

SB2208 Testimony.

To the Chairman and the Committee,

My name is Sam Wagner and I am testifying today for the Dakota Resource Council and its members. DRC has more than 600 members statewide and was founded to protect North Dakota's natural resources and family farms and ranches. Our goals are to bring together people who strive to have local voices heard, hold decision makers accountable and advocate for responsible development of resources without damaging North Dakotans' lives and livelihoods and empower people to influence the decision-making processes that affect their lives and communities"

We would like to state that although we are disappointed that this bill has been amended into a study, we would like to take our time to talk about the good parts of this bill and the reform that we would like to see in the future. Many of our members fear that our neighbors serving are unduly influenced by outside consultants (legal and engineering) who have a huge financial gain to strip from our community via special assessments. When we talk about special assessments vs general Real Estate (RE) tax to fully appreciate where the oppression to select landowners reveals itself. Water Boards do not have the power to levy RE taxes, but depend on a small levy granted by the County Commission to fund their general fund for county-wide operation of their board.

Ultimately these two forms of taxes are what can cripple a landowner if the county commission is not responsible. RE taxes are typically capped off Special assessments, on the other hand can be defined as the source to repay the public for its costs that increased the value of only certain property benefited. They aren't always capped as efficiently and due to multiple projects getting assessed with no clear ending. This is a process that needs to be stopped. If a project is proposed it should have a clear end date to when the project will stop being assessed Some drainage projects get tied up in court or have no definitive end to them and all the while taxes are being collected. 2208 would have had a provision that could define when projects can be levied and give them a hard deadline for when they stop collecting taxes. This needs to stay.

### **Determining cost**

The problem that we have with special assessments is that they do and there are situations where the assessments are larger than all the other RE taxes shown on the property tax statements combined. History will reveal this power has been invested into appointed water boards since near statehood. In the Sargent County drain situations it has shown us the weight of a local water board decision of special assessment can rob select landowners from literally to continue their farms where the Board has no clue how to change past practice to figure out how to attach the costs of new projects' cost to the benefits that create the financing mechanism of special assessments.

The process that determines special assessments by comparing the benefits received needs to be addressed as well.

Since this task of determining benefits to be complicated, water boards in North Dakota have defaulted to consider their consultant's advice. Being only attorneys or engineers, again this task is outside their realm of services, they offer ND water boards the opportunity to utilize "gut instincts." (this situation has moved MN decades ago to another professional group called "viewers" who in a sense conduct FMV (fair market value" appraisals on each potential property to determine FMV for a ditch after the ditch is installed.) Instead, the consultants have "coached" Boards to merely create concentric circles outlining the ditch and assessing 100% if your property is alongside and then feathering downward to 25% or less to the ditch's extreme outside watershed. This method ignores natural contours where some properties shed their water in contrast to those properties' highly developed drainage systems.

This situation creates inequities to those property owners who use their land (perhaps highly erodible) for pasture grazing or hayland being treated the same as an adjacent potato grower using irrigation and subsoil tiling that essentially needs access to a ditch to outlet his unwanted saturated ground. If the latter doesn't pay his "fair share of cost for those benefits", he is in a sense getting financial grant from his neighbor via the special assessment.

If you look back to the Senate testimony, a landowner from Hurtsfield related to the committee how he will have to sell land as he cannot afford the assessments. This is not uncommon, in one of our members' communities there is a family that suffers with a \$190,000 assessment with no benefits. Some lands, usually inherited, are tough to sell because they don't have much inherent value to them and the next person that buys it is going to be saddled with the taxes and special assessments that come along with them. I hear of situations in Pembina County too. These situations are common whenever these special assessments are applied so callously. Some of this can be fixed by better record keeping and better map drawing, and possibly tax relief for places such as wetlands that are drain accessible, but not farmable.

We would also like to mention some history regarding why we have SB# 2208. A group of over 25 landowners sued Sargent County Water Board for the statutory right to vote. See link above for history. At its conclusion, one of our group is a neighborhood friend of Senator Rich Wardner who has gained appreciation of the sins water boards are capable of under the current ND atmosphere. They hired a law firm to formulate his questions to ask for an ND AG Opinion in October 2019. The AG answered those questions September 1st last year, 2020.

The opinion finally answered what the lawsuit attempted to have the court decide. With that opinion, Senator Wardner consulted with a few other influential legislators and the ND State Water Commission; commissioners who were eager for new legislation to correct items they have been facing. This case isn't about whether the ditch project was good or not, however the process of the decision making. The landowners and owners were left to pay the assessments under ND law were statutorily protected to have a public notice, public hearing and vote. Current law stipulates those items but it feels nobody has the will to enforce the law.

In this past decade, landowners in ND nearly all have had unwanted standing water on their property. The easy thing to do is to drain it off and as long as it's not on my property it isn't my problem. The water will always go somewhere and eventually impact another landowners property. This

creates a perpetual cycle where someone is always going to be impacted unfairly.

Waterways are never neat and orderly so when projects are planned there will be times when multiple counties will be affected. The current laws state the county where the permit starts is the only county that requires a hearing, and that landowners 1 mile downstream are the only ones contacted; the law will change that to 10 miles downstream. SB2208 would abolish the practice of splitting large projects into smaller projects to avoid hearings.

The few people that I've seen fighting these injustices are wearing down where as we attend county water board meetings, they are met with scowls and demeaning remarks and even threatened with lawsuits for speaking their thoughts to County Commissioners or State Water Commissioners. It takes its toll. Ultimately DRC and our members want better rules so we don't have to fight these battles and tear our communities apart. If everyone had a basic understanding of each other and fairer ways to assess levies and specials we could go a long way towards healing these wounds.

We would like you to pass SB2208 and in the interim session we hope that you give it the attention it deserves.

<https://www.inforum.com/business/agriculture/3829535-Water-drainage-project-draws-crowd-to-Pembina-County-Water-Resource-District-hearing>