2023 SENATE ENERGY AND NATURAL RESOURCES

SB 2326

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

SB 2326
2/3/2023

A bill relating to the use of economic analysis for flood control and water conveyance projects and works.

9:58 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Beard, Boehm and Magrum are present.

Discussion Topics:

- Dollar limits
- State cost sharing
- Economic soundness
- Local landowners

9:59 AM Senator Mike Dwyer introduced the bill and provided written testimony #19047.

10:06 AM Dennis Reep, President of the North Dakota Water Resource Districts Association, testified in favor of the bill and provided written testimony #18618.

10:09 AM Kurt Lysne, North Dakota Water Users Board, testified in favor of the bill and provided written testimony #18611.

10:14 AM Eric Volk, Executive Director, North Dakota Rural Water testified in favor of the bill and provided written testimony #18963.

10:16 AM Michael Anderson North Dakota State Water Commission member testified neutral on the bill and provided written testimony #18900.

10:27 AM Chairman Patten closed the public hearing.

Additional written testimony:

Chad Reimche provided written testimony #18649.

Clifford Issendorf provided written testimony #18589.

10:27 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

SB 2326
2/16/2023

A bill relating to the use of economic analysis for flood control and water conveyance projects and works

9:43 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Committee action

9:44 Andrea Travnicek, Director, Department of Water Resources, gave oral testimony on the bill.

9:54 AM Senator Beard moved to Do Pass the bill. Motion seconded by Senator Boehm.

9:55 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

Senator Beard will carry the bill.

This bill does not affect workforce development.

9:56 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2326: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2326 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE ENERGY AND NATURAL RESOURCES

SB 2326

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

SB 2326
3/9/2023

Relating to the use of economic analysis for flood control and water conveyance projects and works.

2:28 PM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, and Roers Jones. Absent: Representative Ruby.

Discussion Topics:

- Analysis threshold
- Cost share
- Snagging and clearing projects
- Legislative authority
- Regulation
- Agency bureaucracy
- Eastern ND water management
- Economic analysis (EA) tool
- Municipal life cycle cost analysis

Sen Mike Dwyer, District 47, introduced SB 2326, Testimony 23448
Keith Weston, District Manager, SE Cass Water Board, Cass County Joint Water Board, and Red River Joint Water Resource District. Executive Director of Red River Retention Authority, Testimony 23321
Dennis Reep, President, ND Water Resources District Association; member of Burleigh County Water Resource District, Testimony 23118
Kurt Lysne, engineer, ND Water Users Board, working on a regular basis with Red River Valley Water Resource Districts, Testimony 23108
Eric Volk, Executive Director, ND Rural Water Systems Association (NDRWSA), Testimony 23049
Samantha Vangness, government relations liaison, Corn Growers Association, Testimony 23380
Phil Murphy, ND Soybean Growers Association, oral testimony
Patrick Fridgen, ND Department of Water Resources came forward to answer questions.

Additional written testimony:
Michael Wyum, Testimony 23231
Michael Anderson, Testimony 23404

3:05 PM Chairman Porter closed the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

SB 2326
3/30/2023

Relating to the use of economic analysis for flood control and water conveyance projects and works.

10:13 AM

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby. Absent: Rep Olson

Discussion Topics:

- Committee action

Dr. Andrea Travnicek, Director, Department of Water Resources
Pat Fridgen, Planning and Education Director, Department of Water Resources

Rep Hagert moved to adopt an amendment to change the $1,000,000 to $500,000 threshold on SB 2326, seconded by Rep Anderson.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	N
Representative Jim Kasper	Y
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	AB
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	N

11-2-1 Motion carried.

Rep Hagert moved a Do Pass as Amended on SB 2326, seconded by Rep. Anderson.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y

Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	Y
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	AB
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

13-0-1 Motion carried. Rep Hagert is carrier.

10:27 AM meeting adjourned.

Kathleen Davis, Committee Clerk

SB 2326 was reconsidered on 4/6/23.

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

SB 2326
4/6/2023

Relating to the use of economic analysis for flood control and water conveyance projects and works.

10:00 AM

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Ruby, and Roers Jones. Absent: Representative Bosch, Kasper, Olson.

Discussion Topics:

- Committee work

Rep Hagert, Testimony 27328, 27329

Rep Dockter moved to Reconsider SB 2326, seconded by Rep Marschall. **Voice vote, motion carried.**

Rep Hagert moved to adopt Amendment 23.0545.03001 (Testimony 27328, 27329), seconded by Rep Marschall. **Voice vote, motion carried.**

Rep Hagert moved a Do Pass as Amended on SB 2326, seconded by Rep Marshall.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	AB
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	AB
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

11-0-3 Motion carried. Rep Hagert is carrier.

10:04 AM meeting adjourned.

Kathleen Davis, Committee Clerk

Prepared by the Legislative Council staff for
Representative Hagert
March 30, 2023

4-6-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2326

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

Page 1, line 1, after "61-02-02" insert ", and 61-03-21.4"

Page 1, line 14, overstrike "one million" and insert immediately thereafter "five hundred thousand"

Page 3, after line 24, insert:

"**SECTION 3. AMENDMENT.** Section 61-03-21.4 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21.4. Economic analysis process required for certain projects.

The department of water resources shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than ~~one million~~five hundred thousand dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the department of water resources shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2326: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2326 was placed on the Sixth order on the calendar.

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

Page 1, line 1, after "61-02-02" insert ", and 61-03-21.4"

Page 1, line 14, overstrike "one million" and insert immediately thereafter "five hundred thousand"

Page 3, after line 24, insert:

"**SECTION 3. AMENDMENT.** Section 61-03-21.4 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21.4. Economic analysis process required for certain projects.

The department of water resources shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than ~~one million~~five hundred thousand dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the department of water resources shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review."

Renumber accordingly

2023 CONFERENCE COMMITTEE

SB 2326

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

SB 2326
4/18/2023
Conference Committee

A bill relating to the use of economic analysis for flood control and water conveyance projects and works.

11:10 AM Chairman Kessel opened the meeting.

Chairman Kessel and Senators Kannianen, Patten, and Representatives Dick Anderson, Hagert and Novak are present.

Discussion Topics:

- Funding levels
- Amendments

11:10 AM The committee has discussion on the bill and house amendments LC 23.0545.03001.

11:12 AM Senator Kannianen moved the Senate accede to the House amendments. Motion seconded by Senator Hagert.

11:13 AM Roll call vote was taken.

Motion carried 6-0-0.

Senator Kessel will carry the bill for the Senate.

Representative Dick Anderson will carry the bill for the House.

11:13 AM Chairman Kessel closed the meeting.

Rick Schuchard, Committee Clerk

Date: 4/18/2023
Roll Call Vote #: 1

2023 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2326

Senate Energy and Natural Resources Committee

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

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

Motion Made by: Kannianen Seconded by: Hagert

Senators	4/18			**Yes**	**No**		**Representatives**	4/18			**Yes**	**No**
Kessel	P			X			Dick Anderson	P			X	
Kannianen	P			X			Hagert	P			X	
Patten	P			X			Novak	P			X	
Total Senate Vote				3	0		Total Rep. Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Kessel House Carrier Dick Anderson

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2326: Your conference committee (Sens. Kessel, Kannianen, Patten and Reps. D. Anderson, Hagert, Novak) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ page 1541 and place SB 2326 on the Seventh order.

SB 2326 was placed on the Seventh order of business on the calendar.

TESTIMONY

SB 2326

February 1, 2023

Senate Energy & Natural Resources Committee
c/o Senator Dale Patten, Chair
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Senate Bill 2326 – Support

Dear Chairman Patten and Members of the Senate Energy & Natural Resources Committee:

Thank you for the opportunity to submit this testimony in support of Senate Bill 2326.

My name is Clifford Issendorf. I am a lifelong farmer in Bottineau County, a landowner, and currently the Bottineau County Water Resource Board Chair. I have served on the Bottineau County Water Resource District Board for over 40 years.

The Bottineau County Water Resource Board understands the importance of economic analysis to justify the expenditure of State Water Commission cost-share funding for flood control and water conveyance projects. However, the time and cost of conducting the Economic Analysis Worksheet is a requirement we believe should be reserved for those projects that are estimated to exceed $1 million in costs.

I submit this written testimony to make record that the Bottineau County Water Resource Board is in support of Senate Bill 2326. We urge the Committee to vote “Do Pass” on this bill.

Sincerely,

Clifford Issendorf
Board of Managers Chair,
Bottineau County Water Resource District

NORTH DAKOTA WATER USERS ASSOCIATION

Dedicated to Protecting, Developing, and Managing North Dakota's Water Resources

PO Box 2254, Bismarck, ND 58502-2254 701-223-4615 • 701-223-4645 (Fax)

SB 2326
Testimony of Kurt Lysne
Senate Energy and Natural Resources Committee

Chairman Patten and members of the Senate Energy and Natural Resources Committee, I am Kurt Lysne. I serve on the North Dakota Water Users board and am an engineer, working on a regular basis with water districts in the Red River valley. I rise today in support of SB 2326.

The North Dakota Water Users Association voted to include the following resolution in their 2023 policy document:

> *We oppose the incorporation of benefit-cost principles in determining the feasibility and justification of state funding for water conveyance and flood control projects under $1 million total project cost as stipulated by N.D.C.C. 61-03-21.4.*

Over the years, there have been many conversations about the use of economic analyses by the State Water Commission (SWC) to determine cost-share on projects. The legislature requires, in statute, that all flood control and water conveyance projects over $1 million must undergo an economic analysis. The SWC in policy has lowered that threshold to $200,000.

We believe the SWC's economic analysis can be a useful tool, however, it costs both local sponsors and the state time and resources to conduct. It has been my experience that large and small projects fare similarly when going through the economic analysis. In our view, the discretionary requirement to conduct economic analyses on projects less than $1 million places an additional financial and administrative burden on small projects that have a track record of providing a return on investment.

Ultimately, we believe that removing the requirement that projects under $1 million have to go through the economic analysis for cost share would allow state staff and local sponsors to focus their time on analysis of larger projects with greater need for study, while also expediting the completion of important smaller projects.

For these reasons, we ask for a do pass recommendation on SB 2326.

Thank you. I'd be happy to stand for any questions you may have.

North Dakota
Water Resource
Districts Association

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

SB 2326
Testimony of Dennis Reep
Senate Energy and Natural Resources Committee

Chairman Patten and members of the Senate Energy and Natural Resources Committee, I'm Dennis Reep, President of the North Dakota Water Resource Districts Association and member of the Burleigh County Water Resource District. I rise today in support of SB 2326.

Water resource districts are the local sponsors of many water conveyance and flood control projects of a variety of sizes. We believe these projects, large and small, provide real benefit to the people we serve, the citizens of our counties. While we recognize the importance of ensuring appropriate use of public funds, we believe that the economic analysis required for water conveyance and flood control projects by the State Water Commission should be limited to those large projects requesting a significant amount of state funds. As Senator Dwyer alluded to, this is in line with the legislature's intent when they first passed this requirement in the 2017 legislative session.

The Water Resource Districts Association voted to include the following resolution in their 2023 policy document:

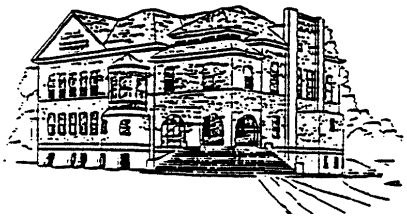
> *We oppose the incorporation of benefit-cost principles in determining the feasibility and justification of state funding for water conveyance and flood control projects under $1 million total project cost as stipulated by N.D.C.C. 61-03-21.4.*

Ultimately, we believe that removing the requirement that projects under $1 million have to go through the economic analysis for cost share would allow state staff and local sponsors to focus their time on analysis of larger projects with greater need for study, while also expediting the completion of important smaller projects.

For these reasons, I ask you to give SB 2326 a Do Pass recommendation.

Thank you. I'd be happy to stand for any questions you may have.

WELLS COUNTY COURTHOUSE



Wells County Water Resource District
Tammy Roehrich, Secretary
700 Railway St N #244
Fessenden, ND 58438
Phone: 547-2537
Cell:341-1359
Fax: 701-547-3188
troehric@nd.gov

Chairman Patten & Senate Energy & Natural Resources Committee Members:

Thank you for the opportunity to testify on Senate Bill 2326.

My name is Chad Reimche. I am a landowner in Wells County and also serve on the Wells County Water Resource District Board of Managers.

I submit this written testimony in support of Senate Bill 2326. Economic evaluations help distributors, like the State Water Commission, compare the value of impact created by cost-share funding for flood control and water conveyance projects with the cost of those funds. Smart economic analysis tools help show the state that investment in these projects is good for the state's economy.

Analyzing the value of impact of a project, though, comes with a cost. The Economic Analysis Worksheet tool used by the State Water Commission takes time and costs money to complete. The cost of analyzing the project's economics requires further employment of the project's engineers and increases the cost of the project passed on to taxpayers. Because of this, it is important that the legislature consider an appropriate threshold for projects that should, and projects that should not, require economic analysis as a condition of cost-share funding eligibility.

I believe that $1 million is a good threshold for determining whether economic analysis should be applied to cost-share funding.

I encourage a "Do Pass" recommendation on Senate Bill 2326. I request the opportunity to testify in person before the committee and will stand for any questions. Thank you for your consideration of my testimony.

Sincerely,

Chad Reimche, Board of Managers Member
Wells County Water Resource District

Testimony
SB 2326—Department of Water Resources
Senate Energy and Natural Resources Committee
Senator Dale Patten, Committee Chair
February 3, 2023

Chairman Patten, and members of the Senate Energy and Natural Resources Committee – I am Michael Anderson, a member of the North Dakota State Water Commission (Commission). I am here today to provide neutral testimony related to Senate Bill 2326, which pertains to the total cost threshold for flood protection and water conveyance projects subject to Economic Analysis (EA) when applying for Commission cost-share assistance.

On behalf of the Commission, which is responsible for enforcing EA requirements, I thought it would be helpful for the committee to receive some background on the total cost threshold issue – particularly related to the decision made by the Commission to require EA for projects with a total cost of $200,000, which is lower than the minimum $1 million threshold included in Statute.

In 2017, the 65th Legislative Assembly passed House Bill 1020 – the budget bill for the agency that was then called the State Water Commission. Section 21 said the State Engineer shall develop an EA process for water conveyance and flood-related projects expected to cost more than $1 million. It also said when the Commission was considering funding for one of the aforementioned types of projects, that the State Engineer would provide the results of an EA for Commission consideration.

After a lengthy public process to establish EA guidelines, and after beginning to implement statutory EA requirements for water conveyance and flood-related projects with a total cost of at least $1 million during the 2019-2021 biennium, my fellow Commissioners and I began to appreciate having the results of those analyses in our decision-making.

As we all know, not all projects are created equal. Thus, knowing the state's return on investment, before making a decision to commit tax dollars, was viewed by my colleagues and I as a good thing. That is, after all, the fundamental purpose of EA – to calculate the ratio of benefits returned to those investing in a project, compared to the overall costs of the project. In short, for every dollar of cost, is there at least one dollar of benefit when looking at projects in their entirety? With that in mind, the Commission began discussing the possibility of reducing the threshold of the total cost to a lower level during the summer of 2019.

In cooperation with the Interim Legislative Water Topics Overview Committee, Legislative Council was asked by the Committee Chair, Representative Jim Schmidt, to weigh in on the Commission's ability to require EA for projects with a total cost of less than $1 million. Legislative Council reported back that the Commission does have that authority – so long as the minimum statutory threshold is met. In December 2019, the Water Commission approved $200,000 as the new total project cost threshold for EA to be conducted. The $200,000 amount was chosen by the Commission because it matched the statutory requirement for bidding public improvement construction projects. It should also be noted that after the Commission's most recent year-long process that concluded in December 2022 to update and modify the Cost-Share Program policy, the Commission reaffirmed approval of the $200,000 threshold.

As I mentioned previously, Mr. Chairman, I wanted to appear before you today so you and the other committee members had some historical context of why, and how, the Commission established the current $200,000 EA threshold.

Mr. Chairman, this concludes my testimony related to SB 2326, and I will try to answer any questions that you or other committee members might have.

Eric Volk, Executive Director

ND Rural Water Systems Association

In Support of Senate Bill 2326

Senate Energy & Natural Resources Committee

February 3, 2023

Chairman Patten and members of the Senate Energy and Natural Resources Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today, I am submitting testimony in support of Senate Bill 2326 which clarifies section 61-02-02(9) of the North Dakota Century Code.

Section 2 of the bill simply cleans up the definition of "Project" in subsection 9 by inserting *"a water conveyance project or"* and properly references any one of the works to subsection *"11"*, not subsection 10.

From Benjamen J. Johnson, Judge of District Court for the Northwest Judicial District…*Prior to 2019, the definition cross-referenced to "works" under subsection 11, but that was changed in the 2019 legislative session. In looking at the legislative history of 2019, it appears that the Legislature intended to eliminate subsection 10, "water conveyance project", and "works" would have been the new subsection 10, which is why subsection 9 was changed. But later in the session "water conveyance project" was reinserted as subsection 10, but subsection 9 was not also corrected. This appears to be a legislative oversight. The North Dakota Supreme Court has held:*

> *"Our primary goal in statutory construction is to ascertain the intent of the Legislature. In ascertaining the Legislative intent, we first look to the plain language of the statue and give each word of the statue its ordinary meaning. We construe the statue as a whole and give effect to each of it provisions if possible. If the language of the statue is clear and unambiguous, we cannot ignore that language under the pretext of pursuing its spirit because the legislative intent is presumed clear from the face of the statue."*

With that said, the NDRWSA supports Senate Bill 2326. Thank you for giving me the opportunity to provide testimony on behalf of the members of the NDRWSA. Eric Volk, ericvolk@ndrw.org.

TESTIMONY: SB 2326

SENATOR MIKE DWYER, DISTRICT 47

I. CLEAN UP BILL

Members of the Senate Energy and Natural Resources Committee, this is a clean up bill concerning two areas of Title 61 of the North Dakota Century Code relating to water. I will explain.

II. 2017: NEW REQUIREMENT

In 2017, the Legislature imposed a new requirement on the State Water Commission, which was that "flood control and water conveyance projects" exceeding $1 million would require an "economic analysis". The new law added to the Century Code a definition of a "water conveyance project" and a definition of "economic analysis".

III. INTERPRETATION OF STATUTES

When an individual or business or government agency is interested in the meaning of a statute, the first rule is to look to see if the words of the statute have a plain meaning. In this case, the new requirement for an economic analysis for flood control and water conveyance projects exceeding $1 million was actually inserted into law in two separate statutes.

Section 61-02-01.3 was amended to provide as follows:

61-02-01.3. COMPREHENSIVE WATER DEVELOPMENT PLAN. Biennially, the commission shall develop and maintain a comprehensive water development plan organized on a river basin perspective, including an inventory of future water projects for budgeting and planning purposes. As part of the commission's planning process, to facilitate local project sponsor participation and project prioritization and to assist in education regarding life cycle analyses for municipal water supply projects, and economic analyses for flood control and water conveyance projects expected to cost more than one million dollars, the commission shall develop a policy that outlines procedures for commissioner-hosted meetings within the upper Missouri River, Devils Lake, Little Missouri River, upper Heart River, and upper Cannonball River drainage basins.

In addition, a new section was added to Chapter 61-03, concerning this new economic analysis requirement for flood control and water conveyance projects. Section 61-03-21.4 was adopted and provides as follows:

61-03-21.4. ECONOMIC ANALYSIS PROCESS REQUIRED FOR CERTAIN PROJECTS. The department of water resources shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than one million dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the department of water resources shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.

Eric Volk, Executive Director

ND Rural Water Systems Association

In Support of Senate Bill 2326

House Energy & Natural Resources Committee

March 9, 2023

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today, I am submitting testimony in support of Senate Bill 2326 which clarifies section 61-02-02(9) of the North Dakota Century Code.

Section 2 of the bill simply cleans up the definition of "Project" in subsection 9 by inserting *"a water conveyance project or"* and properly references any one of the works to subsection *"11"*, not subsection 10.

From Benjamen J. Johnson, Judge of District Court for the Northwest Judicial District…*Prior to 2019, the definition cross-referenced to "works" under subsection 11, but that was changed in the 2019 legislative session. In looking at the legislative history of 2019, it appears that the Legislature intended to eliminate subsection 10, "water conveyance project", and "works" would have been the new subsection 10, which is why subsection 9 was changed. But later in the session "water conveyance project" was reinserted as subsection 10, but subsection 9 was not also corrected. This appears to be a legislative oversight. The North Dakota Supreme Court has held:*

> *"Our primary goal in statutory construction is to ascertain the intent of the Legislature. In ascertaining the Legislative intent, we first look to the plain language of the statue and give each word of the statue its ordinary meaning. We construe the statue as a whole and give effect to each of it provisions if possible. If the language of the statue is clear and unambiguous, we cannot ignore that language under the pretext of pursuing its spirit because the legislative intent is presumed clear from the face of the statue."*

With that said, the NDRWSA supports Senate Bill 2326. Thank you for giving me the opportunity to provide testimony on behalf of the members of the NDRWSA. Eric Volk, ericvolk@ndrw.org.

NORTH DAKOTA WATER USERS ASSOCIATION

Dedicated to Protecting, Developing, and Managing North Dakota's Water Resources

PO Box 2254, Bismarck, ND 58502-2254 701-223-4615 • 701-223-4645 (Fax)

SB 2326
Testimony of Kurt Lysne
House Energy and Natural Resources Committee

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Kurt Lysne. I serve on the North Dakota Water Users board and am an engineer, working on a regular basis with water resource districts in the Red River valley. I rise today in support of SB 2326.

The North Dakota Water Users Association voted to include the following resolution in their 2023 policy document:

> *We oppose the incorporation of benefit-cost principles in determining the feasibility and justification of state funding for water conveyance and flood control projects under $1 million total project cost as stipulated by N.D.C.C. 61-03-21.4.*

Over the years, there have been many conversations about the use of economic analyses by the State Water Commission (SWC) to determine cost-share on projects. The legislature, since 2017, has required, via statute, all flood control and water conveyance projects over $1 million undergo an economic analysis. The SWC, citing concerns that project sponsors would split, or fracture, projects into smaller chunks to avoid the economic analysis, lowered that threshold to $200,000 at their meeting in December 2019.

As Senator Dwyer stated, project fracturing did not occur prior to the lowering of the threshold and does not occur today.

To demonstrate this, I'd like to provide a brief overview of the history of the economic analysis requirement. The SWC developed their economic analysis (EA) tool during the 2017-2019 biennium. Projects over $1 million were required to submit a completed EA beginning in the 2019-2021 biennium. The first SWC meeting that considered projects subject to the EA was held in August 2019. At that meeting, there were two rural drainage projects for consideration: Tri-county Drain 6 (total project cost $1,641,879) and Sargent County Drain 12 (total project cost $358,000). Clearly, Drain 12 was not an example of project fracturing as it fell well under the $1 million threshold. The EA for Drain 6 was 0.406, later corrected to 1.534, but the low initial ratio resulted in questioning the benefits of drains. The SWC tabled Drain 12, a project not even close to the $1M threshold, and required an EA.

At the October 2019 meeting, the Drain 6 project was considered again. An error was found in the initial EA. After the error was corrected, the new EA score was 1.534. Full funding for the Drain 6 project was approved in October. No other water resource district projects were considered in October.

The next SWC meeting was in December 2019. At the December meeting it was noted that the commission had requested staff as early as September, a mere two months after the EA requirement came into effect, to draft changes to the EA requirement to lower the threshold. The commission considered lowering the threshold to $75,000 in November at their subcommittee

meeting. At the full commission meeting in December, the commission voted to establish a $200,000 threshold for the economic analysis, effective immediately and prior to the commission considering any projects on the agenda for the December meeting. The one water resource district project on the agenda in December was tabled to allow for additional local discussions. It was ultimately approved in February 2020. Drain 12, the project tabled at the August meeting, was also approved in February 2020 after the policy change.

Given this history of projects that came before the SWC between the first meeting where the statutory EA was required (August) and the meeting where the SWC lowered the threshold to $200,000 (December), I am perplexed by the argument that the threshold needed to be lowered because water resource districts were attempting to circumvent the $1 million threshold. To reiterate: there were only two projects presented to the SWC prior to their decision to lower the threshold. One was over $1 million and went through the EA. One was $360,000—nowhere near the threshold.

To be clear, the SWC considered those two projects and at their next meeting as a subcommittee, one month later, began discussing lowering the threshold.

Based on this review of the history, available to anyone via the minutes published by the SWC, I would resist any argument that the EA threshold *needed* to be lowered to prevent 'cheating' by water resource districts.

I want to be clear, the SWC's economic analysis can be a useful tool, to help inform good decision making. However, conducting the EA costs both local sponsors and the state time and resources. It has been my experience that large and small projects fare similarly when going through the economic analysis. It is important to note, that the costs to complete an economic analysis do not directly correlate to the overall cost of the project, resulting in an increased cost burden on smaller projects that have shown to have similar cost-effectiveness as larger projects. In our view, the discretionary requirement to conduct economic analyses on projects less than $1 million places an additional financial and administrative burden on small projects that have a track record of providing a return on investment.

Ultimately, we believe that removing the requirement that projects under $1 million have to go through the economic analysis for cost share would allow state staff and local sponsors to focus their time on analysis of larger projects with greater need for study, while also expediting the completion of important smaller projects.

For these reasons, we ask for a do pass recommendation on SB 2326.

Thank you. I'd be happy to stand for any questions you may have.

North Dakota
Water Resource
Districts Association

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

SB 2326
Testimony of Dennis Reep
House Energy and Natural Resources Committee
March 9, 2023

Chairman Porter and members of the House Energy and Natural Resources Committee, I'm Dennis Reep, President of the North Dakota Water Resource Districts Association and member of the Burleigh County Water Resource District. I rise today in support of SB 2326.

Water resource districts are the local sponsors of many water conveyance and flood control projects of a variety of sizes. We believe these projects, large and small, provide real benefit to the people we serve, the citizens of our counties. While we recognize the importance of ensuring appropriate use of public funds, we believe that the economic analysis required for water conveyance and flood control projects by the State Water Commission should be limited to those large projects requesting a significant amount of state funds. We believe this to be in line with the legislature's intent when they first passed this requirement in the 2017 legislative session.

Members of our organization have looked at the results of economic analyses on projects greater than and less than $1M over the past few years, and the results are similar no matter the total project cost. The effort and cost of conducting the economic analysis is essentially the same no matter the overall project cost, creating a higher percentage administrative burden for the local sponsors on the smaller projects.

The Water Resource Districts Association voted to include the following resolution in their 2023 policy document:

> *We oppose the incorporation of benefit-cost principles in determining the feasibility and justification of state funding for water conveyance and flood control projects under $1 million total project cost as stipulated by N.D.C.C. 61-03-21.4.*

Ultimately, we believe that removing the requirement that projects under $1 million have to go through the economic analysis for cost share would reduce the burden on WRDs, and also reduce NDDWR staff review time, and allow them and local sponsors to focus on analysis of larger projects with greater need for study, while also expediting the completion of important smaller projects.

For these reasons, I ask you to give SB 2326 a Do Pass recommendation.

Thank you. I'd be happy to stand for any questions you may have.

March 8, 2023

Chairman Porter and members of the House Energy and Natural Resources Committee:

My name is Michael Wyum. I am the vice chairman of the Sargent County Water Resource District. I write today in support of SB 2326.

I support this bill since it restores the legislative intent established in the 2017 legislative session which adopted the one million dollar threshold for economic analysis of water conveyance and flood control projects. The later action by the State Water Commission to lower that threshold to two hundred thousand dollars has placed a significant financial burden on smaller water projects developed at a local level by water resource districts. The cost of calculating the economic analysis becomes quite significant as a percentage of total cost on a small project.

Even though many of our locally developed projects are small, they are of vital importance to the rural areas served.

Thank you for your consideration, and please give SB 2326 a SO PASS recommendation.

North Dakota
Water Resource
Districts Association

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

SB 2326
Testimony of Keith Weston
House Energy and Natural Resources Committee
March 9, 2023

Good afternoon, Chairman Porter and members of the House Energy and Natural Resources Committee. My name is Keith Weston, and I serve as a water resource district manager for the Southeast Cass Water Board, Cass County Joint Water Board, and Red River Joint Water Resource District. I'm also executive director of the Red River Retention Authority. I have more than 40 years of experience working in water and natural resource management at the local and federal level. I am here today to ask for your support for SB 2326.

I would like to provide additional information to this committee regarding the state's economic analysis (EA) tool. The state has described the EA as just one tool in the toolbox. However, our experience is that the benefit cost (BC) ratio derived by the EA tool is weighted heavily by the State Water Commission (SWC) when making decisions. Rather than just one tool in the toolbox, it feels as if the SWC uses the EA as a determiner of decisions. As noted by other speakers, state cost share for water projects is reduced when the BC ratio derived from the EA tool is less than 1:1.

I have extensive experience working with the federal government on water management projects. As a note of comparison, when a federal agency, such as the Natural Resources Conservation Service (NRCS), conducts an EA and the BC ratio is less than a 1:1 ratio, the NRCS considers that data point along with other, non-monetized, benefits, such as societal or environmental effects and values, in evaluating eligibility for cost share, and does not necessarily reduce cost share should the BC be less than 1:1. In my view, this provides a more comprehensive look at the overall costs and benefits of a project. The state has not yet chosen to look at non-monetized benefits in considering the overall benefits a project may generate.

As a local water manager, I can assure you that local water resource districts are committed to managing our water resources responsibly. State funding is critical to making these projects happen, regardless of the size of projects. The projects being pursued by water resource districts are important projects, particularly to agricultural producers and landowners. In fact, it is most often landowners who petition to have projects developed in the first place. The idea that water resource districts spend time, energy, and resources, including state resources, to develop "bad" projects, or projects that won't deliver for their neighbors, just isn't factual. In fact, the EAs that have been performed have demonstrated that the state is obtaining a significant return on investments in water conveyance and flood control—an ROI that I believe would be enhanced should the state choose to also consider non-monetary benefits.

Because of the rather limited view that the EA tool has of the overall benefits derived by a project, as well as the significant time and resource investment conducting the EA has for both local water boards and the state, I believe it is important for us to consider the ROI on conducting EAs, particularly for small projects. At what point does the benefit the information

provided by the EA tool outweigh the time delay and expense of conducting it? Put another way, what's the EA of the EA?

I would argue that, at a minimum, that threshold should be $1 million. Unfortunately, in today's economic climate even $1 million does not go far when it comes to completing infrastructure projects. If the $1 million threshold established in 2017 was tied to inflation, that threshold today would be almost $1.3 million.

With all this in mind, I would ask for do pass recommendation on SB 2326 and would be happy to stand for any questions you may have.

Testimony of Samantha Vangsness, government relations liaison

North Dakota Corn Growers Association

In support of SB 2326

March 9, 2023

Chairman Porter and members of the House Energy and Natural Resources,

I am Samantha Vangsness, government liaison for the North Dakota Corn Growers Association (NDCGA). NDCGA is the voice of the more than 13,000 corn growers across the state and advocates at the grass roots level on issues impacting producers. NDCGA would like to voice support of Senate Bill 2326.

NDCGA works closely with water resource district leadership. This bill would clarify that only large flood control and water conveyance projects, over $1 million, would require an economic analysis by the State Water Commission. These projects are critical for North Dakota producers to fully utilize their land and maximize their crop yields. Clarifying this requirement would reduce delay and expense currently incurred on these small, but important, projects.

We urge a 'Do Pass' recommendation on SB 2326. Thank you for your time today and I stand for any questions you may have.

Testimony
Engrossed SB 2326—Department of Water Resources
House Energy and Natural Resources Committee
Senator Todd Porter, Committee Chair
March 9, 2023

Chairman Porter, and members of the House Energy and Natural Resources Committee – I am Michael Anderson, a member of the North Dakota State Water Commission (Commission). I am here today to provide neutral testimony related to Engrossed Senate Bill 2326, which pertains to the total cost threshold for flood protection and water conveyance projects subject to Economic Analysis (EA) when applying for Commission cost-share assistance.

On behalf of the Commission, which is responsible for enforcing EA requirements, I thought it would be helpful for the committee to receive some background on the total cost threshold issue – particularly related to the decision made by the Commission to require EA for projects with a total cost of $200,000, which is lower than the minimum $1 million threshold included in Statute.

In 2017, the 65th Legislative Assembly passed House Bill 1020 – the budget bill for the agency that was then called the State Water Commission. Section 21 said the State Engineer shall develop an EA process for water conveyance and flood-related projects expected to cost more than $1 million. It also said when the Commission was considering funding for one of the aforementioned types of projects, that the State Engineer would provide the results of an EA for Commission consideration.

After a lengthy public process to establish EA guidelines, and after beginning to implement statutory EA requirements for water conveyance and flood-related projects with a total cost of at least $1 million during the 2019-2021 biennium, my fellow Commissioners and I began to appreciate having the results of those analyses in our decision-making.

As we all know, not all projects are created equal. Thus, knowing the state's return on investment, before making a decision to commit tax dollars, was viewed by my colleagues and I as a good thing. That is, after all, the fundamental purpose of EA – to calculate the ratio of benefits returned to those investing in a project, compared to the overall costs of the project. In short, for every dollar of cost, is there at least one dollar of benefit when looking at projects in their entirety? With that in mind, the Commission began discussing the possibility of reducing the threshold of the total cost to a lower level during the summer of 2019.

In cooperation with the Interim Legislative Water Topics Overview Committee, Legislative Council was asked by the Committee Chair, Representative Jim Schmidt, to weigh in on the Commission's ability to require EA for projects with a total cost of less than $1 million. Legislative Council reported back that the Commission does have that authority – so long as the minimum statutory threshold is met. In December 2019, the Water Commission approved $200,000 as the new total project cost threshold for EA to be conducted. The $200,000 amount was chosen by the Commission because it matched the statutory requirement for bidding public improvement construction projects. It should also be noted that after the Commission's most recent year-long process that concluded in December 2022 to update and modify the Cost-Share Program policy, the Commission reaffirmed approval of the $200,000 threshold.

As I mentioned previously, Mr. Chairman, I wanted to appear before you today so you and the other committee members had some historical context of why, and how, the Commission established the current $200,000 EA threshold.

Mr. Chairman, this concludes my testimony related to Engrossed SB 2326, and I will try to answer any questions that you or other committee members might have.

TESTIMONY ON SB 2326
SENATOR MIKE DWYER, DISTRICT 47

MR CHAIRMAN AND MEMBERS OF THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE, SB 2326 HAS THREE SIMPLE WORDS, AS YOU SEE ON LINE 14 OF PAGE 1, BUT SB 2326 IS ABOUT THREE MAJOR ISSUES

1. REGULATION AND AGENCY BUREAUCRACY
2. WATER MANAGEMENT IN EASTERN ND
3. LEGISLATIVE AUTHORITY

I. 2017 LEGISLATION

IN 2017, THE LEGISLATURE ADDED A NEW REQUIREMENT FOR WATER MANAGEMENT PROJECTS IN THE EAST, WHICH IS THAT WATER CONVEYANCE AND FLOOD CONTROL PROJECTS EXCEEDING $1 MILLION WOULD BE REQUIRED TO HAVE AN ECONOMIC ANALYSIS BY THE STATE. THE NEW LAW EXEMPTED BIG PROJECTS LIKE THE FARGO-MOORHEAD DIVERSION, THE SOURIS RIVER FLOOD CONTROL PROJECT, AND ALL WATER SUPPLY AND RURAL WATER PROJECTS.

THE STATE WATER COMMISSION LOWERED THE THRESHOLD FROM $1 MILLION TO $200,000, AND ALSO REDUCED THE COST SHARE PERCENTAGES FOR ANY PROJECT THAT HAS A COST BENEFIT RATIO UNDER 1.0. WATER SUPPLY AND RURAL WATER HAVE A LIFE CYCLE ANALYSIS, BUT THESE PROJECTS DO NOT NEED TO STUDY THE ECONOMIC BENEFIT OF THESE PROJECTS, AND THE COST SHARE HAS NEVER BEEN ADJUSTED FROM THE 75% STATE COST SHARE, WHICH IS MUCH HIGHER THAN WATER CONVEYANCE AND FLOOD CONTROL PROJECTS.

II. EASTERN ND WATER MANAGEMENT

IN ORDER TO UNDERSTAND WHY THIS 2017 LEGISLATION WAS VIGOROUSLY OPPOSED BY LOCAL ENTITIES, (IT BARELY PASSED THE SENATE BY A 24-23 VOTE), YOU NEED TO REVIEW WATER MANAGEMENT IN EASTERN ND. LOCAL FLOOD CONTROL AND WATER CONVEYANCE PROJECTS GO THROUGH A RIGOROUS LOCAL PROCESS, WITH NOTICE, PUBLIC HEARING, COST REVIEW, LANDOWNER INPUT, AND EVENTUALLY A VOTE BY THOSE WHO WILL BE PAYING THE LOCAL ASSESSMENT.

SO, THE ADDITIONAL REGULATORY REQUIREMENT WAS OPPOSED DUE TO THE ADDED COST AND DELAY, AND BUREAUCRACY, THAT WAS CERTAIN TO OCCUR. I SAY BUREAUCRACY BECAUSE THE BENEFITS CONSIDERED BY AN ECONOMIST, AND THE BENEFITS SEEN BY THE PEOPLE ON THE GROUND, CAN BE VERY DIFFERENT.

IT IS ALSO SO VERY IMPORTANT TO UNDERSTAND THAT DRAINAGE IN EASTERN ND IS CRITICAL FOR FARMING AND AGRICULTURE. FARMING IN THE RED RIVER VALLEY IS AN ECONOMIC ENGINE THAT PRODUCES STATE TAX REVENUE, JOBS, OPPORTUNITIES, AND QUALITY OF LIFE. OVER 300 ASSESSMENT DRAINS, WHICH HAVE BEEN APPROVED BY LANDOWNERS AT THE LOCAL LEVEL AND COST-SHARED BY THE STATE WATER COMMISSION, ENABLE THIS ECONOMIC ENGINE OF FARMING IN CENTRAL AND EASTERN NORTH DAKOTA TO BE REALIZED. THE STATE'S RETURN ON INVESTMENT IS SUBSTANTIAL.

VI. FLOOD CONTROL AND WATER CONVEYANCE PROJECTS.

AS I STATED, PROJECTS AT THE LOCAL LEVEL GO THROUGH A RIGOROUS PROCESS OF PUBLIC HEARINGS AND INPUT, STUDY, DETERMINATION OF BENEFITS, AND A VOTE BY LANDOWNERS WHO ARE PAYING THEIR SHARE. IT WAS STATED DURING THE SENATE HEARING THAT THE REASON THE AGENCY IGNORED THE LAW IS THAT LOCAL WATER BOARDS CHEATED, BY SPLITTING UP PROJECTS SO THE COST WOULD BE UNDER $1 MILLION TO AVOID THE ARBITRARY ECONOMIC ANALYSIS. YOU WILL HEAR TESTIMONY FROM THESE WATER BOARDS THAT THIS ALLEGATION IS UNFOUNDED.

VII. SNAGGING AND CLEARING

THE 2017 LAW ALSO PROHIBITED SNAGGING AND CLEARING OF NATURAL STREAMS AND RIVERS, FROM RECEIVING STATE COST SHARE. SNAGGING AND CLEARING IS NECESSARY TO PROTECT COUNTY AND TOWNSHIP BRIDGES FROM DAMAGE, AND TO PREVENT BOTH RURAL AND MUNICIPAL FLOODING. THIS PROVISION WAS OVERWHELMINGLY REVERSED IN 2019. BUT THESE TYPES OF PROJECTS ARE SPLIT UP NOT TO AVOID THE $1 MILLION LIMIT, BUT BECAUSE THE STATUTORY AUTHORIZATION FOR THESE PROJECTS HAS A LIMIT ON THE LOCAL ASSESSMENT AUTHORITY. SO, THESE PROJECTS ARE LIMITED TO SMALLER STRETCHES OF THESE NATURAL STREAMS AND RIVERS.

VIII. WATER SUPPLY AND RURAL WATER PROJECTS.

AS I PREVIOUSLY STATED, THESE PROJECTS WERE EXEMPT FROM THE ECONOMIC ANALYSIS, BECAUSE THEY WERE REQUIRED TO HAVE A LIFE CYCLE ANALYSIS. BUT THE LIFE CYCLE ANALYSIS HAS NEVER REDUCED THE 75% COST SHARE FOR THESE PROJECTS.

IX. SECTION 2 OF SB 2326.

DURING A LAWSUIT BETWEEN TWO WATER SUPPLY ENTITIES, THE JUDGE MENTIONED THERE APPEARED TO BE A MISTAKE IN THE STATUTE, AND THE DEFINITION OF PROJECT ONLY MENTIONED WATER CONVEYANCE AND NOT THE PARAGRAPH FOR WORKS. SO SECTION 2 IS SIMPLY A TECHNICAL CORRECTION.

X. CONCLUSION

I URGE THE COMMITTEE TO GIVE THIS BILL A DO PASS, AND LET THE LAW PASSED IN 2017 TAKE EFFECT. IT WILL REDUCE COSTS, REDUCE DELAYS, AND REDUCE THE REGULATORY BURDEN OF SMALL PROJECTS.

23.0545.03001
Title.

Prepared by the Legislative Council staff for
Representative Hagert
March 30, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2326

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

Page 1, line 1, after "61-02-02" insert ", and 61-03-21.4"

Page 1, line 14, overstrike "one million" and insert immediately thereafter "five hundred thousand"

Page 3, after line 24, insert:

"**SECTION 3. AMENDMENT.** Section 61-03-21.4 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21.4. Economic analysis process required for certain projects.

The department of water resources shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than ~~one million~~five hundred thousand dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the department of water resources shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review."

Renumber accordingly

23.0545.03001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2326

Introduced by

Senators Dwyer, Kannianen, Sorvaag, Weber

Representatives D. Anderson, Nelson

A BILL for an Act to amend and reenact sections 61-02-01.3 ~~and~~, 61-02-02, and 61-03-21.4 of the North Dakota Century Code, relating to the use of economic analysis for flood control and water conveyance projects and works.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-01.3 of the North Dakota Century Code is amended and reenacted as follows:

61-02-01.3. Comprehensive water development plan.

1. Biennially, the commission shall develop and maintain a comprehensive water development plan organized on a river basin perspective, including an inventory of future water projects for budgeting and planning purposes.
2. As part of the commission's planning process, to facilitate local project sponsor participation and project prioritization and to assist in education regarding life cycle analyses for municipal water supply projects, and economic analyses for flood control and water conveyance projects only for those expected to cost more than ~~one million~~five hundred thousand dollars, the commission shall develop ~~a policy that outlines~~policies and procedures for commissioner-hosted meetings within the upper Missouri River, lower Missouri River, James River, upper Red River, lower Red River, Mouse River, Devils Lake, Little Missouri River, upper Heart River, and upper Cannonball River drainage basins.

SECTION 2. AMENDMENT. Section 61-02-02 of the North Dakota Century Code is amended and reenacted as follows:

61-02-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the state water commission.

2. "Cost of works" includes:
   a. The cost of construction, the cost of all lands, property rights, water rights, easements, and franchises acquired which are deemed necessary for such construction;
   b. The cost of all water rights acquired or exercised by the commission in connection with the works;
   c. The cost of all machinery and equipment, financing charges, interest before and during construction and for a period not exceeding three years after the completion of construction;
   d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of a project;
   e. Administrative expenses;
   f. The construction of the works and the placing of the works in operation; and
   g. Other expenses necessary or incident to the financing authorized in this chapter, including funding of debt service, repair and replacement reserves, capitalized interest, and the payment of bond issuance costs.
3. "Cost-share" means funds appropriated by the legislative assembly or otherwise transferred by the commission to a local entity under commission policy as reimbursement for a percentage of the total approved cost of a project approved by the commission.
4. "Economic analysis" means an estimate of economic benefits and direct costs that result from the development of a project.
5. "Grant" means a one-time sum of money appropriated by the legislative assembly and transferred by the commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project.
6. "Life cycle analysis" means the summation of all costs associated with the anticipated useful life of a project, including project development, land, construction, operation, maintenance, and disposal or decommissioning.

7. "Loan" means an amount of money lent to a sponsor of a project approved by the commission to assist with funding approved project components. A loan may be stand-alone financial assistance.
8. "Owner" includes all individuals, associations, corporations, limited liability companies, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.
9. "Project" means a water conveyance project or any one of the works defined in subsection ~~10~~11, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
10. "Water conveyance project" means any assessment drain, streambank stabilization, or snagging and clearing of water courses.
11. "Works" includes:
    a. All property rights, easements, and franchises relating to and deemed necessary or convenient for their operation;
    b. All water rights acquired and exercised by the commission in connection with such works;
    c. All means of conserving and distributing water, including reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
    d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water, including works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

SECTION 3. AMENDMENT. Section 61-03-21.4 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21.4. Economic analysis process required for certain projects.

The department of water resources shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than ~~one million~~five hundred thousand dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project,

flood-related project, or water supply project, the department of water resources shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.