

2011 HOUSE ENERGY AND NATURAL RESOURCES

HB 1413

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1413
01/28/2011
13644

☐ Conference Committee

Committee Clerk Signature



Minutes:

Rep. Porter: We will open the hearing on HB 1413

Rep. Hofstad: This issue was brought before the legislative session two or three sessions ago. It is dealing with the structures within the lake as the lake rises. We have a number of structures that have inundated and remain in the body of water. As the waters began to rise there weren't very many structures in the water. It seemed to be the obvious route to take to require the state engineer to take these structures out of the water. As we have gone along this problem as escalated we now have a number of structures that are in the lake. The state water commission inventoried all of these structures they can tell you what structures will be inundated at various levels that this lake is rising to.

These are waters of the state of North Dakota it is a sovereign body of water we have farmsteads that being inundated that makes it very difficult to make that determination to remove the structures? What this bill does, it takes issue that the State Engineer is required to remove these structures and give them an option. It is important to give them this option because there are structures that are absolutely necessary to remove from the lake. There are fuel tanks, anhydrous tanks, propane tanks, and other things that make common sense to remove from the lake. I have passed out some amendments to this given to me by the State Engineer.

Rep. Nelson: On line 8 we are talking about "determined to be navigable by a court". This rule seems to be written very narrowly. Which waters have been determined by the court?

Rep. Hofstad: Devils Lake itself has been determined to be navigable, as I understand the lake is sovereign to the State of North Dakota.

Rep. Keiser: Under the current law does the state engineer have to remove all the items or can they say they don't have to be removed, because they aren't dangerous and they just add cost to the state?

Rep. Hofstad: The purpose of this bill is that the State Engineer has to remove these structures.

Lee Klapprodt: I am the director of planning and education at the State Water Commission. I would like to add some supporting comments to what is already said about this bill. It is

true that the purpose of this bill is to offer the State Engineer more flexibility. The amendments that were offered to this bill are consistent philosophy. We would like to remove the word "imminently" so we can give them a grace period to move their structures if we determine that they need to be removed. We have an inventory of all of the structures that will fall into the lake at different evaluations. At 1454 there are 717 structures that are in jeopardy of falling or going into the water. Almost half of those are steel buildings. 300 of those are wooden buildings.

Rep. Keiser: I am looking at the purposed amendment. Is that your amendment?

Lee Klapprodt: Yes

Rep. Keiser: The original language that you were proposing "imminently" is a factor, as you strike that with the language, then the only issue that it removes is "currently a factor " and replaces it with "it is likely to be a factor in the future." You may to consider "has been determined to be or may be a risk factor" so you are covering one that is a risk factor right now or the State Engineer has the option to say " I can't say it is a risk factor right now, it may be a risk in the future.

Lee Klapprodt: We are satisfied with the wording that we provided. If the committee sees a change to be necessary that would be fine with us.

Rep. Nelson: If you order for removal and then later it becomes known that the object would not have become a menace. How does something become to be not a menace?

Lee Klapprodt: Devils Lake is at an evaluation of 51. We are looking at structures that are at 52. The State Engineer could order those structures removed, if the lake doesn't go up expected and they had removed those structures as ordered by the State Engineer we would be responsible for that.

Rep. Nelson: If the water is at 51 and goes to 52 it would be my cost to remove the structure, but if it only went to 52 and I was at 53 and you required me to remove that structure then you would compensate me for that.

Lee Klapprodt: Yes if we have issued an order and forced the removal of the building then we would be responsible for that.

Rep. Porter: Are there any further questions in support? Is there any opposition to HB 1413? Seeing none we will close the hearing on HB 1413.

Rep. Keiser: I make a motion to adopt the amendment.

Rep. Anderson: Second.

Rep. Porter: Is there any discussion on the amendment? Voice vote taken. Motion carried.

Rep. Porter: We have an adopted bill in front of us as amended

Rep. Keiser: I move a do pass on HB 1413 as amended.

Rep. De Krey: Seconded as amended.

Yes 12 No 0 Absent 3 Carrier: Rep. Clark. Motion carries.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1413

Page 1, line 4, replace "Subsection" with "Subsections"

Page 1, line 4, after "1" insert "and 7"

Page 1, line 5, replace "is" with "are"

Page 1, line 8, overstrike "imminently"

Page 1, line 14, overstrike "imminently"

Page 1, after line 21, insert:

- "7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is ~~imminently~~ likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice."

Renumber accordingly

Date: 1-28-2011
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1413

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Keiser Seconded By Rep. DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunsakor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote taken motion carried

January 31, 2011

VK
2/1/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1413

Page 1, line 1, replace "subsection" with "subsections"

Page 1, line 1, after "1" insert "and 7"

Page 1, line 8, overstrike "imminently"

Page 1, line 14, overstrike "imminently"

Page 1, after line 21, insert:

"SECTION 2. AMENDMENT. Subsection 7 of section 61-03-21.3 of the North Dakota Century Code is amended and reenacted as follows:

7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is ~~imminently~~ likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice."

Renumber accordingly

Date: 1-28-2011
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1413

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Keiser Seconded By Rep Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen	✓		Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh		
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper					
Rep. Keiser	✓				
Rep. Kreun					
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep Clark

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

REPORT OF STANDING COMMITTEE

HB 1413: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1413 was placed
on the Sixth order on the calendar.

Page 1, line 1, replace "subsection" with "subsections"

Page 1, line 1, after "1" insert "and 7"

Page 1, line 8, overstrike "imminently"

Page 1, line 14, overstrike "imminently"

Page 1, after line 21, insert:

"SECTION 2. AMENDMENT. Subsection 7 of section 61-03-21.3 of the North
Dakota Century Code is amended and reenacted as follows:

7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is ~~imminently~~ likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice."

Renumber accordingly

2011 SENATE NATURAL RESOURCES

HB 1413

2011 SENATE STANDING COMMITTEE MINUTES

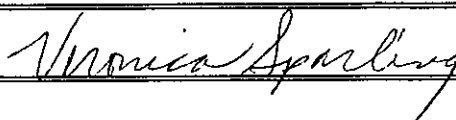
Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1413
March 11, 2011

Job #15297

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to removal of dangers in or on the bed or navigable waters

Minutes:

Attached Testimony

Chairman Lyson opened the hearing on HB 1413.

Representative Curt Hofstad, District 15, the heart of the Devils Lake basin: as waters rose, people hoped they could stop the hazards of the rising lake. The bill required the people to remove the structures that were there. Hundreds of farmstead structures have been removed; removal of all of the structures has become a burden. This bill would give the State Engineer an option by taking the word "shall" out. Some of those structures are a problem such as floating propane tanks for example. If there are hazardous items, he would have the option to have it removed. He offered an amendment to HB 1413. See Attachment #1.

Senator Lyson: Did the county set any rules for cleaning up before the flood waters rose?

Representative Curt Hofstad: The water has inundated more as there has been more precipitation. Optimists look forward and plan ahead for the next season. They just try to hold on, not wanting to let go of that farmstead or that business.

Senator Lyson: When we do something from the state level, the locals say "don't take our authority away from us" now the locals are trying to give it back to the state. The locals have some authority here.

Senator Hogue: There is an exemption for fences. I think that would be one of the worst hazards, why exempt them?

Representative Curt Hofstad: There was an exemption made because there was so much push back from farmers and ranchers because of the difficulty of removal. I think that was the reason.

Senator Lyson: That was not a decision based on safety.

Representative Curt Hofstad: There are a lot of things that would be unsafe in that water.

Senator Uglen: Is the state trying to clean everything up or just the hazardous chemicals?

Representative Curt Hofstad: This legislation gives the State Engineer authority but also flexibility. Everything has been inventoried but not everything has to be removed.

Lee Klapprodt, State Water Commission, stood in support of HB 1413. This bill changes the "shall" to "may". The authority has been with the state all along. It has always been a state mandate to do this. This bill will ease the mandate and give the State Engineer more flexibility. We have inventoried the structures that will need to be removed this spring anticipating the rise in water levels. They have used digital elevation and visual flyovers to do the inventory. The amendment offered would allow latitude so they can be ready for this spring. The property owners have been notified of what needs to be moved. There have been very few boating incidents to date.

Senator Lyson: When the lake starts going down, who will be responsible for all the debris?

Lee Klapprodt: As the lake recedes, it is my understanding that it will revert back to the people who owned the land. I would assume any debris will be the responsibility of the landowner.

Opposition: None

Chairman Lyson closed the hearing on HB 1413.

Senator Burckhard made a motion to adopt the proposed amendment.

Senator Schneider: Second

The **motion carried** by voice vote.

Senator Uglen made a motion for a Do Pass as Amended.

Senator Burckhard: Second

Roll Call Vote: 6-0-1

Carrier: Senator Uglen

#1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1413

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

Page 2, after line 7, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3-11-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 143

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Burckhard Seconded By Schneider

carried by voice vote

Senators	Yes	No	Senators	Yes	No
Chairman Lyson			Senator Schneider		
Vice-Chair Hogue			Senator Triplett		
Senator Burckhard					
Senator Freborg					
Senator Uglem					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*proposed amendment
(attachment #1)*

Date: 3-11-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1413

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ^{as} ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Uglen Seconded By Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Lyson	✓		Senator Schneider	✓	
Vice-Chair Hogue	✓		Senator Triplett		
Senator Burckhard	✓				
Senator Freborg	✓				
Senator Uglen	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Uglen

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

REPORT OF STANDING COMMITTEE

HB 1413, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1413 was placed on the Sixth order on the calendar.

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

Page 2, after line 7, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly