

**2017 HOUSE AGRICULTURE**

**HB 1416**

# 2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1416  
2/3/2017  
Job #27899

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*DeMae Kuehn*

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

Relating to the definition of cleaning out and repairing of drain.

**Minutes:**

Attachments 1-5

**Representative Sebastian Ertelt, Sponsor:** (Attachment 1)

(6:25)

**Representative Skroch:** In the clarification of the word "maintenance", what type of projects does it apply to?

**Representative Ertelt:** The word "maintenance" is not found in this definition. The term is used within this chapter of law. Cleaning out and repairing would be maintenance. It talks about obstructions or sediment being cleaned out to get the drain to what it was originally.

**Representative Headland:** "Not to exceed its original function." What does that mean? Are you trying to say you don't want more water moved than originally planned? What if deeper and wider is needed?

**Representative Ertelt:** That is why design is included to what it was before. This language doesn't prohibit from widening or deepening a drain. If it is beyond the current design, the more formal process would need to be followed.

**Representative Headland:** Your intention is to not allow any more development on a drain. It is limited to its original design

**Representative Ertelt:** I am not one to prohibit progress. Widening and deepening may need to occur. If you are moving more water, than use the process.

**Representative Satrom:** Do we have a problem with people widening and then causing problems for those downstream?

**Representative Ertelt:** You will hear from some that are affected even though they are not downstream.

**Representative Kiefert:** I have a stock pond with one of my drains. Does this affect ponds?

**Representative Ertelt:** I cannot answer that.

**Bob Banderet, Cogswell, North Dakota:** In my opinion water boards have too much leeway interpreting what constitutes maintenance. Water boards are using maintenance levies to accomplish all actions. The local water board in Sargent County has proposed a \$3.9 million flood protection improvement project of which \$2.3 million is the responsibility of the assessment district landowners. The plans call for widening the existing ditch to increase hydraulic capacity. Because a 4 to 1 slope of the banks is also part of the plan a new channel will need to be dug where the ditch is adjacent to roadways which is going beyond the scope of cleanout and repair. Yet the water board is using the maximum \$4/acre maintenance levy to finance the local share. Because the water board can borrow against 6 years of maintenance levy without a landowner vote, they have segmented this project's length to fit that 6-year window. The entire project that the water board envisions is likely \$8 to 10 million which means the maximum levy will go on for 15 to 20 years. This was done without landowner vote or even input. The water board held one meeting by invitation only for landowners from whom easements are required. Water boards are using unclear language in Century Code to financially obligate landowners with huge improvement projects without a vote. Water boards are unelected positions.

I ask this committee to include language to prevent water boards from segmenting large projects to fall into that 6-year maintenance window only to avoid a landowner vote.

(17:03)

**Vice Chair Trottier:** How far back does the assessment go distance wise from the drain?

**Bob Banderet:** The assessed benefits go out 4 or 5 miles. Some places it is only 1 or 2 miles.

**Representative Headland:** Is the \$4 assessment assessed beyond the original property agreement or is it on the same property that paid for the original drain.

**Bob Banderet:** The district was reassessed in 1983 which increased from the original.

**Paul Mathews, Cogswell, North Dakota:** (Attachment 2)

It comes down to maintenance. We are just keeping the original drain in its condition. Anything more than that is improvement. When do we get a chance to take it to our water board and vote on it? We've been turned away. Landowners are left out.

(21:45)

**Representative Headland:** Is the argument about not having a say as to what the water board does? Or is this about the ability to move the water that was intended to be moved?

Is this about the money or the function?



**Paul Mathews:** This portion of the law is a landowner protection.

**Representative Headland:** They are using their ability for maintenance to expand beyond the original assessment. You are saying that if they are going to do that, it should be through the correct process.

**Paul Mathews:** I agree.

**Representative Headland:** I don't think this bill does that.

**Derrick Braaten, Attorney in Bismarck:** In 1997 there was an Attorney General's opinion that defined "maintenance" as being limited by the levy. At the time of the AG opinion it was \$1.50 per acre not \$4 per acre. The amount they are allowing to be assessed has increased at about twice the rate of inflation. It is the engineer's specifications that define original function and design. If it is a new project, it needs to go through a vote. What is really going on is the democratic process is not being used.

**Representative Skroch:** Do you envision this definition of maintenance being applied to very small projects or only large projects?

**Derrick Braaten:** It is only going to apply to very large projects. If you are talking about a bridge or a culvert, you can look back to the engineering specifications.

This definition won't impact legitimate maintenance.

**Representative Skroch:** If they are replacing a bridge over a ditch that will no longer carry the weight of a semi, does it have to be the original design?

**Derrick Braaten:** No, the original function is of the drain not the bridge.

**Representative Skroch:** How about if it is a culvert that doesn't handle the flow anymore?

**Derrick Braaten:** Not with a culvert but the drain may need to be developed as a new project.

**Representative Headland:** My concern is that this doesn't achieve what the authors of the bill are trying to do. It prohibits projects all over the state in moving water.

Does this address the concerns of the authors?

**Derrick Braaten:** I do believe it meets the intent. The water districts can't bypass the democratic process.

**Representative McWilliams:** What if it costs more to run a special election than the project total? Do you see this bill as a hindrance to the smaller projects?



**Derrick Braaten:** To the extent that it is maintenance, I don't see it as an issue. When it is a new project you need to go through the process.

**Representative Kiefert:** The bill needs an amendment to specify what you are trying to do.

**Representative Satrom:** We have two issues. One is exceeding the definition of normal maintenance. The other is the authority of the water boards.

**Derrick Braaten:** I can't speak to the intent of the authors. There are significant new projects not going through the democratic process.

**Representative Headland:** Is there a process in place today that allows impacted property owners to object?

**Derrick Braaten:** There is not short of litigation. The concern is that we want to have a process.

**Representative Kiefert:** There should be an exclusion for agriculture. If I want to put a stock pond in a drain, this would prevent me from doing that.

**Leon Mallberg, Property Owner:** The ditch that goes across one of my quarter sections is 50 feet wide. The idea for improving it is to make it 75 feet wide. They have to go to eminent domain or quick take. That is beyond maintenance. There will be spoil piles on both sides of the ditch. The water comes from another county which has no obligation for this drainage. Watersheds don't recognize county lines. It is a 30-mile stretch that is broken into 10-mile segments and being passed off as maintenance.

**Representative McWilliams:** Is that taking acreage out of production?

**Leon Mallberg:** Yes, but I'm paying taxes on a full 160 acres. I can't farm the ditch but I am paying taxes on it. It is moving someone else's water.

#### **Opposition:**

**Sean Fredricks, Red River Joint Water Resource District:** It is composed of 14 water resource districts. They view this bill as dangerous.

The way assessment districts work, they go through an analysis of benefitted properties. The landowners who benefit from it get to vote. If the project goes through, a maintenance district is created at the same time. At the end of the bond issue to pay off the construction costs the members of the assessment district then become members of the maintenance district. At that point they assess maintenance levies because the need to operate and maintain the drain. Can't create it and leave it.

This bill would restrict the size of a culvert. When a small culvert is washed out you, cannot use those maintenance dollars to replace it with a larger culvert.

Drain 11 referred to previously has been around for 100 years. The engineering is different today. It was designed with very steep slopes which are eroding. The culverts are not big enough. The project is to lay back those slopes. This bill says we can't use maintenance dollars to lay back the side slopes. If we put it back the way it was, it will fail again. When going back for a vote, you spend \$40,000 of the maintenance dollars for voting.

**Representative McWilliams:** With some quick math on previous testimony, it would have a total financial impact of \$1400 per year for the landowner. Could you set a threshold to bring it to a vote?

**Shawn Fredricks:** We are talking a maintenance levy. These are not new assessments. When several culverts wash out, FEMA will help but they have a deadline and going to a vote may not make the deadline.

**Representative McWilliams:** It comes out to about 6 acres out of production. That landowner will still be taxed on nonproduction land.

**Shawn Fredricks:** We get appraisals to get easements or we can buy the land and they don't have to pay taxes. The slopes will not come out of production. We pay for loss of use during the two years of construction. After that they can farm the back slope.

**Representative Headland:** Are there other reasons for the deterioration of the drain other than drain tile?

**Shawn Fredricks:** Hydrology changes in any area. Tile is not causing these drains to fail. These drains are outlets for the tile. We have to lay back the side slopes to accommodate the extra water brought by tile.

The question about appeal rights—landowners have been discussing Drain 11 project for many months. There is law that if you don't like a decision of a water resource district it can be appealed to district court.

**Representative Magrum:** Is this about using money that is already available without creating another tax?

**Shawn Fredricks:** Yes. The language in the bill conflicts. In the first line it says you can use the funds to deepen and widen a drain. Then the last line says you can't exceed the original design. How can you deepen and widen if you can't go past the original design?

**Representative Magrum:** The ones that brought in this bill don't want the water boards to get outside the original intent of this tax?

**Shawn Fredricks:** They told us you can't lay back the side slopes, etc.

**Mike Dwyer, Representing Water Resource Districts:** The Red River Valley has rich farmland. The ability to maintain the drains is extremely important.



**Levi Otis, Argusville:** This limits the definition of repair when not to exceed its original function and design. In the Century Code there are procedures for constructing new drainage and for repairs. The definition currently includes widening, deepening, and extending a drainage system. There are no other provisions in the law for authorizing an improvement. By changing this definition of repair you may be taking away the authority of water resource districts to do an improvement.

**Robert Fleming, Pembina County Water Resource Board:**

I have a problem with the language. It says "not to exceed the original function and design." We have drains in Pembina County that were built in 1890 and were probably dug by hand. They have been modified over time as most of the other 45 or 50 drains have. Which is the original design?

The original function of the drain is to drain water. But the original design may not be sufficient to get that done any more. The way this is written is very cumbersome.

When we receive a complaint at the water board, we have two paths. We can either go with reconstruction which is a vote or we can do a clean out. A clean out is faster but you don't get any cost share. With reconstruction and a vote, you get cost share but it is slower. Many times farmers can't wait for reconstruction. When a ditch erodes it plugs the drain.

If we can figure out the original condition, it often can't be done due to the amount of wetness. In order to get to firm ground, the side slopes have to be brought back which couldn't be done under this bill.

The financial threshold doesn't work. In Pembina County the largest drain is Drain 67. It drains 68,000 acres which is 425 quarters. The smallest drain is Drain 3 which drains about 18½ quarters—less than 3,000 acres. A set dollar amount wouldn't work.

FEMA will help cost share but won't again next year if the design is not improved which would then be on the taxpayers. Drain 67 blew out in 2013. FEMA helped with the repair and improvements by paying \$2.6 million.

The phrase "Clean and repair a drain" appears in the Century Code 12 times.

Bridge design is part of the drain design. If the drain has to be back to the original condition, you can't change the bridge.

**Representative Magrum:** The bigger culvert will cause culverts downstream to wash out.

**Robert Fleming:** Yes, it does get to be huge. We are already limited by \$4 per acre per year. Our biggest drain brings in about \$200,000 a year. Our smallest drain brings in \$12,000 a year.

**Representative Skroch:** If you have an urgent project and there isn't enough money in your maintenance fund, how do you go about paying for it? Do you seek an additional assessment?



**Robert Fleming:** There are two ways to do it.

1. We stop until we can vote which takes it to the next year.
  2. Or we have a landowners meeting and tell them what we can do. We start at the outlet and go back as far as we can. We try to keep the water flowing but it doesn't meet everyone's needs. When we get another year of assessments, we can continue.
- Every time the Red River comes up, it washes our drains full of silt. We have a drain every mile going into the Red River.

**Representative Skroch:** Have you seen a situation where the assessment exceeds benefit to landowners?

**Robert Fleming:** No. Some landowners want to be assessed more so the drains can be fixed.

(1:25:50)

**Monica Zentgraf, Richland County Water Resource District:** (Attachment 3)  
This bill would be devastating. Roads would be closed for extended periods of time.

Most of our drains were built in 1901. We have 41 legal drains and 329 miles of channel. We can't take 40 projects to the vote of the people.

(1:31)

**Todd Stein, Sargent County Water Resource Board:** (Attachment 4)--three pictures

Steep ditches affect safety. Our engineers and lawyers are doing the best they can. We have technology to design ditches which was not used on the original design. We are opposing this because we want these projects to be safe and move water.

**Justin Johnson, Civil Technician for the Richland County Water Resource District:**  
(Attachment 5 a & b)

**Brian Vculek, Sargent County:** I would be one of the landowners asking for improvements to drains. This bill would disrupt the ability of the water resource boards to perform their duties.

**Representative McWilliams:** Moved Do Not Pass

**Representative Satrom:** Seconded the motion.

**Chairman Dennis Johnson:** I think this bill gets to be overreaching when we had as many water districts come in opposition. The current law has been working.

**Representative Skroch:** In Sargent county, the people were trying to prevent abuses they saw happen to them. Shawn Fredricks said there was not an increase in the assessment. There was an increase in the assessment without a vote.

They were to fix Drain 11 that included deepening and widening. It came at a cost so high that it was above the \$4 trigger. So they divided it into sections and assessed them as close as they could to that \$4 amount without having to go to a vote. After presenting it to the people, Ransom County landowners were able to opt out of the assessment and pay nothing. They were part of the benefit of the drain.

**Representative Headland:** That points to the broader problem with water boards. We should have water regulations by watershed not by county.

**A Roll Call vote was taken:** Yes 14, No 0, Absent 0.

**Do Not Pass** carries.

**Representative D. Johnson** will carry the bill.


# 2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1416—Committee work  
2/16/2017  
Job #28453

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



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

Relating to the definition of cleaning out and repairing of drain.

## Minutes:

**Chairman Dennis Johnson:** We were given amendments after we voted on this bill.  
So we will reconsider our previous action of Do Not Pass.

**Representative Skroch:** Moved to reconsider our previous actions

**Representative Boschee:** Seconded the motion.

A Roll Call vote was taken: Yes 4, No 10, Absent 0.

**Chairman Dennis Johnson:** The motion for reconsideration failed.  
The bill is the same way it was sent out.



Date: 2/3/2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1416**

House **Agriculture** 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. McWilliams Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschée	X	
Vice Chairman Wayne Trottier	X		Rep. Kathy Hogan	X	
Rep. Jake Blum	X				
Rep. Craig Headland	X				
Rep. Michael Howe	X				
Rep. Dwight Kiefert	X				
Rep. Jeffery Magrum	X				
Rep. Aaron McWilliams	X				
Rep. Bill Oliver	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				

**Total**    **Yes**    14    **No**    0

**Absent**    0

Floor Assignment    Rep. Johnson

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

Date: 2/16/2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1416**

House **Agriculture** 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. Skroch Seconded By Rep. Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson		X	Rep. Joshua Boschee	X	
Vice Chairman Wayne Trottier		X	Rep. Kathy Hogan	X	
Rep. Jake Blum		X			
Rep. Craig Headland		X			
Rep. Michael Howe		X			
Rep. Dwight Kiefert		X			
Rep. Jeffery Magrum	X				
Rep. Aaron McWilliams		X			
Rep. Bill Oliver		X			
Rep. Bernie Satrom		X			
Rep. Cynthia Schreiber Beck		X			
Rep. Kathy Skroch	X				

**Total**    **Yes**    4    **No**    10

**Absent**    0

Floor Assignment    Rep. D. Johnson

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

**REPORT OF STANDING COMMITTEE**

**HB 1416: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1416 was placed on the Eleventh order on the calendar.



**REPORT OF STANDING COMMITTEE**

**HB 1416: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1416 was placed on the Eleventh order on the calendar.

**2017 TESTIMONY**

**HB 1416**

1  
2/3/17

Testimony in Support of House Bill 1416  
Rep. Sebastian Ertelt  
District 26

Chairman Johnson 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 1416 relating to the definition of "Cleaning out and repairing of drain". With my testimony today I will explain to you the intent of House Bill 1416 and why you should support a DO PASS recommendation.

House Bill 1416 modifies the definition of "Cleaning out and repairing of drain" as contained within Chapter 61-21, Drainage Assessment Projects, of the North Dakota Century Code. It quite simply adds clarifying language to the definition that ensures the cleaning out and repairing of a drain may only be done to the extent not to exceed the drain's original function and design, which is consistent with the words "to return the drain" used earlier in the definition.

The modified definition, as you can see in the bill, would thus read, "Cleaning out and repairing of drain" means deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition not to exceed its original function and design.

"Cleaning out and repairing of drain" is referenced in multiple sections of Chapter 61-21 as shown below.

**61-21-42. Drain kept open and in repair by board.**

All drains that have been constructed in this state except township drains shall be under the charge of the board and it shall be the duty of the board to keep such drains open and in good repair. When a drain is situated in more than one county, the drainage board of each county shall have charge of the maintenance of that

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portion of the drain located in its county. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any drain when requested to do so by petition of fifty-one percent of the affected landowners. The percentage of affected landowners of record in the treasurer's office or recorder's office favoring such cleaning out or repairing shall be determined by the weighted voting method as provided in section 61-21-16.

**61-21-43. Assessment of costs of cleaning and repairing drains.**

The cost of cleaning out and repairing a drain or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances in which there has been a reassessment of benefits under the provisions of section 61-21-44. If no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available after a hearing thereon as prescribed in this chapter in the case of a hearing on the petition for the establishment of a new drain. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

**61-21-45. Contracts for work of cleaning and repairing drains.**

If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, the work may be done on a day work basis or a contract may be let without being advertised. When the cost of such work exceeds the amount provided for construction of a public improvement under section 48-01.2-02 in any one year, a contract must be let in accordance with chapter 48-01.2. The competitive bid requirement is waived, upon the determination of the board that an emergency situation exists requiring the prompt

repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

**61-21-46. Maximum levy - Accumulation of fund.**

1. The levy in any year for cleaning out and repairing a drain may not exceed four dollars per acre [.40 hectare] on any agricultural lands in the drainage district.

a. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of four dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full four dollars per acre [.40 hectare].

Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.

b. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed two dollars for each five hundred dollars of taxable valuation of the nonagricultural property.

2. In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, the board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years. If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that can be levied by the board in any six-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 before obligating the district for the costs.

**61-21-47. Expenditures in excess of maximum levy.**

If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of four dollars per acre [.40 hectare] in any year, with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected



landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

As you can see in these last two sections, the amount that may be levied against affected landowners for the cleaning out and repairing of drain is substantial, at \$4 per acre per year for up to six years with the possibility of increasing beyond that. The amount of the levy up to the \$4 per acre per year is determined by a majority vote of the water resource board. These board members are not elected, but rather appointed by the county commission. Such financial impact at the hands of an unelected board deems necessary the clarity of the definition.

Without the proposed clarification in the definition, it may be argued that a drain needs to be made deeper or wider than originally designed in order to return it to a satisfactory and useful condition. Such an argument would run contrary to the intent of the law and any reasonable interpretation of repair. It would be like taking your automobile, which is running a bit rough, to a mechanic for a tune-up in order to return it to a satisfactory and useful condition, and discovering that they added a supercharger to the engine and a new dual-exhaust system instead of giving it the simple tune-up it required.

This bill will not prevent the cleaning out and repairing of a drain. Instead it will provide clarity to both water resource boards and affected landowners. If a water resource board or affected landowners within a water district believe that there is need to deepen or widen a drain beyond its original function and design then they ought to pursue such action through a formal drainage assessment project which allows for more landowner input and opportunity to appeal.

Chairman Johnson and members of the committee, I thank you for your time today and urge you to protect the landowners of this state with a unanimous DO PASS recommendation on House Bill 1416.



17.0813.01001  
Title.

2/3/17  
Prepared by the Legislative Council staff for  
Representative Ertelt

February 2, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1416

Page 1, line 2, after "drain" insert "; and to declare an emergency"

Page 1, after line 8, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency  
measure."

Renumber accordingly

Honorable Chairman Dennis Johnson and Members of the Agricultural Committee:

RE: House Bill 1416

2  
2/3/17  
Paul Mathews

I am in favor of this proposed Bill.

To begin, I am a strong believer in property rights. I believe this bill begins to restore respect for property rights that most of our state's citizens in unanimous fashion support as part their core values.

Two of this Bill's sponsors represent my District #26. This past November, a group of my neighbors pleaded with our representatives that we had recently been, in our opinion, victims of water board process failings. These processes appeared to us as lacking landowner protections for a very significant expensive project levied on landowners. A most striking failure to me occurs when landowners' common sense interpretation isn't adhered to in this narrow area of water board process.

Today I wish to use our community's current situation to demonstrate this apparent disconnect from common sense. The Century Code section to which this bill is focused on relates to how water boards managed landowners' maintenance funds. Please pause here to consider what your own understanding of "maintenance" means to you. If you have the same beliefs as many of my neighbors, it would be confining to the expenses in preserving a drain in its original condition.

Last fall, by chance, some of my public drains neighbors learned of an **improvement** project for a 100 year old drainage ditch. The plans modify the original historic design to include a Board objective to increase flows from the current drain's capacity. This would be accomplished by gradient 4:1 sloping to a widened bottom. This plan would also necessitate additional public corridor rights – because it's wider - and larger culverts to achieve the goal of the improvement plan.

When landowners became concerned of the plan's costs and asked the Board if landowners would have input, they were rejected. The affected landowners were put on notice that only a majority board motion would be necessary to obligate these landowners since "maintenance funds" don't require landowner oversight or approval.

To incense these landowners further, the Board had to scale this project down and confine plans to segments since the same Century Code section caps maximum levies to six years. Once the initial segment is completed, additional two or three or more segments are planned to achieve the Board's ultimate goal for the entire ditch to properly increase its capacity.

I believe that this episode was, in part, the inspiration for our Representatives to ask this Legislative body; "What you believe "maintenance" means?" Should you agree with many of my neighbors, and insert this language, then the balance of this section of Century Code will apply the landowner protections available by existing legislation. Specifically, Century Code stipulates, a Board cannot obligate assessment district without consultation in the form of public hearings and a landowner vote ratifying. As in our situation, the proposed improvement plan is an ambitious and significant financial weighted project for landowners without having the voice carried by a vote.

This clarification is necessary to have all parties understand their role. This would not limit water boards to offer legitimate good improvement plans. But it would remind them to confer, to educate, to organize acceptance from the landowners whom ultimately pay for the project.

In conclusion, I thank you for your public service as legislators and I encourage you to ask me questions relating to my communities' recent experience and so that you can draw an understanding how current law leaves property rights at risk. Specifically the right for landowners to vote.

Paul Mathews

9066 119<sup>th</sup> Ave SE, Cogswell, ND 58017

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2/3/17  
HB 1416

**RICHLAND COUNTY  
WATER RESOURCE DISTRICT**

**MANAGERS:**

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

**SECRETARY /TREASURER:**

Monica Zentgraf  
(701)642-7773 (Phone)  
(701)642-6332 (Fax)  
mzentgraf@co.richland.nd.us (E-mail)

**CIVIL TECHNICIAN:**

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**DATE:** February 3, 2017

**FROM:** Monica Zentgraf

**RE:** HB 1416

We appreciate the sponsors desire to protect property owners, as we also want all property owners to be protected; however, HB 1416 is not going accomplish what the sponsors set out to do. When our attorney forwarded the proposed bill to our office he used the word "dangerous" to describe the language in this bill. There is an additional "d" word that describes this bill and it is "devastating".

The vote process written into this bill will all but halt the majority of work which needs to be done due to time delays and possible failed votes. Money that would have been used for a simple small project will now go towards the vote process, causing small projects to double in cost as well as be delayed for months or possibly even years, depending on the backlog of projects that will need to go through this process. In reviewing all the various projects we did in 2016, we found 40 projects would have been required to go through the hearing and vote process. It is totally unrealistic to think that the vote process could have been accomplished for even 15% of these projects during this past construction season much less talk about trying to get the work done before the onset of winter weather conditions, if the votes pass.

The first two obvious issues are the time delays and added costs to the taxpayers. However, other issues to be concerned about are roads that will be closed for extended periods of time. Any one of these roads may be the only access to a farmstead, a school bus route, an emergency route for an ambulance or fire department, the only access to a farmers' field, or a field to market road.

Another major concern is flood disasters, such as a 1997 or 2011 type event. If we have a flood disaster, the second disaster is going to be trying to deal with this process before repairs can be made! Besides the most pressing issue, which is to make repairs, is the issue of completing repairs before the FEMA deadline and the loss of FEMA money because repairs weren't made timely or because the landowners voted the project down. Also, many times we

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have received FEMA approval for an "improved project" rather than "repairing" the damage such as, if the same spot has been damaged numerous times, or it is impossible to "repair" and the drain slopes need to be flattened. Under this bill, a vote is required. If the vote fails the WRD would have lost the ability to utilize FEMA money to make improvements and eliminate the continual expense for repairing the site. Making repairs that do not hold is only throwing good money after bad.

The RCWRD has 41 legal assessment drains with 329 miles of channel. It is virtually impossible for the District to maintain the drains if they are required to go through the vote process for anything that exceeds the original function and design. The current law, which requires a vote process for excess levies to pay for projects on existing drains or construction of new drains is adequate and should remain in force. We urge a "Do Not Pass" on this bill.

Thank you for your consideration.



#4  
2/3/17  
HB 1416  
Todd Stein











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#5a  
2/3/17

House Bill No. 1416 Testimony

By: Justin Johnson

Good morning Mr. Chairman and member of the committee my name is Justin Johnson I am a Civil Technician for the Richland County Water Resource District. I also live in Richland County off of a township road which runs parallel to Richland County Drain #7.

I am opposed to House Bill 1416 for multiple reasons and will present to you three examples where this bill will directly affect how water resource districts operate.

Please look at the first page of the packet I prepared. Richland County is outlined in black. The red dots represent every culvert we have replaced since 2015. There are 52 sites in total. (You might not count 52 because at the scale I had to make the map some of the points over lap).

Most if not all of these sites would be affected by the new language in House Bill No. 1416 not to exceed its original function and design.

Please turn to the second page in your packet.

This particular culvert issue was brought to me by the farmstead owner while I was out inspecting other repair work.

He expressed concern regarding the culvert that drains off water from his farmstead site. As you can see in the first picture the bottom of the culvert is completely rusted out and was in need of being replaced.

This kind of damage can cause three issues. #1 the water from his farmstead will not drain properly. #2 the township road could wash out, and #3 and far more



concerning for this individual since the bottom of the culvert is rusted out.

The flap gate on the outlet end of the culvert will not function properly and will allow water to back up into his farmyard and potentially flood his property along with his home.

During conversation with the farmstead owner he explained to me his father installed the culvert many years after the drain was established. If that is true according to this new language in House Bill 1416 Not to exceed its original function and design RCWRD would have to go to a vote to be able to replace his culvert even at the same size let alone increasing the size as we did in this case. (Per a recommendation from our engineer)

That is a lengthy process and would cause delays which could result in damage to his farmstead if a high water event was to happen. In this case we had a contractor nearby doing other work so we were able to replace the culvert in a very short period of time.

## Example 2

Please turn to the last page of your packet.

Pictured is a township road crossing on Richland County Drain 31. As you can see in the pictures there was a series of 4 culverts that were in very bad condition. We replaced these culverts with 2 arch culverts per a hydraulic study from our engineer.

Again with this new language we would have to go to a vote to accomplish this work. In this case if we had a large spring event the road could wash out. Causing it to be closed for many months. Not pictured is a farmstead on the Southwest corner of this intersection that utilized this crossing for access.

Another Example is our Richland County Drain #2. We just did a reconstruction on this drain last summer that was approve by a vote of the people of the assesment district.

Let's say we had a large spring event this year that washed out one or more of the new crossings that were installed. The language in this bill would force the Water Resource District to go back to a vote of the people to reinstall a culvert that was just installed just a few month earlier, because it was not the original function and design of the drain.

There are multiple areas around Richland County where the drains have been reconstructed and if washouts were to happen we could not replace the reconstructed crossing without a vote.

I would hate to start telling Richland County tax payers that we are unable to help them with their issues because of the lengthy delays caused by this language.

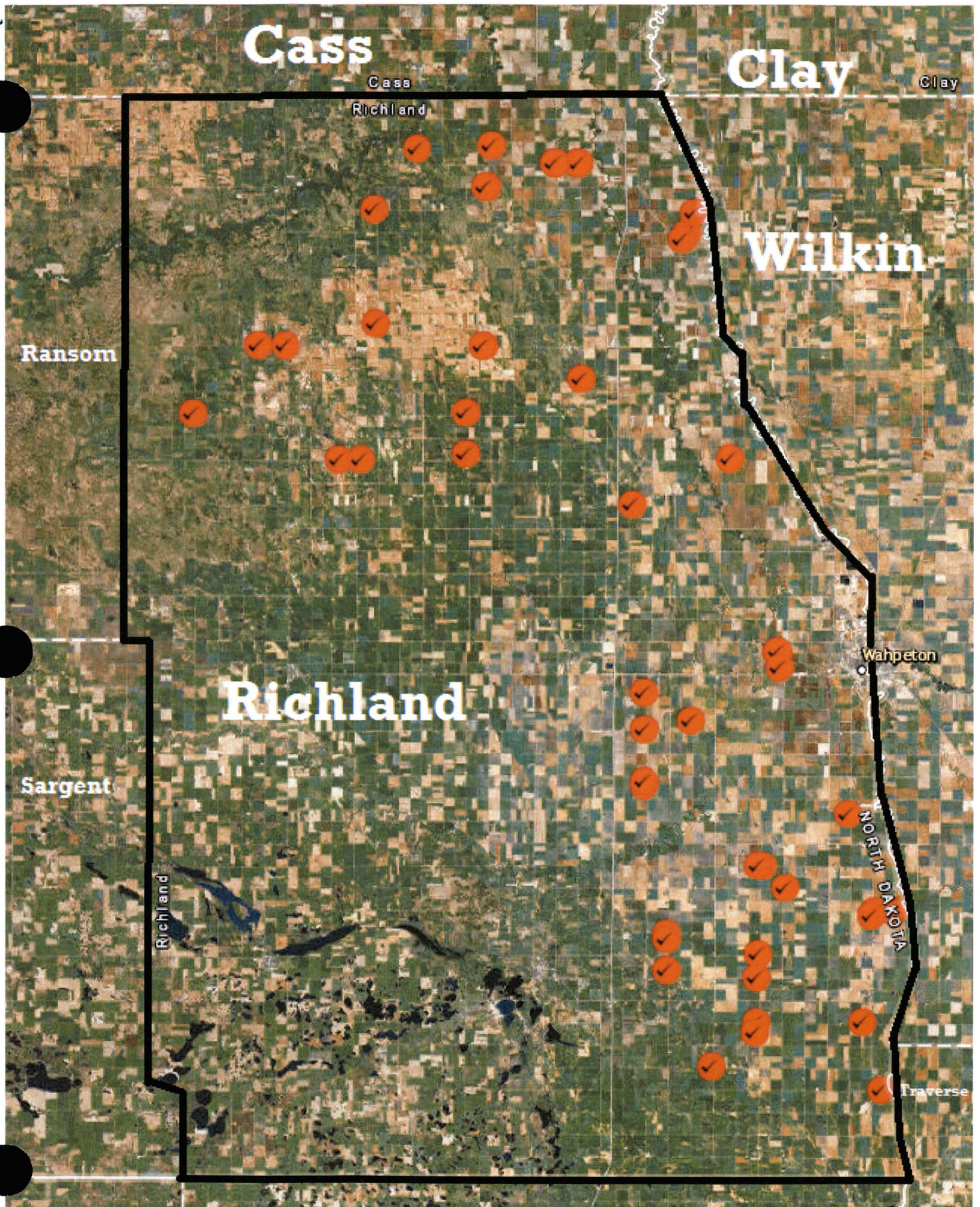
I would also like to point out that the 52 points on page one are just sites involving culverts. We have many more repair sites since 2015 that could be affected by this bill. I wanted to highlight the culvert sites because they are usually the most urgent. I could give you example after example but in the interest of time I will leave you with just these three.

Closing I would like each committee member to ask themselves these questions. How would you feel if you were the farmstead owner in example one and was told by Water Resource Board they are unable to help you until a lengthy voting process was held. Which could allow a devastating high water event to happen which could ultimately flood your home. Also if you were the Farmstead owner in example two? If your main access to your home was closed off for months because of these delays.

I urge you to vote no on House Bill 1416!

Thank you, and I can take any questions you may have.



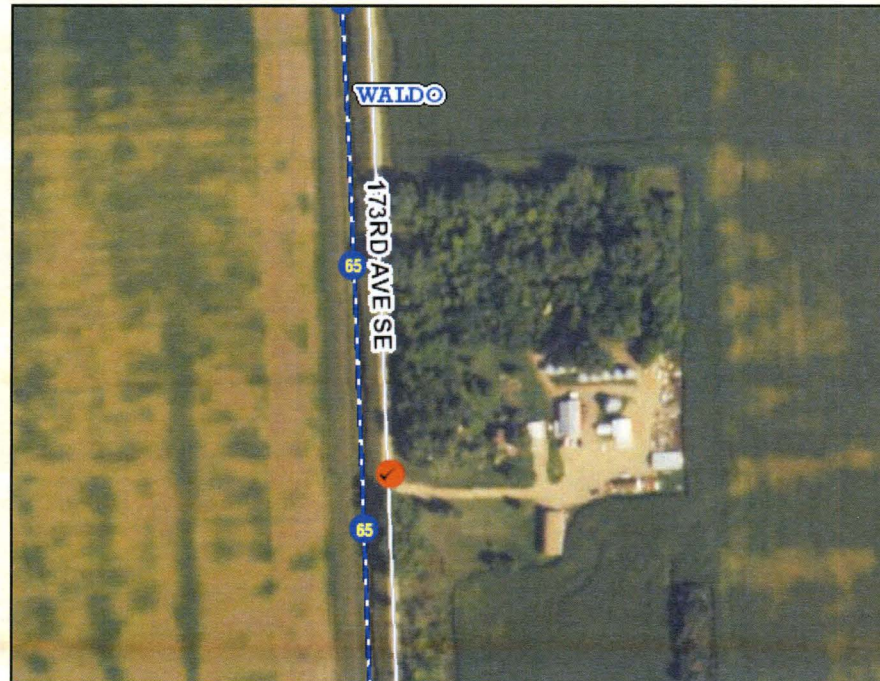




Rusted out 15" Culvert



18" Replacement Culvert Installed



Farmstead with Damage Site Marked

2





Drain 31 Township Road Crossing



Drain 31 Culvert Damage



Drain 31 Culvert Replacement Complete Upstream End



Drain 31 Culvert Replacement Complete Downstream End

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1416

Page 1, line 8, replace "its original function and design" with "the function and design of the  
drain for which the board most recently assessed construction or maintenance costs"

Renumber accordingly