

## Testimony to the House Political Subdivisions

March 11, 2021

Thank you Chairman Dockter and Committee Members for the opportunity to provide testimony on SB 2324. My name is Aaron Birst and I represent the North Dakota Association of Counties which is in opposition to this bill.

This bill contains a simple change. However, this bill is a **Major** shift in public policy. To be clear, if this bill would become law you will have shifted budget (and ultimately property tax levy authority) from duly elected local officials to an unelected State official.

As you know, within North Dakota's thousands of miles of road networks, we have thousands if not tens of thousands of bridges and culverts. Those road networks have been built over multiple generations with many factors going into those decisions. Local road authorities have had to balance many factors including traffic counts, road size, material costs, Federal and State support, budget considerations, environmental impacts and water flow to name a few. Those decisions will have impacts beyond a singular calendar year.

Additionally, when those decisions were made, they were done with the best understanding of the current conditions. Conditions can change. Dry cycles can become wet cycles or vice-versa.

Also, changes brought on by human activity can alter previously understood conditions.

Drainage of wetlands, drain tiling, cultivation of previously natural grasslands can also change waterflows to name a few. In other words, what may have been a properly sized culvert may over time become obsolete.

Under this bill a simply engineering study looking **EXCLUSIVELY** at present water flows would **REQUIRE** Counties and Townships to expend money **WITHIN A YEAR** without regard to their financial situation. Meaning this bill would force Counties and Townships to shift money from their current priorities to suit the State Engineer's recommendation. This bill also does not address when a legitimate debate exists between competing stream studies. The State Engineer's determination is final.

Water law is complex. However, North Dakota has always had an engrafted reasonableness standard when it comes to drainage. As the North Dakota Supreme Court has repeatedly made

clear for close to seventy years, "political subdivision have no duty to provide "perfect" drainage." See Little v. Burleigh County, 82 N.W.2d 603 (ND 1957) Even more specifically the Supreme Court recognized there exists "an implied standard of reasonableness in applying N.D.C.C. §§ 24-03-06 and 24-03-08." See Fandrich v. Wells County, 2000 ND 181.

Passage of this bill would overturn well settled law which would result in unreasonable shifting of taxing authority from elected officials to appointed officials.

Thank you.