

**2025 SENATE AGRICULTURE AND VETERANS AFFAIRS**

**SB 2283**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Agriculture and Veterans Affairs Committee

Fort Union Room, State Capitol

SB 2283  
1/30/2025

A bill relating to smaller subsurface water management systems; and to provide a penalty.

10:15 a.m. Chairman Luick called the meeting to order.

Members present: Chairman Luick, Vice-Chair Myrdal, Senator Marcellais, Senator Weston, Senator Weber, Senator Enget

### Discussion Topics:

- Property smaller than 80 acres
- Unintended downstream consequences
- Downstream landowner notification and communication
- History of water rights and state water laws
- Importance of property rights
- Litigation, mediation, and settlements
- 80 acre drain tile connections and large sums of water
- Local water boards
- Land devaluation and property damage
- Complaints filed and the Water Resource Board
- Burdensome regulations
- Existing regulations and permit processes and proposed process
- Surface drainage
- Disputes outside of district court
- Maximum gallons a minute of water and drainage per acre
- Tile permitting processes in other states
- Permit requirement for drain tile systems

10:16 a.m. Senator Kathy Hogan, District 21, testified in favor and introduced the bill.

10:18 a.m. Samuel Wagner, Ag and Food Field Organizer for the Dakota Resource Council, testified in favor and submitted testimony #32744.

10:22 a.m. Madeline Luke, resident of Valley City, ND, testified in favor and submitted testimony #32817.

10:25 a.m. Randy Coon, farmer from Buffalo, ND, testified in favor and submitted testimony #38242.

10:32 a.m. Rory Gable, resident from Valley City, ND, testified in favor.

10:37 a.m. Steve Hansen, farmer from Ludden, ND and Dickey County Water Board member, testified in opposition.

10:42 a.m. Dan Wogsland, ND Grain Growers Association, testified in opposition and submitted testimony #32845.

10:45 a.m. Jack Dwyer, on behalf of the ND Water Resource Association, testified in opposition.

10:49 a.m. Levi E. Otis, Director of Government Affairs for Ellingson Companies, testified in opposition and submitted testimony #32818.

10:59 a.m. Aaron Carranza, Division Director of the ND Department of Water Resources, testified neutrally.

11:01 a.m. Rory Gabel, resident from Valley City, ND, testified in favor.

11:02 a.m. Madeline Luke, resident from Valley City, ND, testified in favor.

**Additional written testimony:**

Gary E. Heintz, resident of Chaseley, ND, submitted testimony #32769 in favor.

Gary Krapu, resident of Valley City, ND, submitted testimony #32726 in favor.

Eric Larson, Eric and Carl Larson Farmers, submitted testimony #32725 in opposition.

Brent Baldwin, President of Red River Valley Sugarbeet Growers Association, submitted testimony #32724 in opposition.

Arlen Huber, resident of Fingal, ND, submitted testimony #32680 in favor.

11:02 a.m. Chairman Luick closed the hearing.

*Audrey Oswald, Committee Clerk*

Dear Committee Members:

I support Bill 2283.

We need some management of our Natural Resources (water). Now, anything goes.

I live in SE Barnes County, Sec 14 and 13 of Binghampton Township. In Sec 13, a "Y" of two water systems meet. I estimate that over the last 20 years, 10 to 15 under 80 acres drains have been put in so that the water flow has increased dramatically.

I farm about 200 acres- alfalfa, hay, high quality organic produce that is sold regionally. With more drainage and tiling in the past few years, this has made a very big hardship with loss of cropland, highway flooding, county roads washed out. Not to leave out the wetlands- chemicals and salt moving through, wildlife and wetlands lost, a total mess.

Now I have USDA NRCS offices telling me our land is highly erodible. I haven't done any of this.

No one has added up the cost draining has done to landowners, the wildlife, the counties and just the land.

Something needs to be done to save our resources.

Thank you,

Arlen Huber



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email: [information@rrvsga.com](mailto:information@rrvsga.com)

January 29, 2025

Chairman Luick and members of the Senate Agriculture and Veterans Affairs Committee,

Thank you for the opportunity to submit testimony in opposition to SB 2283. My name is Brent Baldwin, I am a Farmer and President of the Red River Valley Sugarbeet Growers Association. A lot of good work has gone into water management in the last few sessions, this issue included. This bill introduces unnecessary regulatory hurdles, increased costs, makes an unfair shift in control over individual landowners' rights and reintroduces a lot of red tape that was removed in previous sessions.

We have several major concerns with this bill. First are the excessive bureaucratic delays. This bill will require landowners to notify all downstream landowners and wait at minimum 30 days to begin a water management project. This added time is extremely costly with our short summers as we have a limited number of days to get a project done before freeze up or additional rain fall.

Next is the increased costs and unnecessary burden on landowners by requiring now certified mail notifications to all the downstream landowners. There are a lot of out of state landowners now, gone are the days of being able to go to the neighbor's house and they be the ones that own the land. Sometimes its hard to get a hold of all these landowners.

Next is the unfair shift in control to downstream landowners. We all know water flows downhill, and yet this bill will effectively allow downstream landowners to delay or completely prohibit a water management project simply by filing an objection. Additionally, many downstream landowners will be extremely hesitant to sign off on a project as they feel it will prevent them for any potential future claim of damages.

Our last concern is the overall negative impact on agriculture in North Dakota. Water management is key to our success, and the negative and unnecessary restrictions that SB 2283 will impose on effective water management.

We strongly encourage this committee to provide a DO NOT PASS recommendation on SB 2283.

Brent Baldwin  
St. Thomas, ND  
President – Red River Valley Sugarbeet Growers

## **Subject: No on SB2283**

Chairman Luick and Members of the Senate Agriculture and Veterans Affairs Committee:

My name is Eric Larson. I farm with my brother Carl in Dickey and LaMoure Counties.

I respectfully urge a do not pass on SB2283.

Forcing more permitting will only add to the cost and time to complete projects. Water boards should not be forced to participate in personal disputes.

The added workload for water boards will also be costly in terms of time and money. They have enough on their plate as it is.

IF A DOWNSTREAM PARTY FEELS THEIR RIGHTS ARE BEING INFRINGED UPON, THEY NEED TO SETTLE THE MATTER IN CIVIL COURT.

Thank you for your time on this matter.

Regards,

Eric Larson

28 January 2025

Dear Committee Members:

I voice my strong support for SB 2283.

The North Dakota Legislature by removing meaningful regulation of tile drainage in the state has created serious problems for many farmers in the state. With little regulation we now have a Wild West scenario where drainers can do whatever they want without any consequences from regulators whether it be from local water boards or the State Water Commission. Tile drainage in the current regulatory environment allows dumping water onto neighbor property without the neighbor's awareness or permission which is patently wrong and needs to stop. Lack of regulation causes widespread economic costs and dislocation to farmers that are being dumped upon often surreptitiously without their knowledge until the neighbor notices a low area in his/her field that used to crop in most years no longer being farmable in any years and the water keeps expanding flooding other cropland. Drainers have learned to use gravity very effectively to discharge on a slope ensuring the water will not stop until coming to reside on a neighbor's field.

Many of the problems associated with tile drainage would cease to exist if the person doing the drainage had to get a permit in all instances before undertaking tile drainage and in cases where tile drain water is to be discharged at a location that will move water onto a neighbor would require the neighbor(s) get permission and where the existing uses of land of neighbor(s) are adversely affected, neighbors would be entitled to flowage easements or other payments. Any time a drainer is moving the water onto a neighbor who is facing economic or other distress the drainer should be liable for damages.

In my case, I own a farm in Dickey County and a neighbor tile drained 2 quarters onto my property without any notifications. He did this by dividing the land into a series of under 80 acre projects. While it was obvious I would suffer major damages the neighbor seeing my farm being flooded simply said to me "It is not my problem" and walked away. Sadly, without laws regulating drainage, individuals insensitive to their neighbors' plight are getting away with grave injustice. The tile drain water first went into a 25-acre slough that was originally 2-3 feet deep and went dry every third or fourth year. Now the slough depth is never less than 10 feet deep and extends has nearly an extra half mile in each direction to the north and south, has destroyed a township road cutting my farm in two parts, and requiring a 6 – 8 mile trip to get to half of the farm that was only 400 yards from the farmstead before his drainage started. In addition, when the water is high, it flows onto another quarter leading to that quarter becoming almost unfarmable because rising water levels lead to that quarter being split into 3-4

parts by standing water. Yet, I have not received one dime of compensation from the neighbor for all the harm caused. Had he been required to get a permit and permission, the project could only have occurred with me being reimbursed for all the damages caused.

Sincerely,

Gary Krapu



## Testimony SB2283

Sam Wagner  
 Ag and Food Field Organizer  
 Dakota Resource Council  
 1902 E Divide Ave  
 Bismarck ND 58501  
 Testimony in Support of SB2283

To the Honorable Chairman and the members of the Committee. We submit these remarks on behalf of DRC.

Mr Chairman,

We understand that water rights have been a big issue for this committee for some time. With permits in 2021, you passed a bill that would require a project with under 80 acres to notify the local water board before installing it with a sunset in 2023 to see how it would work. In 2023 you removed the sunset and made it a permanent law. This year we are asking for one more crucial step to ensure fairness and that our landowners can be good neighbors to each other. As many members of our organization have dealt with drainage issues and had many litigation cases in the past. SB2283 wants to ensure that our landowners notify downstream residents and mitigate disputes before we litigate disputes.

How the process is now:

1. Notify your water board about your project
2. Build your project
3. Get sued because someone downstream didn't like your project and will likely win because there was no notification.

Under this law, the process would go as follows:

1. Notify the water board about your project
2. Notify landowners downstream about your project within 30 days
3. Landowners then have 30 days to respond upon receiving the letter.
4. If they have no response build the project
5. If they respond with problems, schedule a mitigation meeting
6. If mitigation is successful, build the project as prescribed by the mediation
7. If mitigation is unsuccessful, apply for a permit with the water board
8. If the water board approves the permit, then you can build the project.
9. If the landowner affected then sues you, you at least have much more standing to defend your project.

Please keep in mind that this bill doesn't prevent someone from filing a lawsuit if mediation breaks down. However, this gives landowners a chance to settle a dispute or receive

compensation before a lengthy court battle is needed. Most of these disputes can be settled in mediation. There is also the ability still put in your project without a permit if no one objects.

#### **Differences between 1544 and 2283**

1. **The notification requirements.** Either one is good, but we felt 30 days was sufficient enough to get a response from the land owner because this is mediation rather than preparing a full-blown rebuttal to their project.
2. **Details on projects** HB1544 also has a more detailed description of watershed projects and clearly defines if the project doesn't flow on anyone else's property the landowner can just notify the waterboard. This language is more acceptable
3. **Mediation Language** SB2283 has the language for mediation before a lawsuit, 1544 doesn't. Mediation would be a far better alternative.

We recommend DO PASS or combining this language with HB1544.

Testimony for SB 2283

DATE: Submitted on 1-29-25

RE: Gary Heintz

19 1<sup>st</sup> Ave. NW, Chaseley ND 58423

Cell Phone: 701-650-2064

Email: [gheintz@daktel.com](mailto:gheintz@daktel.com)

My name is Gary Heintz from Chaseley ND. I support this bill, SB 2283.

As a result of being at the bottom of a closed basin drainage system, my neighbors and I receive the runoff of a very large watershed plus the waters of upstream tiling systems that fall below the 80 acre permitting requirement.

The drainage system that affects us requires pumping, when allowed, to remove any waters from the final reservoir that inundates our farmland. This flooding is happening now and any additional water, even from smaller tiling systems, compounds the problem. To add insult to injury, my neighbors and I pay at the highest assessment rate only to hold the water while those upstream pay at a lower assessment rate and have free rein to dump their water on those below. These upstream systems are not even required by the authorizing water district to stop pumping until water levels would be at a more manageable level on our farmland.

This legislation would be a good start to downstream taxpayers having some say in slowing down the amount of water that is now accumulating on and flooding their farmland.

Thank you for this opportunity to testify on this bill.

Respectfully,  
Gary Heintz

Dear Committee Members:

I stand in favor of SB 2283.

In this country, we take the right to own property seriously. There are laws that determine who can own, sell and buy land. We have consequences for people who would say, damage your home. Unfortunately, however, there are no rules that apply to small drainage projects, and this results in small or large transfers of unwanted water onto sometimes unsuspecting downstream neighbors. If a farmer divides his tile drainage area into a series of under 80 acre projects, the unpermitted water transfer can be huge.

Farmers make their living from their most valuable asset, their land- I hope you will read the testimony of Arlen Huber. This is stealing

Retired people may live on land rent- this came up in a conversation with one of your Senate colleagues, who spoke of a widow who lost some of her income because a neighbor drained on her pasture. This is stealing.

Too much water in the wrong place can cause habitat loss which is valuable to hunters and wildlife lovers. The taking of the enjoyment of the use of dumped on property without compensation is also stealing.

This bill will remind landowners who would drain that somebody always lives downstream and their rights need to be respected.

No one likes going to court; the money, emotional energy and embarrassment are all expensive. Mediation is a way of trying to get neighbors to talk to each other and come to a successful outcome.

Passing this bill will help close a much needed loophole in our state water laws.

Thank you for accepting my comments

Madeline Luke

Valley City, ND

1/30/2025



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**1/30/2025**

North Dakota Senate Agriculture Committee  
600 E Boulevard Ave  
Bismarck, ND 58505

Chairman Luick and Members of the Senate Agriculture Committee,

I am writing to express my strong opposition to Senate Bill 2283, which seeks to amend section 61-32-03.3 of the North Dakota Century Code relating to smaller subsurface water management systems. After working with this body and many of you over the last 10 years, It is safe to say that I believe this bill would impose unnecessary burdens on farmers who are already facing numerous challenges.

Firstly, the notification requirements outlined in the bill would add significant administrative burdens and potential delays for farmers. Requiring farmers to notify the water resource district board and all downstream landowners before installing a subsurface water management system is an onerous task that could hinder timely agricultural operations.

It has been my experience that these notifications give downstream landowners false hope that there is something that can be done, when what needs to be done is that fence line neighbors need to come up with solutions together and try and force the law to do it.

Secondly, the objection process allows downstream landowners to object within 30 days, potentially leading to a lengthy and costly permit application process for farmers. This added layer of bureaucracy could discourage farmers from implementing essential water management practices.

The installation conditions specified in the bill, such as maintaining a certain distance from assessment drains and installing proper erosion controls, would increase the complexity and cost of installation. Not all farms, drains and tile systems are the same. Blanket regulations do not work. That is why we allow water boards to apply "Conditions" as they see fit.

The mediation requirement for resolving damages caused by subsurface water management systems adds another layer of complexity and potential delay. While mediation can be a useful tool, it may not always lead to satisfactory resolutions and could prolong the resolution of disputes. I also wonder how it fits into today's complaint process. Other questions have me asking: "What if the complaint is frivolous, does the applicant still pay for mediation?" That isn't right.

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Furthermore, the penalties for violating the provisions of this bill add a layer of risk for farmers, who may inadvertently fall foul of the regulations despite their best efforts to comply.

It is important to recognize that adding red tape and bureaucratic hurdles does the progress made by the legislature over the past two decades to support and streamline agricultural practices. Our farmers need support and flexibility, not additional obstacles that could impede their ability to manage their land effectively.

I believe that there is an appetite between the Water Board Association, Agriculture groups and Agribusiness to work through a solution that allows downstream landowners to recoup damages. This bill does not do any of that.

For these reasons, I urge you to oppose Senate Bill 2283 and consider the detrimental impact it would have on our farming community. Thank you for your attention to this important matter.

Sincerely,

Sincerely,  
Levi Otis

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**North Dakota Grain Growers Association  
Testimony in Opposition to SB 2283  
Senate Agriculture and Veterans Affairs Committee  
January 30, 2025**

Chairman Luick, Members of the Senate Agriculture and Veterans Affairs Committee, for the record my name is Dan Wogsland representing the North Dakota Grain Growers Association. NDGGA appears before you today in opposition to SB 2283.

Senate Bill No. 2283 imposes burdensome regulations on landowners who wish to install smaller subsurface water management systems. These systems are often crucial for improving drainage, mitigating flooding risks, and enhancing agricultural productivity.

NDGGA opposes the following aspects of the bill:

- \* **Excessive Notification Requirements:** The requirement to notify all downstream landowners places an undue burden on landowners. It creates a potential for delays and disputes, hindering timely implementation of necessary drainage projects.

- \* **Potential for Increased Litigation:** The bill's provisions may inadvertently increase litigation between landowners over drainage issues. The 30-day objection period and the potential for downstream landowners to challenge projects could lead to costly and time-consuming legal battles.

- \* **Unnecessary Regulation of Small Systems:** The bill applies to relatively small systems, which may not pose significant environmental or hydrological risks. Imposing stringent regulations on these systems is an overreach of government authority and creates unnecessary obstacles for landowners.

- \* **Potential for Increased Costs:** The added regulatory burden and potential for litigation will increase the costs associated with installing these systems, making them less affordable for many landowners.

NDGGA believes that existing regulations and permitting processes are sufficient to address any potential environmental or hydrological concerns associated with subsurface water management systems.

Chairman Luick, Members of the Senate Agriculture and Veterans Affairs Committee, the North Dakota Grain Growers Association respectfully requests your Do Not Pass recommendation on SB 2283 and would urge the full Senate to concur.



## Testimony In Support of SB2283

by Randy Coon

Chairman Liuck and members of the committee, thank you for giving me this opportunity to testify on this bill. My name is Randy Coon and I farm near Buffalo, ND. I believe this bill is a good start to restoring downstream landowner's property rights that were taken away in previous subsurface drainage bills. The previous bill was written to end "fence line politics". If anything, the bad feelings between neighbors has become much worse. Downstream land owners have become frustrated because their only recourse is to go through the legal process, which is very costly. People call the current situation "the wild west of draining", where anything goes. When I visited with a member of the Maple River Water Resource District Board, he stated that the number one complaint he receives is when people tile and just run their water onto their neighbor's land. I am currently dealing with three of these situations on land I own and rent, and these are not isolated cases.

I would like to describe two of these tiling systems that have infringed on my property rights and my ability to farm the land. In the spring of 2023, I sent my hired man to work up a field for seeding. He called me and said "you better get over here right now". My first thought was, oh no, what has he done now. What I found was a track hoe digging in a large tile for a pumping station across the road from my field. The pump was installed to run all the water through a culvert onto my property. This tile project involved five quarters of land and had to use two pumps to move the water onto my property. This was all done without any notification to me. The current law allows this, but what kind of person does this sort of thing? I believe this is done by a person who knows he is doing someone wrong, but does not have the character to talk to me about it. In the spring of 2024, the tile pumps were started in April and ran until September. I was unable to seed 19.4 acres of wheat, and could not get on that land until October to work up the weeds that had grown up during that time. I do not believe this sort of situation should be protected by state law. I have hired a professional engineer to review the tile project and have turned his findings over to an attorney. This has been at a considerable expense to me.

The second project I want to describe is an example of the abuse of the 80-acre tile rule. A landowner asked my landlord if he could drain "a" pothole onto her land. She denied him permission to run water onto her land because her land already had water issues. The adjacent landowner tiled/draind the half section of land in late fall 2023,

despite the landowner's denial. He installed a tile draining on less than 80 acres. However, he had drained the entire 320 acres including a large wetland by digging ditches to the drain tile. Essentially, he had drained the half section using the 80-acre tile rule. I thought that when my landlord told him she did not want any more water drained onto her land, that would have been the end of it. Imagine my surprise when I went to seed it in the spring of 2024. This water was pumped through a culvert that I have never seen water run through before. In fact, he had to build a pool to pump into so the water would reach a level high enough level to run through the culvert. Even worse, he trespassed on my landlord's land to remove the ditch shoulder so the water would run on her land. This tile pump started in February and continued to pump water until October. This tile project prevented 34 acres of land from being planted. There was so much water pumped onto the downstream land that it effected multiple land owners. The Maple River Water Resource District allowed it because the tile was legal by state law. Again, I do not think this was within the intent of the law. The actions of the person draining the water say I will do what I want to and the heck with anyone else.

These two tiling projects give a good example of what downstream landowners are up against. This bill provides some much-needed help for the person having all the water dumped on them. For the first problem I discussed, I have hired an engineer to evaluate the tile project. He has completed his work and I have turned that information over to an attorney. This has been an expensive undertaking and it is not yet finished. Losing valuable crop acres also adds to my costs. Something needs to be done to restore my property rights and prevent damage to my land. Tiling under the current law creates a zero-sum-game, where the tile project may make money but the downstream landowner probably loses as much or more money. Please give the downstream landowners back their property rights and ability to protect their land by voting for SB2283. Thank you.

Contact Information:

Randy Coon

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Buffalo, ND 58011

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Email: rcoon0267@msn.com

# 2025 SENATE STANDING COMMITTEE MINUTES

## Agriculture and Veterans Affairs Committee

Fort Union Room, State Capitol

SB 2283  
1/30/2025

A bill relating to smaller subsurface water management systems; and to provide a penalty.

3:28 p.m. Chairman Luick opened the hearing.

Members present: Chairman Luick, Vice-Chair Myrdal, Senator Marcellais, Senator Weston, Senator Weber, Senator Lemm

### Discussion Topics:

- Over surface run-off and over land flooding
- Drain tiling purpose and education
- Local waterboard responsibility and compliance
- Communication and waterboard notification

3:38 p.m. Senator Myrdal moved a Do Not Pass.

3:38 p.m. Senator Weber seconded the motion.

| Senators                   | Vote |
|----------------------------|------|
| Senator Larry Luick        | Y    |
| Senator Janne Myrdal       | Y    |
| Senator Randy D. Lemm      | Y    |
| Senator Richard Marcellais | N    |
| Senator Mark F. Weber      | Y    |
| Senator Kent Weston        | Y    |

Motion passed 5-1-0.

Senator Luick will carry the bill.

3:40 p.m. Chairman Luick adjourned the meeting.

*Audrey Oswald, Committee Clerk*

**REPORT OF STANDING COMMITTEE**  
**SB 2283 ([25.0899.01000](#))**

**Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman)** recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2283 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.