".

Chairman Klemin: Are you talking about page 1 line 15, so if it would say in "any affected county" instead of "the affected county", would that accomplish that?

Rep. Ertelt: Sure.

Rep. Zubke: In section 3 you talk about the land and the water shed which has natural drainage may not be assessed unless the drainage has actually improved, can you run me through that process. How would you determine cubic feet had drained in the past?

Rep. Ertelt: Typically a drainage assessment project is proposed if no other drainage is on the land. I don't know the specifics but if there is already water flowing away from the land and the drain would not alleviate any additional water, that is what the intent is here.

Rep. Zubke: Isn't the primary premises of water management keep as much water on their land not drain it on to other people's land?

Rep. Ertelt: I would agree with that statement. I don't know where the discord in the bill is regarding that.

Rep. Beadle: I pulled up the chapter 61-16.1 and the title is The Operation of Water Resource Districts so I think it applies to more than just drains. And the definition of project in the definition section means any under taking for water conservation, flood control, water supply, water delivery, erosion control and water shed improvement, drainage, collection and processing and treatment of sewage or discharge of sewage. Should we adjust this so we are only applying to the drainage situation or are you comfortable with the bill applying to all of those other areas as well?

Rep. Ertelt: I apologize for misspeaking, rather it is the final section 4, 61-21 that is draining assessment projects. I don't feel the other areas that the Water Resource Board would

necessarily mean that this shouldn't apply to them so I would be comfortable with leaving it as is.

Paul Mathews, Cogswell, North Dakota: In support of HB 1393. These projects can be very expensive at times and some of my neighbors say we might have to sell the land because we can't afford the assessments. Mr. Matthews did not provide a copy of his email to the legislators. Special assessments are targets to property and are attached to land improvements, so if you have a project that transfers costs to something you are improved on. The water sheds bump up to each other and on the current water project we have overlap and are paying in two districts. We could have the appeal process but it is difficult for the normal landowner to get those messages out. We have no paper that tells us how to appeal the process. If this report that is coming back to landowners, I believe when a project comes to a water board, they are assigned to say what is the cost and what is the benefits. We shouldn't really approve it without the costs. In today's technology world this information is available and should be gotten out to all the landowners. 15:17-21:38

Rep K. Koppelman: You state that Minnesota has advanced their process to their drainage situation, how are their water laws different?

Mr. Mathews: It is not only that the cost versus benefits, you can go through the corn belt states, they instruct the water board managers when you assess more cost than benefits. I am not sure North Dakota has expressed this to their water board members. Minnesota uses viewers, they are independent and will do a report for every land owner, that is my understanding.

Chairman Klemin: In the existing statute on page 3 line 24, "an assessment may not exceed the benefit as determined by the board to the parcel of the land or political subdivision assessed." That is the existing language, it seems to be saying that the assessment can't exceed the benefit. I'm not sure what you would be asking to have in addition to that language, on the drainage part, in the last section it talks about a report being prepared for each parcel to verify this. That apparently only applies to drains. There may be other projects besides drains. Doesn't that satisfy what you are concerned about?

Mr. Mathews: I am not sure, and I would let the legal resources speak to that. We need to encourage our water boards to be diligent about that task and see if the benefits are there for that assessment that we need. I am 4.5 miles from a drain and I am assessed 50% benefit of the drain, my land does gradually slope that way but my land at 50% drains on top of the 30%. So there seems to be a disconnect that nobody studied this.

Chairman Klemin: Your property though is contributing to the drainage that flows in the direction of the project?

Mr. Mathews: That is correct, if that drain was pulled and was pushed in it would not change my land at all. Some of this was studied in 2003, it was mentioned current language could be interpreted to allow any land within the water shed to be assessed even if that land does not benefit. There was an attempt to assess land 29 mile away from a proposed project. The Representative was uncomfortable with that and that situation still exists.

Rep. Ertelt: What do you receive today in terms of an explanation of the benefit that you receive?

Mr. Mathews: We get a real estate tax statement that says pay this amount. You would have to investigate and go back into the Water Boards offices to find out. If you were doing a reassessment process there is opportunities to go to the Water Board and make your objection known, they usually look to the opinion of the engineer. Which I do respect because we are not engineers. It just bothers me when I see the assessment maps 10-20-30%, to me the benefit assessments are not current.

Vice Chairman Hatlestad: How active are your county commissioners? Do they get involved at all?

Mr. Mathews: I can recall one headline in my local paper when there was an issue from a landowner and that said we appoint them and we can't do anything about it as they are an independent body.

Rep. Zubke: When you say they appoint them and they can unappoint them.

Mr. Mathews: Just this past month, 2 other Water Board members came to the County Commissioners and they asked for another one to be removed and they were advised that his appointment is a 3 year appointment unless he is guilty of misconduct. He did resign.

Kathy Marquette, Rutland, North Dakota: In support of HB 1393(See Testimony #2).
30:10-38:28

Chairman Klemin: Questions from the committee? Seeing none. Any other testimony in support of HB 1393?

Leon Malberg, Dickinson: I am affected by what is going on in Sargent County I have land with water on it and land that does not have water on it. My land is in two counties. The land with a drain across my property is in Taylor township which is about 8 miles away. I received a postcard in November from an engineering firm saying we request your presence at a meeting at Cogswell to discuss the requirements placed upon you. I am the managing partner of the family farm. I asked my family if they knew of a Drain 11. I went to the meeting and was told exactly what I was supposed to do. There was no discussion. They did not answer questions. I see an assessment in December on my tax statement and I called the County Auditor. So I called the two names I was given for the Water Board three times each with no response. I hand wrote a request of the Water Board members and was told I could contact the Secretary treasurer only on Thursdays. Then I found out the Secretary/treasurer of the Water Board is also a county commissioner. I still have had no contact with the Water Board. Now they are asking for an easement, they need to do some work on the drain. They either have to use eminent domain or quick take depending if you give us an easement. I answered I didn't understand what you are doing and you are telling me that this is Drain 11. The records show the land where I have a ditch is in Drain 9. Where I have the drain going through the county tax people say I have a full 160 acres. That tells me I am paying taxes

on 160 acres and I don't farm that ditch. The credibility of those on the water board is in question in my opinion, where is their experience? There is something askew here. The legislation was passed by this body and I think it needs a complete overhaul and assessment.
45:54

Chairman Klemin: Any other support for HB 1393? Seeing none. Any opposition?

Mike Dwyer, Water Resource Districts Association: In opposition of HB 1393. The eastern 2/3 of the state is completely dependent on drainage. The richest farm land but it depends on water management. The need to balance upstream and downstream there are Water boards in all the counties. All of these drain projects that exist in the eastern part of the state are assessment projects and that is how they are funded and paid for. The process to get a project established. You have to send out notices, you have a meeting, you have a vote, and they are required to be positive votes. So a majority has to vote yes because of the water management conflict. Water resource districts are funded by a mill levy and has to be approved by the county commission. Few county commissioners do approve the full 4 mills. If you were to approve this bill you will have to increase the mill levy because this will increase the expenses that the Water Boards go through to get these projects established. . When a group of landowners come into the water board the law is it is required to investigate that. The process once there is a vote and they send out a notice to the landowners and have another hearing on the assessments. So the landowners are very aware that this is going on and once the project is approved and the assessment is established. The landowners have 3 different appeals. One is to appeal to the State Engineer, or if there is 25% or more of you, then you can appeal to the State Engineer to look at the whole project to see if it was done properly or also you can appeal to District court. Water Boards members are appointed by Commissioners and they can be removed. In the case that was referenced the member resigned instead of getting removed but the job got done. There is that check and balance in place. If you look at page 3 you would prohibit any Assessment District for Surface Water Management going forward again because of the way the projects are set up, the entire water shed contributes. Some of the lands don't get the same amount of benefit as others. If you could only assess land where the drain is you could never go forward.

Rep. M. Johnson: I read page 3 as if a landowner has artificially improved their own property that contributes volume to a drain then they would be assessed but if they have natural drainage they are not assessed.

Mr. Dwyer: Yes. If you did construct a drain you could be assessed. But a large portion of the water shed doesn't actually have artificial construction and those couldn't be assessed even though they contribute water.

Chairman Klemin: Where it says in this bill an assessment may not exceed the benefit to the parcel of land and you were talking about the entire water shed contributing to the drainage. So what is the definition of benefit?

Mr. Dwyer: For water shed districts or draining we are going to have a positive vote because everyone is contributing water in that water shed and generally the water boards will propose some assessment even to those in the upper reaches. If they contribute water the argument

is there is a benefit. There can be an appeal to the State Engineer if the landowner feels there is no benefit.

Chairman Klemin: The formula for the assessments sounded like the votes, is there some other method of determining how many votes you get?

Mr. Dwyer: It's a dollar per assessment or a vote per dollar of assessment.

Chairman Klemin: If there is an assessment of \$13,000 then the landowner gets 13,000 votes.

Mr. Dwyer: Yes that is the way it is for all assessment districts.

Rep K. Koppelman: We hear of the concerns about water, I have heard some people are paying for two drains and we are being assessed for two flood control diversions. When the vote was taken on that the people in the area were told you have about a 1% benefit here, your part of it. Those taxes have not been assessed because that particular project is being paid for by sales tax. They can along and said for the bonding we need to have property tax as a back up for this. We are going to have a vote and you only get 1% assessment and you are really not in much danger and you get about a 1% benefit so you get a 1% vote. 100 people are severely threatened get 100% of the vote and get 100 times the vote than the people I represent. I am not against that project but you can see the inequity that people feel about that process. How do we deal with that? 58:55

Mr. Dwyer: I work with the water boards all over the state, they are dedicated and they do develop over years. In 1981 the Legislature did an interim study on Water Resource Districts and you looked at having them set up on water shed lines. They tried to determine the way they would be run. That was the last time you did a comprehensive look at what we do. It may be time to look at the Water Resource districts again.

Greg Larson, Chairman of the Burleigh County Water Resource District: County commissioners appoint water resource district managers. They can unappoint us at any time. The county commissioners can levy 4 mills but Burleigh County district operates off of 1.5 mills. That translates to \$470,000 per year. We try to push as many expenses off to a project, all the design and preliminary work before it goes to a vote cannot be assessed to the project. That comes out of the mill levy. This section of law is that pertains to all assessments not just drainage and in that regard, in our case we have our Water District managers and a County Commissioner who is assigned the portfolio and he is at every one of our meetings and is very involved. I don't know how that plays elsewhere. In a project that is about flood protection, we have two projects that completes a loop for all of south Bismarck, currently we have the Corp of engineers, the state water commissioner engineers and the city of Bismarck engineer and there two consulting engineering firm and others. If we are going to find a neutral party we may have to go out of state. Explained the funding for Bismarck's project. Three streams of funding and it is complicated. The assessment proceeding works but if it says drain how do we do that in a flood protection. Then we can't do that. The other thing on Page 2 line 25, to change the language from benefited property belonging to counties, cities, school districts, park districts, and townships may not be

exempted and political subdivisions. Only ½ of the property we are protecting is city and another quarter of it is state owned and the loop finishes the protection of Bismarck's waste water treatment plant and if they can't be assessed with this bill, it doesn't happen. The final section talks of water shed and there has to be language to exempt or change that because it says only the folks only immediately affected can be assessed. We are protecting house in south Bismarck and over 800 homes in Burleigh county, retail and several city offices and other things. The Assessment goes way out however this makes it difficult. We can't assess the people who are behind the protections that the city of Bismarck put up or behind the protection that Burleigh county agreed to do, which isn't done. So our total assessment District of people that would be assessed is 892 people and they have agreed to pay to get this done. You need to be aware that this is a consequence of this bill that way it is changed and I don't think you intended to do it. It will if it passes and we will be back here rewriting this lots of times to make this work. 1:07:41

Rep K. Koppelman: The comment you made about the page 2 line 25, it is changing it from shall not be exempt to may not be exempt, I'm not sure that is a substantive change that may just be a change by Legislative Council. It is something we should check on. This has not been studied since 1980, is it time?

Mr Larson: Yes.

Rep. Ertelt: Yes that language change was Legislative Management so I did not refer to that in testimony. You mentioned a neutral party would be hard to find, aren't there other engineering firms in the state?

Mr. Larson: Yes, it would have to be out of the Bismarck area, my concern is the expense.

Rep. Ertelt: you also reference the bill would prohibit land in regard to flood protection from being assessed to others than those immediately adjacent to the flood protection. Wouldn't you agree it would be fairly easy to show benefit with flood protection based on flood plains?

Mr. Larson: You would think so, but in fact it isn't. With declining benefits and flood spread and it is a difficult thing. Certainly you can do it but that portion of this bill refers to drainage it doesn't refer to flood protection.

Rep. Ertelt: The bill is specifying drainage so I don't see how it might be construed to mean flood protection.

Mr. Larson: I'm here trying to give what I see as a potential for the unintended consequences. When the language is in there and someone is opposed to this it will be an issue. It might be a simple change to say this pertains only to drainage issues and I am fine with that.

Rep. Ertelt: That is what this process is really about to understand the issue fully. I still don't see in the section that refers to drainage how one could construe that to mean flood protection.

Mr. Larson: I think we will agree to disagree.

Bryan Vculek, Sargent County North Dakota: In opposition to HB 1393. (See Testimony #3). 1:13:00-1:16:37

Rep. Ertelt: You said all land owners were invited to the initial meeting to develop the project. How many landowners were impacted by Jackson Water project?

Mr. Vculek: I don't know how many were in the district. There was about 30 people on the sign in list of the meeting.

Rep. Ertelt: You said this would add more time to the process if there are multiple counties involved, how long would you expect a delay to happen if there were 2 counties involved?

Mr. Vculek: It seems to me that when this project I was recently involved in took us 5 years, why would you want to put more burden on this seems unreasonable to me.

Sean Fredricks, Red River Joint Water Resource Districts, Attorney: In opposition to HB 1393. A bill like this will make it more difficult and the language on Page 3 in my view will render new drainage projects impossible. The outcry after the 2009 and 2011 floods is why are you doing more to protect us. The Water Resource districts that I work for several people came in and said you need to build more flood protection. This bill will make it harder and with regard to drains virtually impossible. Its true water managers are appointed by the county commissioners. They do everything they can for their community. The water district process is more fair than any other process. We conduct the benefit analysis for any proposed project and it is very thorough and precise. Then we ask the landowners if this project is important enough for you to tax yourselves. They get to decide. They are already voting. On page 2 mirroring the Minnesota drainage process for viewers, they have said their process is more difficult. In North Dakota for agriculture drainage is important. In terms of hiring an engineering firm, it is an unnecessary expense and who pays for that, the people who need the project. On page 3, this is critical, if you can't assess somebody unless they put in drain tile, there will be no one to assess. This will basically make drainage null and void. The piece on page 4 about the individual parcel reports, there are drains in the state that have thousands of people that benefit. Drain 27 in Fargo and there are thousands in that assessment district can you imagine the expense and time it would take to go and prepare a written report on every home. It would be great for engineering firms but it would be impossible to build or improve a project. 1:27:05

Rep. Ertelt: In section 4 you said it is nearly impossible but in fact there is an assessment done on each parcel and each one of those assessed individuals are notified of the assessment, can you explain the difficulty in ascribing to those individuals what their benefit is?

Mr. Fredricks: The way it works now is, let's say we are building a drain, we do a site review, then we prepare an assessment map, then a list based on the map. The list and the map is basically the report already. We conduct a project hearing and a assessment hearing and meetings leading up to the assessment process and we are not going to go ahead with a

project if we don't think there is support. Landowners have several opportunities to view all this information and they can get specific information on their property for the Water Boards or the Engineer will provide it. If you had to write each specific report it would be very time consuming and expensive.

Rep. Ertelt: This investigation is done on each parcel of land to see how much there are assessed, are you saying it cannot be easily conveyed to the parcel owner?

Mr. Fredicks: Yes, it can be, if someone asks for more specifics we can provide it. But to front load that process and say you have to prepare written reports for 286 properties would render a lot of these projects cost prohibitive. The will not happen.

Rep. Ertelt: Mr. Vculek stated he believes the whole community benefits and in regards to the particular Jackson Drain, was every parcel in the city of Oakes assessed for it as well?

Mr. Fredicks: I believe they were and it may be we just assessed the city, I can't quite remember how we did it. I think this bill is trying to fix a process that is not broken.

Rep. Pyle: When drains are assessed to a city and the cost is divided out based on your property taxes, based on your lot size so the bigger the lot the bigger the assessment.

Recording number 27906.

Chairman Klemin: Further opposition to HB 1393.

Robert Fleming, Pembina County Water Resource Board: In opposition to HB 1393.

The reason we are asking you to oppose the bill is the duplication of efforts. We try keep expenses down so we can do as much dirt moving and drain implementation as possible and the maintenance that needs to be kept up. The entire county is covered by the Li DAR system so if someone comes in and says I don't think I am benefited they can pull it up on the projector and they can draw a line from point A to point B and we can tell you if the water goes that way. It is a wonderful technological advancement and given us a lot more accuracy in determining what the benefit is to each piece of property. The landowner can see it and as questions. The final complaint on page 3 lines 26 and 27, the theory is that if you are on the top of the hill you shouldn't have to pay because your water goes somewhere. There is still a neighborly attitude in my community and if your water damages somebody else's land they could sue you. There is benefits to the top of the hill people too. Being able to control water and keep it in the ditches is a benefit to the whole county. To say the top of the hill people should not pay, where should we draw that line. We would request a Do Not Pass on HB 1393 Explains why the email from William J. Brudvik, Attorney at law and letter from Rebecca Flanders Pembina County States Attorney on behalf of Pembina County Commissioners oppose HB 1393. (Referenced testimony # 4) 00:33-12:23.

Rep. Ertelt: Your first statements were about the duplication of efforts and the voter approval of a project and how in section 1 the approval by the County Commission would run contrary to other language that requires the drain to be built if approved by the voters. Are you saying this provision for approval occurs after the land owner votes?

Mr. Fleming: I am saying that because if the land owner vote is no, it doesn't go any further. If the vote is yes, we do the resolutions and we move forward.

Rep. Ertelt: There is language preceding the additional language in that section and it says nothing about a vote, it simply says a decision of the water board itself is it not? That determines if they are going to make a resolution?

Mr. Fleming: The resolution that I think this refers to is the first resolution when we have the landowners come in and they tell us what they want. We do the first resolution that appoints an engineer to look at what they want and design a project and cost estimate so we can get it to a vote. This happens prior. 14:19

Rep. Toman: You are talking about cost benefits reports, if you compare that percentage of impact to percentage of cost per parcel, what is the new cost? Why can't the landowner just see that? You say you can sit down and tell them?

Mr. Fleming: The problem is not furnishing them the report, the problem is with paying a neutral party to inspect that lot and prepare a parcel by parcel report. It is the cost to hire these neutrals. My concern is I am not sure how mechanically it would work, if you are talking about the neutrals taking the engineers plan I can't think of an engineering firm that will take data from another firm and run with it. Then they would be taking the liability and accepting it on themselves. They will do the whole thing over again because they want to be sure of their numbers. The cost would be to hire the neutral to inspect any of the land for benefit.

Dan Jacobson: Southeast Cass Water Resource Board, Cass County Joint Board, and State Water Resource Board: In opposition to HB 1393. I was on the Sargent county water board for the first 28 years and there has always been problems there and there always has been a problem and probably always will be. There are two counties that have problems with the rules we are working with today. So that is 4 percent of the counties, and we are being asked to change our rules for this small amount of counties and the rest of the state will be penalized for that. We don't think that is fair. If it is not broken, don't fix it and we don't think our system is broken. My request would be to eliminate this bill. 17:01- 18:23.

Monica Zentgraf, Secretary/ Treasurer for Richland County Water Resource Board: In opposition to HB 1393. (See Testimony # 5). 18:26-21:38 Our people on the board feel very strongly the people on the hill should have to pay something, their water does go to the drain and so does some of their silt.

Rep. Ertelt: One of the individuals testified in opposition to the bill shared his displeasure with the time it takes to complete a project. Do you see that this bill would affect the way State Water Board does their business and their timeliness in how you would address water concerns across the state?

Aaron Carranza, Engineer with State Water Commission: That would depend at what point the state was involved in both from the cost share perspective and the drain permit perspective and at what point the neutral party review would be in play. If the project were to substantially change after a neutral party review and the cost share and drain permit processes already were in for the state of North Dakota, then they could be potentially have to be reopened and it could cause additional time.

Rep. Ertelt: Did you say you were an attorney for the State Water Board?

Aaron Carranza: No, I am a professional engineer for the state.

Chairman Klemin: Closed the hearing on HB 1393.

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee Prairie Room, State Capitol

HB1393
2/10/2017
28235

- ☐ Subcommittee
☐ Conference Committee

Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to assessments by water resource districts.

Minutes:

Attachments 1,2,3

Chairman Klemin: Opens for committee work on HB 1393.

Rep. Ertelt: (Handed out amendment #1 and marked up bill #2) This addresses Section 2. Explained the amendment. 2:45-5:28. On page 2 line 1 we would add" use of current light imaging detection and ranging technology, and assessment

Chairman Klemin: It says " current light detection" but what you are saying it should say "current light imaging detection" is that correct? Will that be a part of your amendment, is that your intention?

Rep. Ertelt: Correct.

Chairman Klemin: There is a map from Aaron Carranza that submitted a map of the LiDar status as of February 2017 showing where it was completed and where it is progress. (See Attachment #3).

Rep. Ertelt: That is why we inserted the word current there so if there isn't current technology available that they would not be obligated to use that. Mr. Carranza stated he though every county would be made current by the end of this year.

Chairman Klemin: Other than adding the word imaging then the amendment is complete.

Rep. Ertelt: Yes. I move the proposed amendments.

Rep. Guggisberg: second the motion.

Voice vote: All ayes. Motion carries to adopt the amendments.

Rep K. Koppelman: I would like to change line 15 page 1 that affected county that should be changed to "any" because in some cases that involves more than one county.

Rep. Ertelt: I agree that should be added.

Rep K. Koppelman: Then on Page 4 the last Section 4 on line 4 that the "shall" be changed to "may"

Rep K. Koppelman: My proposed amendment on page 1 line 15, the fourth word, delete "the" and insert "any". I move this amendment to HB 1393.

Rep. Ertelt: Seconded.

Voice vote #2 on the amendment by Rep. Koppelman. All ayes. Motion carried.

Chairman Klemin: As I recall the testimony at the hearing there was opposition for the requirement of "the board shall prepare a report" because of the intention that it would require many reports and too many for a city.

Rep K. Koppelman: I move to change the word "shall" to "may" page 4 line 8 on the original bill.

Rep. Ertelt: Seconded.

Voice vote: All ayes. Motion carried on vote #3.

Chairman Klemin: Any further discussion? We have an amended HB 1393 before us what are your wishes?

Rep. Zubke: I move a Do Not Pass as amended to HB 1393.

Rep. Beadle: seconded the motion

Rep. Zubke: I have received countless emails in opposition to this bill. This is a decades long of establishing special improvement projects and in particular drainage projects and I recognize there are winners and losers in that. I am not comfortable changing that process in which most of the testimony says there will not be any more drainage projects if we pass this legislation. I would encourage a do not pass on HB 1393.

Rep. Ertelt: As I stated in preparation of this amendment and I did have discussion with the Pembina was one of the ones most against the bill but was willing to work toward improvement of this process. We passed a bill out of the house that would affect any special assessments to be approved by an elected body. This is simply asking before a substantial amount of money is spent on the project the county commissioners are approving that. In Section 2 the LiDAR is something that is used today. The comment about no more projects being able to proceed when talking about this bill, I don't think we are necessarily given clarification to that, you would have to strip the power away from the board to make the drainage projects impossible. Section 3 deals with the artificially improved land, that is the

land which would be deemed to be able to be assessed. The people receiving the benefit are the ones that should be assessed. Section 4 I think the amendment addresses this section.

Rep. Beadle: In that section 3 1. If you are not affected at all but we heard testimony with the top of the hill but then we hear the testimony that their water and silt flows downhill, so if we improve drainage down below and alleviate those issues. I agree with the intention that is you are not affected you shouldn't be paying but I still don't think this is a perfect bill and I will support the do not pass.

Rep. Guggisberg: What does the process look like and I know how the LiDAR maps work? I am concerned about the cost?

Rep. Ertelt: I have been told by water resource members they use this technology to determine how much to assess. Today it is just not specified to determine assessment. There are land owners within this assessment process, volunteer their land to be assessed at a higher rate than they should be even if the data leads you to believe otherwise. The reason they do this is so they have more voting rights. The process assigned \$1 for each vote so they are able to pass the assessment project. If we want to respect land owners who are not receiving benefits we need to do something to make it a more fair assessment.

Rep. Guggisberg: I like the idea of using technology that would be the ultimate neutral party there. My hesitation is I don't know if we are there yet and I also this only affected 1-2 districts so I am not sure how I am going to vote yet.

Chairman Klemin: The amendment to section 3 on page 3 where it was stated you can't just put drainage language in a water project statute without taking into account the consequences of flood control projects.

Rep K. Koppelman: I like the fact the bill seeks fairness. I am troubled by section 3 only for the reason is the way it is written it may make sense in the rural area, but in a city your lot is not going to be artificially improved and I don't think that was the intent of the sponsor. I am not sure. The rest of the bill really makes a lot of sense. Maybe we should be studying this issue. I am struggling with the bill but I like its intent.

Rep. Ertelt: On the top of the hill argument and silt ending up in the drain, if there is a drain already existing and there will be an improvement but if the drain is already existing their silt is already going into the drain. If there isn't any more artificial improvements to the land to make more go into the drain, then the argument is the same whether you are talking about water or silt. The individual isn't doing anymore to that drain whether it is silt or water. I disagree about that argument. There are a number of bills being brought forward, this is not just a local issue, this one is just addressing this section of the law. In regards to Section 3 is probably the most contentious portion of the bill. If that portion of the bill was struck do you have the same objection to the bill and do you feel the measures in the other 3 sections are reasonable in order to address the issues that exist with in Water Resource districts.?

Rep. Zubke: I would have to review the amendments that we have made.

Rep. Ertelt: To clarify section 3 is most contentious and my question is would the remainder of the bill be acceptable. We need to bring back some harmony with the Water Resource Districts. That is my goal with the bill, there are neighbors at odds with each other over water.

Rep. Zubke: I understand that and I also recognize that in my area we have neighbors that won't talk to each other. I don't like to make amendments after the experts are not here to make comments and they really are the experts.

Rep. Johnson: What exactly are we looking at right now?

Chairman Klemin: We have the amendments by Rep. Ertelt. Then on page 1 to change the word the to any and the amendment on page 4 line 8 to change the word shall to may.

Rep. M. Johnson: We essentially gutted this bill, if Rep. Ertelt is willing to take out Section 3. Haven't we gutted this bill with the amendments? So what is left if section 3 were gone.

Chairman Klemin: Well we have a motion for a do not pass.

Rep K. Koppelman: I am going to resist the do not pass only so we can have further discussion on this bill. I share Rep. Johnsons view and I would propose an amendment to remove Section 3 if this motion fails.

Rep. Ertelt: To Rep. Zubke would you consider withdrawing your do not pass motion in an effort to removed section 3 from the bill?

Rep. Zubke: I don't like the other sections of the bill. All the emails I got did not like the bill. Without the experts being able to comment on that. I am going to leave my motion for a Do Not Pass.

Chairman Klemin: Motion for a Do Not Pass as amended on HB 1393.

Roll Call Vote: Yes 8. No 4. Absent 3. Motions carries

Rep. Zubke: will carry the bill. Hearing close.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1393

Page 2, line 6, remove the overstrike over "~~inspect~~"

Page 2, line 6, remove "contract with a neutral party to develop an assessment"

Page 2, remove line 7

Page 2, line 8, remove "2. The neutral party shall inspect"

Page 2, line 9, overstrike "determine" and insert immediately thereafter "develop"

Page 2, line 9, replace "of" with "and, where available, the use of current light detection and ranging technology, an assessment formula for"

Page 2, line 11, after "made" insert an underscored comma

Page 2, line 19, replace "3." with "2."

Page 2, line 19, remove the overstrike over "~~board~~"

Page 2, line 19, remove "neutral party"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1393

Page 1, line 15, replace the first "the" with "any"

Page 2, line 6, remove the overstrike over "inspect"

Page 2, line 6, remove "contract with a neutral party to develop an assessment"

Page 2, remove line 7

Page 2, line 8, remove "2. The neutral party shall inspect"

Page 2, line 9, overstrike "determine" and insert immediately thereafter "develop"

Page 2, line 9, replace "of" with "and, where available, the use of current light imaging detection and ranging technology, an assessment formula for"

Page 2, line 11, after "made" insert an underscored comma

Page 2, line 19, replace "3." with "2."

Page 2, line 19, remove the overstrike over "board"

Page 2, line 19, remove "neutral party"

Page 4, line 8 replace "shall" with "may"

Renumber accordingly

Date: 2-10-17
Roll Call Vote: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1393

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 17.0778.01002 and add the word "imaging"
to line 9 Page 2.

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Ertelt Seconded By Rep. Guggisberg

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion Carried

Date: 2-10-17
Roll Call Vote: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1393

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: page 1 line 15, 4th word delete "the" and insert "any."

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. K. Koppelman Seconded By Rep. Ertelt

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion Carried

Date: 2-10-17
Roll Call Vote: 3

2017 HOUSE STANDING COMMITTEE

ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1393

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: Page 4 line 8 change "shall" to "may"

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. K. Koppelman Seconded By Rep. Ertelt

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion Carried.

Date: 2-10-17
Roll Call Vote: 4

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1393

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Zubke Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	✓		Rep. Guggisberg		✓
Vice Chairman Hatlestad	✓		Rep. Hanson	✓	
Rep. Beadle	✓				
Rep. Becker	✓				
Rep. Ertelt		✓			
Rep. Johnson		✓			
Rep. Koppelman		✓			
Rep. Longmuir	✓				
Rep. Maragos	✓				
Rep. Pyle	AB				
Rep. Simons	AB				
Rep. Toman	AB				
Rep. Zubke	✓				

Total (Yes) 8 No 4

Absent 3

Floor Assignment Rep. Zubke

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

REPORT OF STANDING COMMITTEE

HB 1393: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). HB 1393 was placed on the Sixth order on the calendar.

Page 1, line 15, replace the first "the" with "any"

Page 2, line 6, remove the overstrike over "inspect"

Page 2, line 6, remove "contract with a neutral party to develop an assessment"

Page 2, remove line 7

Page 2, line 8, remove "2. The neutral party shall inspect"

Page 2, line 9, overstrike "determine" and insert immediately thereafter "develop"

Page 2, line 9, replace "of" with "and, where available, the use of current light imaging detection and ranging technology, an assessment formula for"

Page 2, line 11, after "made" insert an underscored comma

Page 2, line 19, replace "3." with "2."

Page 2, line 19, remove the overstrike over "board"

Page 2, line 19, remove "neutral party"

Page 4, line 8 replace "shall" with "may"

Re-number accordingly

2017 TESTIMONY

HB 1393

2-3-17
HB1393

#1

Testimony in Support of House Bill 1393
Rep. Sebastian Ertelt
District 26

Chairman Klemin and members of the committee,

I am Representative Sebastian Ertelt, representing District 26, which includes all of Sargent County, the eastern half of Dickey County, the southeastern half of Ransom County, and the western half of Richland County. I am prime sponsor of House Bill 1393 relating to assessments by water resource districts. With my testimony today I will explain to you the intent of House Bill 1393 and why you should support a DO PASS recommendation.

Let me begin by saying that it is not the intent of this bill to hamper the ability of water resource boards to pursue necessary projects by means of assessments, but to rather provide affected landowners with a reasonable level of protection of their property, both physical and financial. The bill addresses four separate parts of the assessment process in water resource districts which currently leave too much room for unaccountability and abuse.

In Section 1, the bill requires that proposed projects be approved by the board of county commissioners in the affected county before proceeding with the project. This would occur after initial examination by the water resource board of the proposed project and a resolution by the water resource board regarding the necessity of the project. It is also at this point that the water resource board designates a registered engineer to assist them. Water resource board members are not elected, but appointed by the county commission. This provision of the bill simply seeks approval by an elected body before significant funds may be expended on project development.

Section 2 of the bill requires a neutral party to develop the assessment formula for the project. To do so, each parcel of land is to be inspected by the neutral party to determine the benefit received, which is currently left to the opinion of the water

resource board. The assessment formula sets forth the proportion of total project cost that each assessed parcel of land would be responsible for. While you will likely hear argued that involving a neutral party will only drive up costs and increase the time to begin a project, it should be noted that the neutral party would be performing a task currently assigned to the water resource board, but typically performed by or with the designated project engineer. There is not a doubling of tasks here, but rather a transfer of assignment.

Neutrality is paramount in this step of the process because it is here that a manipulation of the assessment can mean the success or failure of the project as votes are assigned on the basis of the assessment formula – the higher your assessment, the more voting rights you have – one vote for one dollar assessed. This process is ripe for the abuse of pay to play. I am not here to accuse any water resource board, engineer, or affected landowner of such manipulation or abuse, nor do I fault the water resource boards for outsourcing this step of the process as they may be otherwise ill-equipped to make such a determination themselves. However, an honest review of the process can only result in the acknowledgement that the potential for such manipulation and abuse exists given the conflict of interest that exists with an engineering firm or affected landowner who stands to benefit greatly from project work that they may also determine the voting rights for.

It should also be noted that the neutral party should have expertise in this field and would likely be another engineering firm. If there is concern over ambiguity here, the word “party” could simply be replaced by “engineer”.

Section 3 of the bill first follows the changes in Section 2 by removing reference to benefits determined by the water resource board as they would now be determined by the neutral party. More importantly, it prohibits land from being assessed if natural drainage from the land is not artificially improved and contributes additional volume to a drain. Current law does state that the assessment is to be made in accordance with the benefits received, but it does not define those benefits. This provision in the bill would provide some guidance in that regard.

The final change in the bill in Section 4 requires a report for each assessed parcel to be prepared to verify that the assessment does not exceed the benefit received.

This provision in the bill simply formalizes in a document, the inspection and benefit analysis already performed to determine the assessment. It also provides a much desired communication of information to the affected landowners that should only help to convince them of their benefit and therefore make them more inclined to vote for the drain.

Assessments for drains can be very expensive for affected landowners. Although it may not be the norm, it is not uncommon for drain assessments to surpass the amount of property taxes on a parcel of land. I have not touched on the substantial easements that may be required for drainage projects, but that is also a strong concern of affected landowners. The gravity of such financial burden and the possible forfeiting of land are reason enough to provide affected landowners with the reasonable measures of protection set forth in HB 1393.

Chairman Klemin and members of the committee, I thank you for your time today and urge you to protect the pocketbooks and property rights of your fellow North Dakotans with a unanimous DO PASS recommendation on House Bill 1393.

Provided by Kathy Marquette
9071 138th Avenue SE
Rutland, ND 58067-9428
marquette@drtel.net
701.724.3191

2-3-17

To amend and reenact section 61-16.1-17, 61-16.1-21, 61-16.1-22, and 61-21-20 of the North Dakota Century Code, relating to assessments by water resource districts.

Chairman Klemin and Members of the Political Subdivisions Committee:

My name is Kathy Marquette and I come to you today from Rutland, North Dakota. My purpose in being here is to voice my support of HB 1393 for three targeted groups of people in relation to our personal experience with water drains in southeast North Dakota in the counties of Sargent and Dickey. Those three groups of people are parents—Gerald and Judy Ringdahl—and their property located within Verner Township in Sargent County, affected by Jackson Improvement Drain, our neighbors in Sargent County who are affected by this drain assessment and for **all** farmers and property owners in the future who may have their land and property rights affected by a water drain.

I. Background on Jackson Improvement Drain

- a. Landowners notified by Dickey-Sargent Joint Water Resource Board October 6, 2014
- b. 8-mile of channel improvement that will consist of the extension of the Oakes Pilot Drain and incorporation of two lateral drain segments southeast of Oakes. Runs along State Highway 11 and is planned to drain close to 50,000 acres.
- c. Intent: to remove high water from closed basin areas and anticipated controlled retention within the water shed that doesn't exist right now.
- d. 8 miles of channel improvements; 10 foot bottom and a 3:1 or 4:1 side slope. A pump lift station will provide outlet flow from closed basins which include several bodies of water—Lake Taayer, Pickell Lake and Kraft Slough. Our family farm is located on top of a hill surround by these three bodies of water. The channel will discharge into the James River a quarter of land located in Bear Creek Township, Dickey County.
- e. Cost of project: \$5.2 million with cost-share funding from ND State Water Commission; now down to \$3.75 million
- f. Ballots to be returned no later than 5 p.m. Friday, December 5 to Dickey County Courthouse in Ellendale, ND (incorrect zip code on return envelope—sent to Marion, ND in LaMoure County instead)
- g. Due to the size of the assessment district and the total cost of the project, landowners became alarmed. Assessments payable over 20 years; a huge commitment. How were we to find out more about this project? Landowners felt “blind-sided” by this project.

II. Support for Proposed Changes to HB 1393

- a. 61-16.1-17 The board shall present the resolution to the board of county commissioners in the affected county and may not proceed with the project unless approved by the board of county commissioners.
- b. 61-16.1-21 Assessment of cost of project
 - i. The board will "...contract with a neutral party to develop an assessment formula."
 - 1. Alleviates conflict of interest with engineering company who represents the local water boards.
 - a. State of Minnesota—uses a "viewer" to look at land values, benefits of a drain in relation to assessment
- c. Item 2 in 61-16.1-21: remove "in the opinion of the board" to make it neutral so there is no evidence of conflict of interest by any interested party.
- d. Item 2 in 61-16.1-21: remove "board" and replaced with "neutral party" for continuity of removing any perceived conflict of interest.
- e. Section 61-16.1-22 Assessment list to be published—Notice of hearing—Alteration of Assessments—Confirmation of assessment list—Filing
 - i. Removing "as determined by the board" to read "An assessment may not exceed the benefit to the parcel of land or political subdivision assessed.
 - ii. Adding "Land in the watershed, which has natural drainage, may not be assessed unless the drainage has been artificially improved and contributes additional volume to a drain."
- f. Section 61-21-20 Assessing cost of constructing and maintaining drain.
 - i. Adding in Item 2.: "The board shall prepare a report for each parcel assessed to verify and ensure no parcel is assessed costs that exceed any benefits received."
 - 1. Ringdahl family: Owns 14 parcels of land for a small grain and livestock based operation—8 of the 14 parcels were assessed more in drain tax for Jackson Improvement Drain than property tax. The amount of drain assessments total for the previous tax year was \$13,593.36. This is a 20 year commitment. We cannot rationalize that the benefits outweigh the costs for our family. Many other families feel the same way.
 - 2. What will eventually happen for some families? Drain assessments combined with property taxes will be too much of a financial burden and many will be forced to sell their land—those actually benefitting from the project will be well positioned to purchase land from those who cannot pay their taxes.
 - 3. Is this ethically right? We care too much about our land and that of our neighbors to not attempt to have current law changed to reflect a more fair process.

III. Conclusion

- a. Rationale: to ensure that the assessment process by water resource boards is fair, impartial, ethical and bears no conflict of interest with any parties employed by the boards and the companies that represent them in relation to property owners.
- b. To protect landowners' property rights with large dollar drain projects and to re-establish trust with area water resource boards.
- c. Transparency is key—if water resource boards are confident that their plans are fair and equitable, bring in a neutral third party to determine assessment costs vs. benefits of any water drain project.
- d. *Water is a necessary evil; no one wants it in excess. Projects are necessary to control it; however, projects must be equitable for all parties involved in relation to benefits vs. assessment costs.*
- e. **"No matter what message you are about to deliver somewhere, whether it is holding out a hand of friendship, or making clear that you disapprove of something, is the fact that the person sitting across the table is a human being, so the goal is to always establish common ground."** (Madeline Albright—former US Secretary of State)

10:30

House Political Subdivisions Comm

#3

1393

HB 1393

2-3-17

Representative Klemin and committee members:

I am Brian Vculek corn and potato grower from Sargent County

I am against House bill 1393

I was one of the organizing supporters for what became Jackson Improvement

Sargent/Dickey

A \$5 million drainage project near Oakes

Whole community Benefits

In April of 2011 all involved land owners that we could think of were invited to attend

Many contributed including Ms. Marguerite Father

All were kept as informed as much as possible

Through many twists and turns we were finally able to start a project spring of 2016

In the time between conception and construction

State Highway 11 was raised

DMVW RR raised their grade

DMVRR voted for assessment that cost them \$360,000

Sargent County 2 was raised

At least one township road was under water

If all the money that was spent on these grade raises could have been put toward the Jackson Improvement project there would been little left for a local assessment

All this while a considerable amount of my property and neighbors was not able to be farmed.

Some of this is highly productive irrigated land and now with the tile I have installed will have a potato crop planted.

I can't imagine we would want to make this process any more difficult.

Under 1393 for a project like Jackson would we need to not only engage the WRB's of two Counties, but the County Commissions of both Counties?

I think 1393 would make creating an Assessment District next to impossible.

Neutral Third party:

Who is this? More challenges to overcome!

I work with WRB's in three counties. I have not seen any type of malicious behavior from any of them in any situation. A more likely situation is that they err on the side of excess caution.

Again procedures we have now already took five years in the case of Jackson improvement

If we want to improve drainage in ND we need more outlets not less.

We already have a very democratic and clumsy method of creating assessment districts in ND. Let's not make it worse!

Thankyou Chairman Klemin and committee members

HB 1393 #4

2-3-17

House Bill No. 1393

William Brudvik <WBrudvik@brudviklaw.com>

Wed 2/1/2017 9:41 AM

To: Klemin, Lawrence R. <lklemin@nd.gov>; phadlestad@nd.gov <phadlestad@nd.gov>; Beadle, Thomas R. <tbeadle@nd.gov>; Becker, Richard S. <rsbecker@nd.gov>; Ertelt, Sebastian <sertelt@nd.gov>; Guggisberg, Ron L. <rguggisberg@nd.gov>; Hanson, Karla R. <krhanson@nd.gov>; Johnson, Mary C. <marycjohnson@nd.gov>; Koppelman, Kim A. <kkoppelman@nd.gov>; Longmuir, Donald <dlongmuir@nd.gov>; Maragos, Andrew G. <agmaragos@nd.gov>; Pyle, Brandy L. <bpyle@nd.gov>; Simons, Luke <lsimons@nd.gov>; nptowman@nd.gov <nptowman@nd.gov>; Zubke, Denton B. <dzubke@nd.gov>;

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Chairman Klemin and members of the distinguished House Political Subdivisions Committee: This email communication is made in opposition to House Bill No. 1393, which is scheduled to be heard by your committee on Friday, February 3rd at 10:30 a.m. This is a bill designed to severely limit the powers of County Water Resource Districts to establish, maintain and improve needed drainage and flood control projects in their respective counties. County Water Resource Districts were initially created by the legislature in NDCC 61-16.1-01 to manage, conserve, protect, develop and control the waters in the state. Water Resource District Board Members are appointed by the County Commissioners. They serve at the pleasure of the County Commissioners. One of their most important responsibilities is the power of County Water Resource Districts to establish legal [assessment] drainage projects which allow landowners within a drainage footprint to petition for and establish legal drains for drainage and flood control of waters within the drainage basin footprint and to maintain those projects after they are built. Heretofore, the County Water Resource Districts have acted as a separate political subdivision responsible for water issues in each county. . A legal drain is created by a petition of affected landowners who see a need for a drainage project to either carry surface water run-off from their fields to an adequate outlet or to prevent surface water run-off from inundating their lands. It is voted upon by landowners within the assessment footprint. The vote of each landowner is based on the amount of benefit that landowner will receive from the project. In other words, landowners within the direct path of the drain will normally receive the most benefit and pay the highest assessments. Landowners on the perimeters of the drainage footprint and ones who have natural drainage on their lands would receive less benefit and pay a lower assessment. House Bill 1393 would (1) require a County Water Resource District to first obtain the approval of the County Commissioners to approve a proposed assessment drainage project **and** the assessments of benefit assigned to each parcel of land within the drain footprint; (2) contract with a "neutral party" to develop an assessment formula for the proposed drain and to assess each parcel accordingly; (3) prepare a separate written report for each parcel in the assessment district; and (4) not allow any landowner who has natural drainage to be assessed for the cost of the drain.

I have represented the Steele County Water Resource District since 1978. In that time we have built 13 legal drains. Here is how we do it. We receive a request from landowners in a particular drainage basin to help them improve surface drainage off their lands or prevent waters from coming on their lands from their neighbors. We ask our engineers to take a look at the proposed drainage basing area and give us a preliminary report on the need and feasibility of a legal drain. If it appears to be a justifiable project, an informal meeting of the landowners within the footprint is noticed and held. At that meeting the need for the project, as expressed by landowners affected, is presented and the engineer reports on the feasibility, the location and design of the

drain, and an estimate of the cost. In Steele County we have then asked the landowners attending what is a fair price for land needed for right of way and what is a fair price for temporary right of way during construction. We also give the landowners a map of the assessment footprint and ask them to indicate what is a fair percentage of benefit for their land. If the landowners give a consensus to proceed, we ask the engineer to prepare final plans and specs and assign a percentage of benefit to each parcel based on what the landowners, themselves, have provided to us, and schedule a formal hearing and vote on the drain. If it passes, landowners are given another chance to appeal their percentage of benefit before the drain is built. In the years I have represented the Steele County Water Resource District construct 13 legal drains, I have served and filed two complaints for eminent domain for right of way. In both of those cases, the landowners signed a right of way easement as soon as the complaint was served. We have never been to court to obtain right of way by eminent domain. We have never had landowner dissatisfaction about the cost of land for right of way because we give them the opportunity to set that price. Landowners who have natural drainage are given an assessment commensurate with the fact they don't need the drain project as much as their neighbors, unless their natural drainage is exacerbating water problems on their neighbor and we can alleviate that with our project. Requiring Water Resource Districts to hire a third party engineer/appraiser to evaluate each parcel of land in the assessment footprint would be cost prohibitive to any drainage project and probably preclude it from passing a cost-benefit analysis. Not only that, but these costs will have to be added to the cost of the drain to be paid for by the assessed landowners. House Bill 1393 is a solution in search of a problem and I would urge you to reject it in committee. Thank you for your service to the citizens of the State of North Dakota. Bill Brudvik

William J. Brudvik

Attorney at Law

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2

OFFICE OF THE PEMBINA COUNTY STATE'S ATTORNEY

PEMBINA COUNTY COURTHOUSE

**301 Dakota Street West, #9
Cavalier, North Dakota 58220
TELEPHONE (701) 265-4334
FAX (701) 265-8570**

January 31, 2017

To: Committee for Political Subdivisions

Re: HB 1393 – Assessments by Water Resource Districts
North Dakota Century Code Sections 61-16.1-17; 61-16.1-21; 61-16.1-22; and
61-16.1-22

Dear Chairman of the Committee:

[¶1] I write this letter on behalf of the Board of Pembina County Commissioners, (hereafter, "*Commissioners*"). The Commissioners are opposed to the proposed modifications as set out in HB 1393 regarding the sections noted above. The Commissioners both select and appoint the Water Resource District Managers (Water Board members) in Pembina County. The system in place has been adequate and effective. The Commissioners do not agree that an additional layer of approval is necessary or economical, and objects to the submission that the Commission should be required by statute to become a moderator of duties it has delegated to the Water Board. Instead, any party with standing that has a dispute with a determination made by the Water Board may seek its remedy through an appeal at the District Court level. The Commission does not want the additional responsibility proposed in N.D.C.C. Section 16-16.1-17.

[¶2] Likewise, the Commission does not agree that revisions to or implementation of additional assessments as proposed in the remainders of the Sections proposed under 61-16.1 are necessary or economical. The implementation of these provisions would add needless expense to the landowners and delays on projects. The Commission recommends that the statutes remain unchanged and objects to the provisions initiated in HB 1393.

[13] Thank you for your consideration in this matter.

Respectfully,

A handwritten signature in black ink, appearing to be 'R. Flanders', written over a horizontal line.

Rebecca Flanders ND # 07478
Pembina County State's Attorney
301 Dakota Street West # 9
Cavalier, ND 58220
Telephone number (701) 265-4334
Fax Number (701) 265-8570
Email pembinasa@nd.gov

HB 1393

2-3-17

#5

**RICHLAND COUNTY
WATER RESOURCE DISTRICT**

MANAGERS:

Gary Friskop, Chr. (Wahpeton)
Arv Burvee, Vice Chr. (Fairmount)
James Haugen (McLeod)
Don Moffet (Barney)
Robert Rostad (Colfax)

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DATE: February 3, 2017

FROM: Monica Zentgraf

RE: HB 1393

The RCWRB meets regularly with the County Commission to discuss various issues pertaining to both the WRB and the County, as well as to generally update the Commission on WRD issues and projects. The County Commissioners always struggle with the need to be involved in water issues and have stated numerous times that they appoint the WRB to handle water related issues. When informed of the language in HB 1393, the Commissioners again voiced this same opinion.

We wish to remind you that if a WRB Member is not doing their job, the Commission has a process to remove Water Board Members from Office and we do not feel projects should be required to be approved by the County Commission before they may proceed.

In regard to the required "neutral third party" work spelled out on Page 2 of the bill, it is our firm belief that the process is redundant, time consuming, and extremely costly. Please keep in mind that landowners who need the project will pay the costs for this "neutral third party" in addition to the costs for the initial work- in other words, they will pay twice. When I say the costs of a "neutral third party" are extreme, consider a project involving 5,000 parcels of land. That means 5,000 individual, written reports. There currently are districts this large and even twice as large, within the State. The cost for this third party work will likely be in the hundreds of thousands of dollars. Think of the additional dollars that will be assessed to the landowners.

The RCWRD disagrees with the language in HB 1393 in its' entirety and urges a "Do Not Pass".

Thank you for your time.

17.0778.01002
Title.

Prepared by the Legislative Council staff for
Representative Ertelt
February 9, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1393

Page 2, line 6, remove the overstrike over "inspect"

Page 2, line 6, remove "contract with a neutral party to develop an assessment"

Page 2, remove line 7

Page 2, line 8, remove "2. The neutral party shall inspect"

Page 2, line 9, overstrike "determine" and insert immediately thereafter "develop"

Page 2, line 9, replace "of" with "and, where available, the use of current light detection and ranging technology, an assessment formula for"

Page 2, line 11, after "made" insert an underscored comma

Page 2, line 19, replace "3." with "2."

Page 2, line 19, remove the overstrike over "board"

Page 2, line 19, remove "neutral party"

Renumber accordingly

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1393

HB 1393 #2

2-10-17

Introduced by

Representatives Ertelt, Rich S. Becker, Hatlestad, K. Koppelman, Toman, Weisz

Senators O. Larsen, Luick, Unruh

1 A BILL for an Act to amend and reenact section 61-16.1-17, 61-16.1-21, 61-16.1-22, and
2 61-21-20 of the North Dakota Century Code, relating to assessments by water resource
3 districts.

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. The board shall present the resolution to the board of
15 county commissioners in the affected county and may not proceed with the project unless
16 approved by the board of county commissioners. For the purpose of making examinations or
17 surveys, the board or its employees, after written notice to each landowner, may enter upon any
18 land on which the proposed project is located or any other lands necessary to gain access. The
19 engineer shall prepare profiles, plans, and specifications of the proposed project and estimates
20 of the total cost thereof. The estimate of costs prepared by the engineer shall include acquisition
21 of right of way and shall be in sufficient detail to allow the board to determine the probable share
22 of the total costs that will be assessed against each of the affected landowners in the proposed
23 project assessment district.

1 **SECTION 2. AMENDMENT.** Section 61-16.1-21 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-21. Assessment of cost of project.**

4 1. Whenever the water resource board proposes to make any special assessment under
5 the provisions of this chapter, the board, prior to the hearing required under section
6 61-16.1-18, shall ~~inspect~~contract with a neutral party to develop an assessment
7 formula.

8 ~~2. The neutral party shall inspect~~ any and all lots and parcels of land, which may be
9 subject to assessment and shall ~~determine~~develop from the inspection ~~of and, where~~
10 available, the use of current light detection and ranging technology, an assessment
11 formula for the particular lots and parcels of lands which, ~~in the opinion of the board,~~
12 will be especially benefited by the construction of the work for which the assessment is
13 made, and shall assess the proportion of the total cost of acquiring right of way and
14 constructing and maintaining ~~such~~the improvement in accordance with benefits
15 received but not exceeding ~~such~~the benefits, against:

16 4. a. Any county, township, or city, in its corporate capacity, which may be benefited
17 directly or indirectly ~~thereby~~.

18 2. b. Any lot, piece, or parcel of land which is directly benefited by ~~such~~the
19 improvement.

20 ~~3.2.~~ In determining benefits the ~~board~~neutral party shall consider, among other factors,
21 property values, degree of improvement of properties, productivity, and the water
22 management policy as expressed in section 61-16.1-15. Property belonging to the
23 United States shall be exempt from ~~such~~the assessment, unless the United States has
24 provided for the payment of any assessment which may be levied against its property
25 for benefits received. Benefited property belonging to counties, cities, school districts,
26 park districts, and townships ~~shall~~may not be exempt from ~~such~~the assessment and
27 political subdivisions whose property is so assessed shall provide for the payment of
28 ~~such~~the assessments, installments ~~thereof~~, and interest ~~thereon~~, by the levy of taxes
29 according to law. Any county, township, or city assessed in its corporate capacity for
30 benefits received shall provide for the payment of such assessments, installments
31 ~~thereof~~, and interest ~~thereon~~ from its general fund or by levy of a general property tax

1 against all the taxable property therein in accordance with law. No tax limitation
2 provided by any statute of this state ~~shall~~may apply to tax levies made by any such
3 political subdivision for the purpose of paying any special assessments made in
4 accordance with the provisions of this chapter. There ~~shall~~must be attached to the list
5 of assessments a certificate signed by a majority of the members of the board
6 certifying that the same is a true and correct assessment of the benefit therein
7 described to the best of their judgment and stating the several items of expense
8 included in the assessment.

9 **SECTION 3. AMENDMENT.** Section 61-16.1-22 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of**
12 **assessments - Confirmation of assessment list - Filing.**

13 After entering an order establishing the project, the water resource board shall cause the
14 assessment list to be published once each week for two successive weeks in the newspaper or
15 newspapers of general circulation in the district and in the official county newspaper of each
16 county in which the benefited lands are located together with a notice of the time when, and
17 place where, the board will meet to hear objections to any assessment by any interested party,
18 or an agent or attorney for that party. The board also shall mail a copy of the notice to each
19 affected landowner at the landowner's address as shown by the tax rolls of the county or
20 counties in which the affected property is located. The date set for the hearing may not be less
21 than twenty days after the mailing of the notice. At the hearing, the board may make such
22 alterations in the assessments as in its opinion may be just and necessary to correct any error
23 in the assessment but must make the aggregate of all assessments equal to the total amount
24 required to pay the entire cost of the work for which the assessments are made, or the part of
25 the cost to be paid by special assessment. An assessment may not exceed the benefit as
26 ~~determined by the board~~ to the parcel of land or political subdivision assessed. Land in the
27 watershed, which has natural drainage, may not be assessed unless the drainage has been
28 artificially improved and contributes additional volume to a drain. The board shall then confirm
29 the assessment list and the secretary shall attach to the list a certificate that the same is correct
30 as confirmed by the board and shall file the list in the office of the secretary.

1 **SECTION 4. AMENDMENT.** Section 61-21-20 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-21-20. Assessing cost of constructing and maintaining drain.**

4 After the making of the order establishing the drain, the board shall assess the percentage
5 of the cost of acquiring right of way and constructing and maintaining ~~such~~the drain in
6 accordance with benefits received, against:

- 7 1. Any county, township, or city which is benefited ~~thereby~~; and
8 2. Any lot, piece, parcel, or interest in land which is either directly or indirectly benefited
9 by ~~such~~the drain or by ~~such~~the drain in connection with other existing or proposed
10 drains. The board shall prepare a report for each parcel assessed to verify and ensure
11 no parcel is assessed costs that exceed any benefits received.

12 No land already included in and being assessed by an existing drainage district ~~shall~~may be
13 included and assessed in any newly formed drainage district unless it can be shown that
14 ~~such~~the land will be benefited by the construction of the new drain. The board in considering the
15 benefit and assessing the percentage of costs to each affected tract, parcel, or piece of land
16 may, among other things, take into consideration the present drainage facilities under any
17 existing drainage district, potential use of the proposed drain by ~~such~~the land, whether any ~~such~~
18 lands will be benefited or harmed by any change in the existing flow and course of drainage
19 water by reason of the construction of the drain, and ~~such~~ other matters as may be pertinent to
20 the question of benefits.

3

2-10-17

