2025 HOUSE ENERGY AND NATURAL RESOURCES

HB 1557

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

HB 1557
1/30/2025

A BILL for an Act to provide an appropriation to the department of water resources for legal fee reimbursement grants.

10:16 a.m. Chairman Porter called the hearing to order.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak, Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, M. Ruby, Conmy, Foss

Discussion Topics:

- Water resource center
- Water sheds
- Legal costs

10:16 a.m. Representative Schatz introduced the bill and submitted testimony. #32945

10:25 a.m. Leon Malberg ND Resident, testified in support and submitted testimony. #32519 #32520

10:43 a.m. Patrick Fridgen, Division Director, Department of Water Resources, testified in opposition and submitted testimony. #32649

10:46 a.m. Michael Wyam, Sergeant County, Water Resource District, testified in opposition.

10:53 a.m. Todd Stein, Sergeant County, Water Board, testified in opposition.

10:55 a.m. Chairman Porter closed the hearing.

Leah Kuball, Committee Clerk

NORTH Dakota | Water Resources
Be Legendary.

Testimony in Opposition of
HB 1557
House Energy & Natural Resources
January 30, 2025

TESTIMONY OF
Patrick Fridgen, Planning & Education Division Director, Department of Water Resources

Chairman Porter, and members of the House Energy and Natural Resources Committee, I am Patrick Fridgen, Director of the Planning and Education Division for the Department of Water Resources (DWR). I'm here today to provide testimony in opposition to House Bill (HB) 1557, which pertains to reimbursement of legal fees incurred by private citizens.

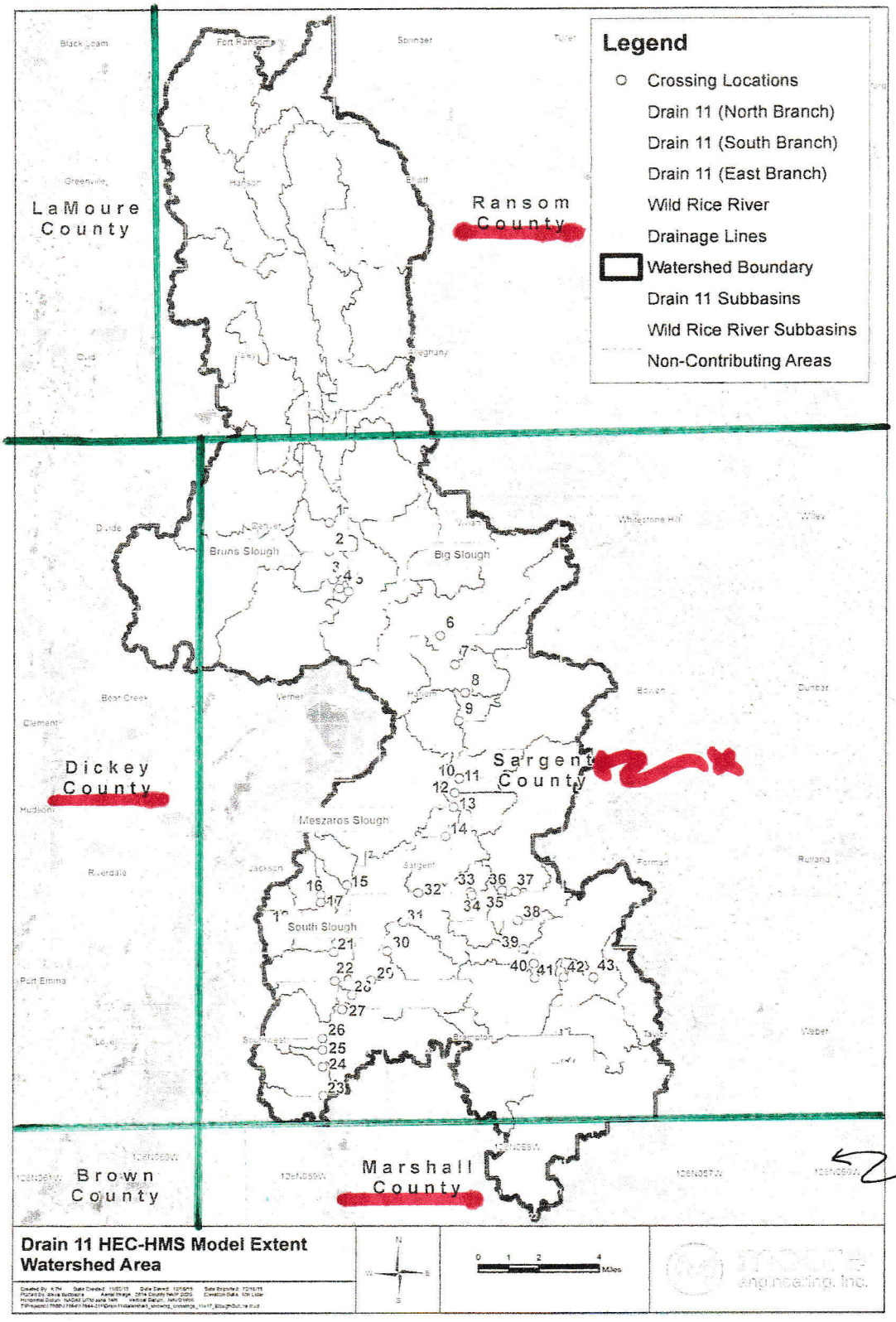
In short, this legislation would appropriate a specific dollar amount to the State Water Commission for the purpose of providing grants to reimburse residents for legal fees associated with "watershed lawsuits" heard by the North Dakota Supreme Court. Although it is not clear from the text, the bill does not have any requirement that the state was a party to these lawsuits, or that a court ordered the state to pay any private party for their attorney's fees. It is our view that this would set an unfortunate precedent for state agencies who have specific areas of responsibility to then award legal fees in trials even remotely related to those topic areas of responsibility. In this case, the focus of the trial was water or watersheds – resulting in proposed reimbursement coming from the Department of Water Resources.

Furthermore, the award of legal fees in litigation is a function of the court system. For example, N.D.C.C. section 32-15-32 provides for the court to award attorneys fees in eminent domain actions. We believe that to be a more appropriate approach.

And finally, we have also been advised that if the State Water Commission would make any grant to a "resident" for legal fees, the payment of such fees could be unconstitutional.

For these reasons, we respectfully request your opposition to this bill and a vote of no.

Mr. Chairman, and members of the committee, this concludes my testimony in opposition to HB 1557, and I will stand for any questions you might have.



SOUTH DAKOTA

2-11

It is a welcome gesture by Rep. Schatz to put **HB# 1557** into the system to try and recover unreimbursed legal costs. In that spirit I wish to ensure that Rep. Schatz has all the information he needs to describe to Committee Members and his peers, what kind of costs landowners went through to try and secure a property right described in the law and known as a **vote.**

But first I would like to relate what landowners have had to face over the last 12 years. To hear the Water Board testify here, you would think they were promoting "Sun Shine, Motherhood, Apple Pie, The Flag and Square Dancing". Just a note to remember, there are 53 **appointed Water boards** in North Dakota. The following are some of the hurdles landowners have faced:

- A "resolution of necessity" was passed by the Water Board with a 30 day notice period to totally eliminate any landowner vote on a water project. Landowners were not notified until day 27.
- An attorney from Sioux Falls, representing a remote California landowner, was told if he could not attend the meeting in person he could not listen in on the phone to the proceedings for his client.
- I called the secretary four days before a scheduled meeting stating I wished to speak to the Water Board. I traveled 310 miles to get there and was told I was not on the agenda and had to leave.
- A landowner notified the Water Board that all they had was an easement ROW, not fee simple title. The landowner was taken all the way to the Supreme Court and won but paid $28,000.00.*
- The Water Board has ignored 36% of the Drain # 11 Watershed and 35% of the water in the drain for 108 years. That cost for Ransom County benefits was placed on the Sargent County landowners.
- The landowners spent $480,993.16 of which $259,000.00 (by law) was reimbursed through Eminent Domain proceedings brought by the Water board, leaving $221,993.16 to be considered by you.
- The Water Board offered $4,500.00 / acre for ROW but the courts decided the land was worth $6,750.00 / acre which was acknowledged by the Board, but never matched by the Board.
- Anyone who is a remote landowner, or who objects or states a concern about Water Board actions is automatically branded as an malcontent and ignored.
- The Landowners offered, in writing, to cease all litigation if the Water Board would conduct a secret vote. The Water Board and its attorney said "NO".
- Testimony at the Legislature states that the landowners caused a significant delay in the project. I refer you to the last **required permit *obtained from Corp of Eng. in October 2021 with conditions requiring further engineering. Construction bids were awarded May 2022 and construction concluded November 2022. Does this timeline suggest a delay caused by landowners, or is it from poor fiscal management?"***
- In 1916 the Sargent County Drain Committee proceeded to Ransom County to include them in the Watershed (Cogswell, ND Paper). Ransom County told then **where to go, how fast to get there and included the horse they rode in on.** Ransom County has been riding in the wagon for 108 years! The Water Board knew this and ignored it for 106 years.

Monetary concerns are enormous when a single landowner may not be able to assemble the courage and/or the dollars to defend property rights. It seems that any regulatory entity or elected official in North Dakota has shielded themselves from this issue suggesting it was not their responsibility or role to protect landowners against Water Boards who drift off from or violate existing statutes. It is an outrage that unelected/appointed water boards can wield such powers, including taxation (assessments), condemnation (taking property) and foreclosure proceedings and their only guardrail is **landowners**. Landowners should not be forced to be the "Sheriff". Landowners without the ability to recover litigation costs in an effort to defend ND property rights should not be the norm. Over the past decades, I am aware of some who have done this, and the only ones who come out ahead are the attorneys. Sympathy is not what is looked for, but I am aware of other landowners facing similar situations where it may involve selling the farm to pay the legal bill. But to dedicate personal finances to protect their property rights was too much for many of them and they walked away. So without any recorded litigation records, society never sees the silent victims and their stories and water boards and their supporters can claim everything is fine and working in the State.

Not long ago a District Court Judge in the northeast corner of North Dakota ordered restitution for litigation costs because of the grievous nature of the case against the Water Board (Klindt v Pembina County). The North Dakota Supreme Court reversed that order as the Justices stated that the Legislative Branch did not allow Justices to award legal fees for Water Board errors, Yet had the County Commissioners committed an error, it would have allowed the award of legal fees because County Commissioners can be sued - but not any appointed County boards. This situation **doesn't seem logical, fair or democratic**.

Let's move to mental, emotional and psychological costs. Anyone who asserts their rights against any public board needs to be prepared for cruel and degrading comments like "You are not a good neighbor" or "You are not community minded." This can occur even after a Supreme Court vindication.

In this same time period, a local landowner was threatened with a lawsuit **during** a Water Board meeting for providing County Commissioners the water board's own minutes. He was also threatened with an **obstruction lawsuit** after providing a State Water Commission member background on the very issue the Commission was investigating. Landowners were accused of slanderous remarks towards water boards in legal briefs to a district judge. These threats take a physical and emotional toll. Think about the total impact and costs for a landowner to seek justice! Why would anyone subject themselves to this conduct when their property rights are being ignored by a Water Board in a shoddy and uncivil fashion?

The North Dakota Supreme Court case "SCWRD vs. Beck", questioned Water Board imperial powers. The Supreme Court merely did the math that was outlined by the Legislation over 50 years ago. This was not a difficult task but the Water Board and its attorney would not listen. During oral arguments at the North Dakota Supreme Court, one of the Justices asked the Water Board attorney to justify the additional financial support in their version of the argument. They asked "Did you have bake sales?" to satisfy the requirement?

Some may think there is humor in that question, but it openly exposes the situation the Water Board has evaded for 8+ years. The total litigation costs on the Water Board's part, including NDIRF's litigation support, came to $1,300,000. Anything that wasn't paid by the NDIRF was taken from the watershed assessments, including Eminent Domain reimbursement to landowners. The landowners, in effect, are paying all legal costs on both sides. The Water Board Members literally had **no personal skin in the game using assessment money**.

In 2016, the landowners requested a landowner vote and the Board minutes reflect a statement that it was, "Too expensive and takes too long." Translated that statement into every day words, would be, "Sit down and shut up - we know what's best". In their minds they were thinking "With a landowners vote the project could be turned down like a prior project in Rutland, North Dakota area".

The Supreme Court Decision was rendered on December 15, 2023, and the Sargent County Water Board has ignored that order for 14 months. The landowners should not be the "Sheriff" in ordering compliance. This legislative session the Sargent County Water Board's objectives are to eliminate or reduce voting requirements and, in effect, remove Ransom County from the Drain #`11 Watershed. Their plan, should there be a vote, is that Ransom County will not be able to vote at all even though they represent 36% of the watershed.

The records show the Legislature has reimbursed one citizen (who happens to be a Legislator) to protect free speech rights. I am asking you to reimburse $221,993.16 to landowners who stood up for a situation the State is responsible for – to protect landowner rights for citizens in all 53 North Dakota Counties.

Respectfully yours,

Leon L Mallberg

*This $28,000.00 is not included in our request.

Schatz, Mike A.

From:	Michael Wyum <michael.wyum@gmail.com>
Sent:	Wednesday, January 29, 2025 1:44 PM
To:	Ruby, Dan J.; Grueneich, Jim; Christianson, Nels; Dressler, Ty; Finley-DeVille, Lisa; Frelich, Kathy; Hendrix, Jared; Johnston, Daniel; Kasper, Jim M.; Koppelman, Ben; Maki, Roger; Morton, Desiree; dowsowski@ndlegis.gov; Schatz, Mike A.
Subject:	Corrected testimony regarding HB 1202
Follow Up Flag:	Follow up
Flag Status:	Flagged

I offered testimony on HB 1202 which I know has failed, as it should. I was incorrect in my testimony regarding legal fees paid by opponents of Sargent County Drain 11. I thought that the Sargent County Water Board had paid all of the legal fees incurred by our opponents. I have recently learned that we paid only the fees in the one lawsuit which we ultimately lost on appeal to the ND Supreme Court. There were four other suits or appeals filed by our opponents which they lost and paid their own fees.

I apologize for the incorrect information which I provided during my testimony.

Sincerely, Michael Wyum, Sargent County Water Resource Board Member

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

HB 1557
1/31/2025

A BILL for an Act to provide an appropriation to the department of water resources for legal fee reimbursement grants.

11:09 a.m. Chairman Porter called the hearing to order.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak, Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, M. Ruby, Conmy, Foss

Discussion Topics:

- Committee action

11:10 a.m. Representative Heinert moved a Do Not Pass.

11:10 a.m. Representative Olson seconded the motion.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Anna Novak	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Austin Foss	Y
Representative Jared c. Hagert	Y
Representative Craig Headland	Y
Representative Pat D. Heinert	Y
Representative Jorin Johnson	Y
Representative Andrew Marschall	Y
Representative Jeremy L. Olson	Y
Representative Matthew Ruby	AB

Motion carried: 12-0-1

Bill carrier: Representative J. Olson.

11:11 a.m. Chairman Porter closed the hearing.

Leah Kuball, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1557 (25.1284.02000)

Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HB 1557 was placed on the Eleventh order on the calendar.