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Operator's Signature

Yubereca J. Lee

Date

10-16-03

2003 SENATE NATURAL RESOURCES

SB 2127

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10-16-03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2127

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 1-16-03

Tape Number	Side A	Side B	Meter #
1	X		05-16.7
Committee Clerk Signature <i>Janet James</i>			

Minutes:

Senator Thomas Fischer, Chairman, brought the Senate Natural Resources Committee to order.

Attendance was taken indicating all members of the committee were present except Senator Joel Heitkamp.

Senator Fischer opened the hearing on SB 2127, relating to determination of surface water flow and appropriate highway construction.

Todd Sando, Assistant State Engineer for the North Dakota State water Commission testified in support of SB 2127. (See attached testimony).

Senator Michael Every (3.0) asked what recourse a land owner has if they are denied repleability.

Todd Sando replied that they have to work through the water resource district or the township supervisors to make that request. They could have the supreme court make that determination but they could have an engineer do the work for them.

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10-16-03
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Page 2

Senate Natural Resources Committee

Bill/Resolution Number SB 2127

Hearing Date 1-16-03

Senator Michael Every (3.4) asked if there have been cases where water resource boards have said no and the land owners have gone to the state engineer.

Todd Sando replied that there has been times where affected land owners did not get along with the township or water boards and went directly to the water commission.

Senator Fischer (4.4) stated that a bill was passed last session to put into statute that if there is a complaint, meaning the land owner does not agree with the township, that they can access the state engineer for the determination on water flows. He asked if this new action will have a direct effect on that part of the statute.

Todd Sando agreed with Senator Fischer.

Senator Fischer gave an example in Richland County and asked if this was an excessive use of resources by taxing the State Water commission to heavily.

Todd Sando responded that is the size of the water shed that can cause extensive time and expense.

Senator Fischer (7.3) wanted to clarify that with this bill the water resource district would have to go and hire an engineer to make the determinations on large and small water sheds.

Todd Sando corrected Senator Fischer that the water resources district could ask them to make the determinations. This is just to limit the water resource district to make that request not the land owner or the township to make the requests.

Senator John Traynor (6.6) asked if this bill would provide that the water resource board initiates the petition process, how does the water resource get notice that there is going to be a road over a water way.

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10-16-03
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Page 3

Senate Natural Resources Committee

Bill/Resolution Number SB 2127

Hearing Date 1-16-03

Craig Odenbach, chief of the regulatory section, stated the current statute is for the township to notify the water resource board if they are going to change a route.

Senator Traynor clarified that there is a process in place to advise the water resource board and then they initiate the petition process.

Senator Fischer asked Craig Odenbach to step up to the podium and asked him what effect this will have on the process of standards and administrative rules of the stream crossing issue.

Craig Odenbach stated that he thought this bill would clean up the loop hole that is allowed in the current language. His understanding when the changes were enacted in 1999 they weren't supposed to apply retroactive to existing crossings, but through the current language the land owner can request the state engineer to make that full determination. After that the road authority is bond to size that crossing based on that flow determination, which provides the means for which those 1999 can be applied retroactively.

Senator Fischer again asked to clarify that the standards remained the same in the administrative code.

Craig Odenbach confirmed it.

Senator Fischer asked for opposing testimony of SB 2127.

Lloyd Huber, a land owner, testified in opposition of SB 2127. He showed some picture of flooding property and stated he has gone through all the hoops and has had nothing done about his flooding problems. He has approached the state water commission, the county commission and everything and nothing has been done. He thinks that the land owners should be involved and should not be kicked to the side. Any engineer should ask the land owner about how high the water rises in the creeks.

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10-16-03
Date

Page 4

Senate Natural Resources Committee

Bill/Resolution Number SB 2127

Hearing Date 1-16-03

Ken Yantes, (12.2) secretary of the North Dakota Township Officers Association testified in opposition to SB 2127. Two other member of the organization were also present. They feel it is not appropriate to dismiss the township's activity in this petition process. They feel they should be involved and serve their members of their grass roots people in North Dakota.

Terry Traynor, Assistant Director of the Association of Counties testified in opposition of SB 2127. He stated they agreed with the State Engineers office in the intent of what they are trying to accomplish, but not the way they are going about it. It was never their understanding that when this section was amended to make it possible to bring up existing structures that have been in place for a long time and force some sort of reconstruction because of this. As stated the idea was when a road is being constructed, that there is a opportunity to get the engineer involved ahead of time, so the wrong structure is not install. In reading the bill maybe in "line 9" striking our "has been" and changing the sentence to read "has been or will be constructed or reconstructed" to give everybody the opportunity to request that review for a new project but take the old projects off the table.

Brian Kramer (14.9) representing the North Dakota Farm Bureau, testified in opposition of SB 2127. At first look at this bill it appeared like they were trying to put some mechanism in place so that there was some order to taking a look at all of these things. However, what if the Water resource board denies a land owner's application what is their recourse. According to this bill there isn't any. The water resource Board becomes the final determination and there is not any other recourse. If the bill would offer some other kind of recourse then the bill would be acceptable and then they could support it.

Senator Fischer asked for any neutral testimony.

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10-16-03
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Page 5

Senate Natural Resources Committee

Bill/Resolution Number SB 2127

Hearing Date 1-16-03

Senator Fischer closed the hearing on SB 2127 and then adjourned the meeting.

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10-16-03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2127

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 1-17-03 Discussion

Tape Number	Side A	Side B	Meter #
1	X		17.9 - 42.1
Committee Clerk Signature <i>Gant Jones</i>			

Minutes:

Senator Thomas Fischer opened the discussion on SB 2127.

All members of the Senate Natural Resources committee were present except Senator Joel Heitkamp.

Senator Fischer announced that the State Water Commission wants to present some further information on Township and County water Boards next Friday (1-24-03), so more committee work will take place then.

Senator Michael Every stated he had talked to Ken Yantes after the hearing and that they would agree to the bill if it contained an amendment to which he had a draft written up.

Senator Fischer said that was good along with some sticken language in the bill. He further stated that in visiting with Todd Sando he expressed their concerns of the past projects not the future projects. The concern that Senator Fischer said he has is that in the 1999 session, law was

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10-16-03
Date

Page 2

Senate Natural Resources Committee,

Bill/Resolution Number SB 2127

Hearing Date 1-17-03

passed that if a general public does not agree with the local water board, they can then have the opportunity to go to the state water commission and SB 2127 would kill that opportunity.

Senator Fischer continued to explain the processes for determinations and the complaint process.

Discussion was held pertaining to the practice of tax assessment according to the percentage of benefits for a project.

Senator John Traynor (27.7) wanted to walk thru SB 2127 again stated he thought it appeared to him like they were wanting to funnel all water crossing problems through the water resource boards and questioned if they should be.

Senator Fischer continued to work through the bill and stated that the reason that the state water commission wants to strick the "has been" and is so that everthing should work out as it had. You would still have the input from the county commission and the townships but not have to redo old projects.

Senator Stanley Lyson raised some concerns as to the reactions of the county commissioners if they are taken out of the loop.

Senator Every also expressed some of the negative reactions he had received in his area.

The senators shared their experiences with water problems in their districts.

Senator Fischer closed the meeting.

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10-16-03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2127

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 1-30-03 Discussion and Action

Tape Number	Side A	Side B	Meter #
1		X	6.0 - 19.1
Committee Clerk Signature <i>Janet James</i>			

Minutes:

Senator Thomas Fischer, Chairman of the Senate Natural Resources Committee opened committee work on SB 2127 relating to determinations of surface water flow and appropriate highway construction.

All members of the committee were present.

Senator Joel Heltkamp had told the township officers if they had a concern they should bring it into Senator Fischer and if they hadn't by now to go ahead.

Information from Todd Sando dated 1-16-03 was passed out to the committee.

Senator Fischer stated this stems from some specific issues. When the bill was enacted in 1999 it allowed landowners to directly petition the state engineer to view the problem and they didn't want to do it get involved but leave it with the water researcher districts. As he sees it, it is dumping it on the water resource districts and they are not always going to agree with

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Page 2

Senate Natural Resources Committee

Bill/Resolution Number SB 2127

Hearing Date 1-30-03

landowners. That was the reason for having it there, so the landowner had an opportunity to go to the state engineer and try to avoid costly legal fees.

Senator John Traynor brought up that it was the retroactive that was the problem.

Senator Fischer thanked Senator Traynor for the reminder that it was the concern and if that was removed from the bill it would be suitable. ("has been or" on page 1, Line 9 and remove the over strike).

Senator Michael Every stated he already had a amendment that was developed by the township people the day of the hearing.

Senator Heitkamp made a motion to accept the amendment.

Senator Every second the motion.

Roll call vote was taken indicating 6 YEAS, 1 NAYS, AND 0 ABSENT OR NOT VOTING.

Senator Every made a motion for a DO PASS as amended of SB 2127.

Senator Lyson second the motion.

Senator Traynor voted against the amendment because although he agrees with the words "has been or", but does not agree with taking the landowners or the county commissioners out of the loop.

After some discussion the motion for passage of SB 2127 were withdrawn.

Senator Traynor made a motion to remove the overstrike on Page 1, line 11 and 12.

Senator Heitkamp second the motion.

Roll call vote # 3 was taken indicating 7 YEAS, 0 NAYS, AND 0 ABSENT OR NOT VOTING.

Senator Every made a motion for a DO PASS as Amended of SB 2127.

Roll call vote #4 was taken indicating 7 YEAS, 0 NAYS, AND 0 ABSENT OR NOT VOTING.

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Page 3
Senate Natural Resources Committee
Bill/Resolution Number SB 2127
Hearing Date 1-30-03

Senator Every will carry SB 2127.

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10-16-03
Date

38096.0101
Title.0200

Adopted by the Natural Resources
Committee

January 30, 2003

JB
1-31-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2127

Page 1, line 9, overstrike "has been or"

Page 1, line 11, remove the overstrike over "~~the majority of landowners of the area affected or at the request~~"

Page 1, line 12, remove the overstrike over "~~of the board of county commissioners, township supervisors, or~~"

Renumber accordingly

Page No. 1

38096.0101

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Operator's Signature

10-16-03
Date

Date: 1-30-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2127

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Admtd.

Motion Made By Neil Seconded By Every

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor		✓			

Total (Yes) 6 No 1

Absent _____

Floor Assignment _____

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

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Operator's Signature

10-16-03
Date

Date: 1-30-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 7127

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Eny Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer			Senator Michael A. Every		
Senator Ben Tollefson			Senator Joel C. Heitkamp		
Senator Layton Freborg					
Senator Stanley W. Lyson					
Senator John T. Traynor					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

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10-16-03
Date

Date: 1-30-05
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2127

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken

Motion Made By

Seconded By

[illegible]

Total (Yes) 7 No 0

Absent _____

Floor Assignment

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

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Date _____

Date: 1-30-03
Roll Call Vote #: 4

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2127

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Every Seconded By Traynor

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Every

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

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10-16-03

REPORT OF STANDING COMMITTEE (410)
February 3, 2003 12:46 p.m.

Module No: SR-20-1518
Carrier: Every
Insert LC: 38096.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2127: Natural Resources Committee (Sen. Fischer, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2127 was placed on the Sixth order on the calendar.

Page 1, line 9, overstrike "has been or"

Page 1, line 11, remove the overstrike over "~~the majority of landowners of the area affected or at the request~~"

Page 1, line 12, remove the overstrike over "~~of the board of county commissioners, township supervisors, or~~"

Renumber accordingly

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2003 HOUSE POLITICAL SUBDIVISIONS

SB 2127

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10-16-03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2127

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: February 27, 2003

Tape Number	Side A	Side B	Meter #
1	X		12.2-20.9
Committee Clerk Signature <i>Micki Schmidt</i>			3-11-03

Minutes:

TAPE 1: SIDE A:

(12.2) CHAIRMAN GLEN FROSETH: We will open the hearing on SB 2127.

(12.5) CRAIG ODENBACH: CHIEF OF THE STATE WATER COMMISSION'S

REGULATORY SECTION: (Testimony in support) (See attachment #1)

(14.1) REP. DALE SEVERSON: If a new road or culvert system was my way of going out, what about the upstream? Is it big enough to handle what this one can handle, would there be a provision whether they could change that?

(14.5) CRAIG ODENBACH: That has been a concern and a problem when those new standards are developed. The downstream cost is some what smaller. I'm not sure what the answer is.

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10-16-03
Date

Page 2
House Political Subdivisions Committee
Bill/Resolution Number SB 2127
Hearing Date: February 27, 2003

(15.2) CHAIRMAN GLEN FROSETH: If there is a problem, what is the procedure that is taken to correct it? Can you take an individual case and correct it or does there have to be a complaint filed on a field system process to go through before some action that's being taken?

(15.5) CRAIG ODENBACH: (couldn't hear)

(15.7) CHAIRMAN GLEN FROSETH: Is this a complaint process filed and taken to the proper authority hearing and work out a financial agreement. We had the original Bill in 1999. Did you work on it?

(16.4) CRAIG ODENBACH: I wasn't involved in the original hearings but I took this position right after that and got involved in developing the actual standards.

(17.4) REP. DALE SEVERSON: By taking those three words out, are we eliminating the County Commissioners, County Boards, Landlords from going and asking your help on previous construction? It looks like to me that they can't even request it if we take it out.

(17.9) CRAIG ODENBACH: If our determination of the flow shows that the original culvert was inadequate, they would replace it.

(18.4) CHAIRMAN GLEN FROSETH: Any questions? Testimony in support Opposition? Seeing none, I will close the hearing on SB 2127. What are the committee's wishes?

(18.7) REP. GIL HERBEL: I MOVE A DO PASS

(18.8) REP. MARY EKSTROM: I SECOND IT.

(19.0) CHAIRMAN GLEN FROSETH: Discussion? I will have the clerk take the Roll Call

Vote: 10-y; 2-n; 2-absent; Carrier: Rep. Maragos. (20.8)

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10-16-03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2127a

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: March 6, 2003

Tape Number	Side A	Side B	Meter #
1		X	18.2-41.3
Committee Clerk Signature <i>Micki Schmidt</i>			3-26-03

Minutes:

TAPE 1: SIDE B:

(18.2) CHAIRMAN GLEN FROSETH: I call the committee back into session. Let's take a look at SB 2127 again. We passed this bill last week. This issue deals with a bill that we dealt with two years ago in 2001. We thought we had good results, but the original bill sponsor back in 2001, they didn't catch this amendment that the Senate had put on and they thought that this would word it the original meaning of the bill back to where it was before 2001. They asked if we could have this bill re-referred back to committee and consider some further amendments. So at this time we have the bill before us, we need to have a motion to reconsider our action and bring the bill back.

(19.0) REP. RON IVERSON: I WOULD MOVE A MOTION TO RECONSIDER SB 2127.

(19.0) REP. DALE SEVERSON: I SECOND IT.

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Yvonne J. Lee
Operator's Signature

10-16-03
Date

Page 2

House Political Subdivisions Committee

Bill/Resolution Number SB 2127

Hearing Date: March 6, 2003

(19.4) CHAIRMAN GLEN FROSETH: Any discussion? Seeing none, I will take a voice vote on the reconsideration of SB 2127. 14-y; 0-n; The motion carries.

(19.6) REP. DEKREY: In a nut shell what that bill did when we passed it a couple sessions ago is particularly in our district and other districts that were having water problems, political subdivisions were getting sued by land owners because ND state laws state that you cannot impede the flow of water. We had some of those trenchfull rains those last few years. You couldn't build until you get rid of the excess water, so people had a natural lawsuit against the political subdivisions. What we put into law and was able to pass the legislature, got signed, was that the DOT and the State Water Commission set a standard, whatever the standard was that they set, if the amount of water was greater than that, then that is why the water was being impeded, they could not sue the political subdivisions. But if a culvert or structure was built to a lesser standard and it's still flood'ng, they could be sued. But if they met the standard, they couldn't sue. We have a proposed amendment we would like to offer.

(20.8) CHAIRMAN GLEN FROSETH: Just a little background for the new members on this committee: We worked on this bill in 2001. The final bill allowed the State Engineer to set stream crossing standards. The past history is the township built the road. Apparently the township officers or the county commissions would determine the size of the culverts. There was no standard size across the state. What this will allow is the State Engineer to set the standards, according to the stream crossing standards which is a 15 year flooding rule.

(22.6) REP. ROBIN WEISZ: After we passed the original bill in 1999, the Water Commission had proposed some rule making. So we had a meeting and their issue was that every township, every county is going to have to go back and reassess every culvert, every road, then the

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10-16-03
Date

Page 3

House Political Subdivisions Committee

Bill/Resolution Number SB 2127

Hearing Date: March 6, 2003

township changes. I pointed out at that meeting, and they agreed to it, that current prior law already said that so this didn't change that. It was never the intent of this bill to require them to change their current culverts. All the bill said is if you want to be released from liability, you will have to meet the standards that the State Engineer has set. That was the purpose of the bill. Because a lot of people had problems, which basically was the Judge, he just said you can't impede the flow. The argument was and still is "what does that mean by not impeding the flow." So the bill was put in to set the standard to release a township of liability or town, but if they didn't want to follow the standards of the culverts, nobody's complaining and everybody is happy, nothing has to be done. Nothing changes.

(24.7) REP. DEKREY: This is a classic example of what we talked about for an agency that tried to get around the administrative rules process. When we made the policy decision and we took it to the administrative rules and the regulator rules, it was not consistent with the policy. The policy decision that the Legislatures made and so we rejected their rule, and tried to change the policy.

(25.0) REP. ROBIN WEISZ: Because it was Legislative intent that those standards were to apply for every road, township and county. If you didn't want to have the liabilities, currently right now without the law that we had passed, every county, every township is liable. Basically eliminate that over study on line 9 again to make it clear that it's going way back. So what it does do is say now that you don't have to change every culvert from 40 years ago, only if you want to. We think we're back to the current law, it clarifies it better so that the State Engineer doesn't have to back and forth to townships to redo every culvert.

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10-16-03
Date

Page 4

House Political Subdivisions Committee

Bill/Resolution Number SB 2127

Hearing Date: March 6, 2003

(26.9) CHAIRMAN GLEN FROSETH: So by removing this overstrike, counties and townships could still be held liable?

(27.0) REP. ROBIN WEISZ: They are liable now. If any land owner has a dispute over water flow, they're going to go to court and the judge can go wider, if that township can show that that culvert met the 15 year standard, set by State Engineer, you're not liable. But if haven't met the 15 year standard, you'll have to bring it up to that 15 year standard.

(27.6) REP. DEKREY: It really won't stop that court action though, that was not the intent of the bill. But what it is going to do is set a standard so that a land owner can't come in and say that you're impeding the flow of water.

(27.9) CHAIRMAN GLEN FROSETH: Have these amendments been drawn by the State Engineer?

(28.1) REP. ROBIN WEISZ: Absolutely not.

(28.1) CHAIRMAN GLEN FROSETH: I guess it's a disadvantage to them being they don't know this bill is being passed. In fairness to them, I suppose they should

(28.3) REP. ROBIN WEISZ: I was very disappointed when I heard that our legislative intent of what we have, they never talked, there was never one conversation to State Engineer and myself, or Rep. Dekrey who sponsored this bill who should full well know what our intent was when we introduced the bill. And then they came in and said it wasn't legislative intent to do that. Indeed it was.

(30.9) REP. DALE SEVERSON: The amendment as I read it is permissive, you are removing the word "shall" and "may" and yet you know that if they don't use the State Engineers set standards, then they are liable? Is that correct?

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10-16-03

Page 5

House Political Subdivisions Committee

Bill/Resolution Number SB 2127

Hearing Date: March 6, 2003

(31.2) REP. ROBIN WEISZ: That's exactly right. They would be back to where they were prior to being liable.

(31.4) REP. DEKREY: The reason why we did that was a lot of counties out there don't traditionally have water problems in culverts and things. There is no reason to change those up.

(32.0) REP. ROBIN WEISZ: You need to look at the cost of the counties or townships, that if they don't follow the standards and nobody complains, they can ignore it but, if somebody comes to them and complains, we hope to see the county and township would make that change. If this bill isn't in step, and that land owner complains, there's going to be a cost to the township or county and we don't know what that cost may be, because we have no idea. It's up to the Judges, the Courts discretion. They can decide if it should be a 50 or 20. You never know what the end result is supposed to be. So even if you don't follow the standards now, the ability is that if you have a complaint, you can pile up the standards, you know where you have to be, what the cost is going to be and at that point the landowner should not have a case in court.

(33.8) REP. MARY EKSTROM: The other concern is where we had ten years wet. We're at a point now where we're turning to a dryer cycle, but we've been dealing with ten years of highly saturated land. FEMA has been in I don't know how many times to replace a culvert. They're standard is to replace the culvert instead of reducing, and that too is the only way they will pay fully. If the township or county decides they want to decrease the size of the culvert, the additional costs are paid by the county. My problem is when they pass it, many townships and counties said here's our opportunity, it's only going to cost us a little bit more to put that big culvert in and then downstream you have a situation where the culvert has not been replaced and the water is thereby backing up. Is there any interest to it?

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10-16-03
Date

Page 6

House Political Subdivisions Committee

Bill/Resolution Number SB 2127

Hearing Date: March 6, 2003

(35.2) REP. ROBIN WEISZ: If that township or county puts in a larger culvert and you put a 25 year in, and it's supposed to be 15 years, they had better be aware because they have now ceased the standards and everyone of them downstream has a case against the county. This should help clarify. Everyone has to follow the rules.

(36.5) CHAIRMAN GLEN FROSETH: This stream-crossing standard are 15 year standards, is that a minimum?

(36.9) REP. ROBIN WEISZ: They can do whatever they want, it's not a minimum or maximum. If they impede it, they're in track of being sued by downstream. My advice to any township or county is if you're going to put in a new culvert, make sure that it met the standards and that nobody can come back at you two years later after you spent money on a new culvert or bridge.

(39.3) REP. DALE SEVERSON: I think we should have the State Engineer here.

(39.6) CHAIRMAN GLEN FROSETH: We will hold this until tomorrow so the State Engineer can be here. (41.3)

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2127

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: March 7, 2003

Tape Number	Side A	Side B	Meter #
1		X	8.9-21.4
Committee Clerk Signature <i>Micki Schmidt</i> 3-19-03			

Minutes:

TAPE 1: SIDE B:

(8.9) CHAIRMAN GLEN FROSETH: I'll call the committee back to order. Let's take a look at SB 2127 again. This bill was re-referred back to our committee for the purpose of considering another amendment and to notify the State Engineer to give them a chance to speak. So we will discuss the amendment.

(9.8) DALE FRICKE, ND STATE ENGINEER: This bill was introduced at our request. It has been amended a couple of times. In looking at the proposed amendment, I believe that the main concern is that he has struck the three words, "has been" and "or." We would like to leave those three words out. He's putting them back in and we would like them removed. It is a lot of work to develop both capacities for all of the culverts. If we're developing both capacities for new culverts, I think that's one thing, but you're going back and asking us to size all of the culverts that are existing, that is an awful lot of work for us. In many cases there are disputes out

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10-16-03
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Page 2

House Political Subdivisions Committee

Bill/Resolution Number SB 2127

Hearing Date: March 7, 2003

there and in most cases, the counties don't have the money to change them anyway. The local entity that we work with is the Water Resource districts. We would prefer that county commissioners and the towns people work more with DOT. We're not a large department and culverts are more on the transportation side.

(13.1) CHAIRMAN GLEN FROSETH: The intent is that in the event there was a dispute which could be settled by your department as to what type flow standard should be used.

(14.7) DALE FRICKE: Our understanding is that it would be more limited. It's just that we've had some of these requests like, while you're at it, why don't you do everything in the water shed type of thing. If we had those three words removed, then I think it would be very clear that that's not the situation.

(15.0) CHAIRMAN GLEN FROSETH: But that doesn't solve any problems that might arise in a disputed area. The liability still hangs out there.

(15.3) DALE FRICKE: In a lot of cases it is a lot of work to go through. In many cases, you do it and then they go through a process of arguing back and forth whether the number is too high or too low, it's more work than we would like to get into.

(17.0) REP. NANCY JOHNSON: How many requests have there been to check the culverts?

(17.2) DALE FRICKE: Counties and townships make that kind of a request. Maybe one-half a dozen in a year. There's one request from Foster County where they asked for everything and the water shed. We're slowly working with them.

(17.7) CHAIRMAN GLEN FROSETH: Has any action been taken on that request?

(17.8) DALE FRICKE: We've done two so far.

(18.1) CHAIRMAN GLEN FROSETH: In general, do you think the program works then?

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Page 3

House Political Subdivisions Committee

Bill/Resolution Number SB 2127

Hearing Date: March 7, 2003

(18.2) DALE FRICKE: Well, I think what we originally intended to do was we thought there was a loop hole there. We thought that that language in there made it possible to interpret the language that could be retroactive.

(18.4) CHAIRMAN GLEN FROSETH: I think that Legislative intent in here wasn't expected to reassess everything.

(18.8) DALE FRICKE: If the decision is to go with this, I think that the intent that you want is to keep it the way it is, it might be simpler to just kill the bill. That would make sure that our rules are still in place. We would certainly like to get those three words deleted, but if that's the case, then it's my recommendation to kill the bill.

(19.7) REP. MARY EKSTROM: I MOVE A DO NOT PASS WITHOUT THE AMENDMENTS.

(20.0) REP. DALE SEVERSON: I SECOND IT.

(20.1) CHAIRMAN GLEN FROSETH: Any further discussion? Seeing none, I will have the clerk call the Roll Call Vote: 10-y; 2-n; 2-absent; Carrier: Rep. Maragos (21.4)

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10-16-03
Date

Date: 2-27-03

Roll Call Vote #: 2

got back
to Amend
3-3-03

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2127

House _____ "POLITICAL SUBDIVISION" _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Do Pass

Motion Made By Rep. Herbel Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓				
Vice-Chairman Nancy Johnson	✓				
Mike Grosz	✓				
Gil Herbel	✓				
Ron Iverson	✓				
William E. Kretschmar	✓				
Andrew Maragos	✓				
Dale Severson	✓				
Alon Wieland	✓				
Bruce Eckre	✓				
Mary Ekstrom	✓				
Carol A. Niemeler	✓				
Sally M. Sandvig	✓				
Vonnie Pietsch	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Maragos

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

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Date

10-16-03

REPORT OF STANDING COMMITTEE (410)
February 27, 2003 12:20 p.m.

Failed

Module No: HR-35-3576
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2127, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2127 was placed on the Fourteenth order on the calendar.

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Operator's Signature

10-16-03
Date

3-6-03

#1

38096.0201
Title.

Prepared by the Legislative Council staff for
Representative Welsz
March 5, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2127

Page 1, line 9, remove the overstrike over "~~has been or~~"

Page 1, line 17, overstrike "shall" and insert immediately thereafter "may"

Page 1, line 18, overstrike "The" and insert immediately thereafter "If the"

Page 1, line 19, overstrike "and" and insert immediately thereafter "or" and overstrike "are" and
insert immediately thereafter "installs a culvert or bridge of sufficient capacity as
determined by the state engineer, the installing department, county, or township is"

Renumber accordingly

* Second Hearing - ~~we~~ got back to amend.

Page No. 1

38096.0201

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10-16-03
Date

Date: 3-7-03
Roll Call Vote #: 5

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2127

House POLITICAL SUBDIVISION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Ekstrom Seconded By Rep. Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓				
Vice-Chairman Nancy Johnson	✓				
Rep. Mike Grosz	✓				
Rep. Gil Herbel	✓				
Rep. Ron Iverson	0				
Rep. William Kretschmar		✓			
Rep. Andrew Maragos	✓				
Rep. Dale Severson	✓				
Rep. Alon Wieland	✓				
Rep. Bruce Eckre	0				
Rep. Mary Ekstrom	0				
Rep. Carol Niemeier		✓			
Rep. Sally Sandvig	✓				
Rep. Vonnle Pietsch	✓				

Total (Yes) 10 No 2

Absent 2

Floor Assignment Rep. Maragos

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

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Date

10-16-03

REPORT OF STANDING COMMITTEE (410)
March 17, 2003 10:53 a.m.

Module No: HR-47-4886
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2127, as engrossed: Political Subdivisions Committee (Rep. Froese, Chairman)
recommends DO NOT PASS (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2127 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-47-4886

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2003 TESTIMONY

SB 2127

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TESTIMONY ON SENATE BILL 2127

Senate Natural Resources Committee

Todd Sando, Assistant State Engineer
State Water Commission

January 16, 2003

Mr. Chairman and Members of the Senate Natural Resources Committee, I am Todd Sando, Assistant State Engineer, appearing on behalf of the State Engineer and in support of Senate Bill 2127.

Senate Bill 2127 amends N.D.C.C. § 24-03-08. The existing language requires the State Engineer to determine the design discharge that a crossing is required to carry to meet the stream crossing standards upon petition of the majority of landowners affected or at the request of the board of county commissioners, township supervisors, or a water resource board. The proposed amendment would require a determination of the design discharge only upon request from a water resource board.

Originally our intent was to remove the language requiring the State Engineer to determine the design discharge upon petition of the majority of landowners of the area affected. The intended interpretation of "area affected" remains unclear. It could be interpreted to mean the entire upstream watershed or simply the area potentially inundated by backwater behind the crossing, or it could be interpreted to also include the entire downstream watershed. Depending on the interpretation used, on smaller watersheds one landowner might own the entire area impacted upstream of the crossing. We have seen this statute used as a tool to draw the agency into long running disputes between an individual landowner and a township board.

During the 1999 legislative session, changes were made to N.D.C.C. chapters 24-03 and 24-06 requiring the development of stream crossing standards. It was clear during the testimony at the time that the 1999 legislation was not intended to apply retroactively to existing crossings. However, under the current language in N.D.C.C. § 24-03-08 the State Engineer must determine the design discharge required to meet the stream crossing standards and then the appropriate roadway authority is bound to install a culvert capable of passing the flow identified by the State Engineer. Therefore the current language in N.D.C.C. § 24-03-08 provides a back door means by which a landowner or landowners unhappy with an existing crossing can force the retroactive application of the stream crossing standards developed in response to the 1999 legislation.

It was for these reasons that we concluded it would be desirable to eliminate the language relative to the landowners of the area affected. Upon further consideration

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we proposed further limiting this right to only water resource districts. One reason is the demand on staff resources. If the watershed is small, these determinations may not be excessively time consuming, but when the watersheds are large, the amount of effort required can be significant. Typically when we provide the design discharge, the roadway authority must still perform a hydraulic analysis to properly size the crossing. Typically, an engineer possessing the skills to perform the hydraulic analysis to size the crossing also possess the skills to perform the hydrologic analysis to determine the appropriate design discharge.

We also considered the fact that in several recent decisions the North Dakota Supreme Court has found that water resource districts do not have the authority to order the placement of culverts, yet existing statute still requires coordination between the local road authorities and the water resource boards. It is our hope that limiting the right to request the flow determination to water resource boards will foster a greater degree of coordination and cooperation at the local level.

We ask for your favorable consideration of this bill. Thank you.

- 2 -

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Senate Bill No. 2127

1
2 A BILL for an Act to amend and reenact section 24-03-08 of the North Dakota
3 Century Code, relating to determination of surface water flow and appropriate
4 highway construction.

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

6 **SECTION 1. AMENDMENT.** Section 24-03-08 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 **24-03-08. Determination of surface water flow and appropriate highway**
9 **construction.** Whenever and wherever a highway under the supervision,
10 control, and jurisdiction of the department or under the supervision,
11 control, and jurisdiction of the board of county commissioners of any county
12 or the board of township supervisors will be constructed over a watercourse
13 or draw into which flow surface waters from farmlands, the state engineer,
14 upon petition of ~~the majority of landowners of the area affected or at the~~
15 ~~request of the board of county commissioners, township supervisors, or a~~
16 water resource board, shall determine as nearly as practicable the design
17 discharge that the crossing is required to carry to meet the stream crossing
18 standards prepared by the department and the state engineer. When the
19 determination has been made by the state engineer, the department, the board
20 of county commissioners, or the board of township supervisors, as the case
21 may be, upon notification of the determination, shall install a culvert or
22 bridge of sufficient capacity to permit the water to flow freely and
23 unimpeded through the culvert or under the bridge. The department, county,
24 and township are not liable for any damage to any structure or property
25 caused by water detained by the highway at the crossing if the highway has

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1 been constructed in accordance with the stream crossing standards prepared by
2 the department and the state engineer.

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Date

2-27-03

#1

TESTIMONY ON ENGROSSED SENATE BILL 2127

House Political Subdivisions Committee

**Craig Odenbach, Chief, Regulatory Section
State Water Commission**

February 27, 2003

Mr. Chairman and Members of the House Political Subdivisions Committee, I am Craig Odenbach, Chief of the State Water Commission's Regulatory Section, appearing on behalf of the State Engineer and in support of Engrossed Senate Bill 2127.

Engrossed Senate Bill 2127 amends N.D.C.C. § 24-03-08. This section of law requires the State Engineer to determine the design discharge required to meet the state's stream crossing standards upon petition of the majority of landowners affected or at the request of the board of county commissioners, township supervisors, or a water resource board.

During the 1999 legislative session, changes were made to N.D.C.C. chapters 24-03 and 24-06 requiring the development of stream crossing standards. It was clear during the testimony at the time that the 1999 legislation was not intended to apply retroactively to existing crossings. However, under the current language in N.D.C.C. § 24-03-08, the State Engineer, upon request, must determine the design discharge required to meet the stream crossing standards whenever a crossing "has been or will be" constructed and then the appropriate roadway authority is required to install a culvert capable of passing the flow identified by the State Engineer. Therefore, the current language could be misinterpreted to apply to existing structures, which we believe is contrary to the original legislative intent. Removing the words "has been or" will limit the determinations to new construction which would reflect the original intent.

Engrossed Senate Bill 2127 was amended from its original form in response to suggestions made by the Association of Counties. We support the bill as amended, and we ask for your favorable consideration. Thank you.

- 1 -

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