



WATER DRAINAGE COMMITTEE

Tuesday, August 23, 2022
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Larry Luick, Chairman, called the meeting to order at 10:02 a.m.

Members present: Senators Larry Luick, Kathy Hogan, Ronald Sorvaag; Representatives David Monson, Marvin E. Nelson; Citizen Members Jeff Frith, Clif Issendorf*, Sharon Lipsh, Randy Melvin

Members absent: Representative Dennis Johnson; Citizen Member Richard Johnson

Others present: Senator Donald Schaible, Mott, and Representative Jim Schmidt, Huff, members of the Legislative Management

Emily Thompson, Legislative Council, Bismarck

See [Appendix A](#) for additional persons present.

**Attended remotely*

It was moved by Senator Sorvaag, seconded by Ms. Lipsh, and carried on a voice vote that the minutes of the August 23, 2022, meeting be approved as distributed.

Ms. Emily Thompson, Legal Division Director, Legislative Council, provided information on the use of remaining bond funds. She noted excess funds in North Dakota Century Code Chapter 61-16.1 regarding water resource districts must be transferred to the project's sinking fund. In other chapters of the Century Code, specifically Chapter 61-35 pertaining to water districts and Chapter 40-24 pertaining to municipal governments, remaining funds must be transferred to the general fund.

Mr. Austin Gunderson, Counsel, Legislative Council, presented a bill draft [\[23.0024.03000\]](#) regarding a unified assessment process for water projects and corresponding memorandum entitled [Explanation of Bill Draft 23.0024.03000 Relating to Assessment Project Procedures](#). He noted the bill draft unifies Chapters 61-21 and 61-16.1 and incorporates comments committee members provided on bill draft [\[23.0024.02000\]](#) during the April 11, 2022, meeting.

Dr. Duane Pool, Natural Resource Economist, Department of Water Resources, presented testimony ([Appendix B](#)) demonstrating the use and application of the department's economic analysis tool for calculating benefits for assessment projects.

In response to questions from committee members, Dr. Pool noted:

- Indirect benefits include the benefits derived from the drainage of public infrastructure within a drainage district;
- The economic analysis tool is applied for guidance and is not a definitive calculation for determining benefit analysis;
- Factors not included in the economic analysis tool can be incorporated as guidance values such as property values or tiling projects; and
- An economic analysis using the tool takes approximately 10 hours to complete.

Mr. Aaron Carranza, Regulatory Division Director, Department of Water Resources, presented testimony ([Appendix C](#)) regarding the history of hydrological unit codes; the use of hydrological unit codes in watershed analysis, drainage permitting, assessment drain appeals, and stream crossing analysis; and opportunities for enhancement.

In response to questions from committee members, Mr. Carranza noted:

- The department has generated a pilot project in the Turtle River Subbasin which utilizes quality level two light detection and ranging for enhanced geological mapping.
- The department hopes to begin the project in October.

Representative Schmidt noted water conveyance should be based on hydrological unit code basins as opposed to the current system of managing water based on political boundaries.

Chairman Luick distributed the policies ([Appendix D](#)) and bylaws ([Appendix E](#)) of Minnesota's Bois de Sioux Watershed, which has boundaries defined by hydrological unit codes.

Mr. Carranza provided testimony ([Appendix F](#)) from the Department of Water Resources regarding comments and proposed changes to the bill draft [[23.0024.03000](#)].

Ms. Lipsh provided comments on the bill draft [[23.0024.03000](#)] regarding the authority and jurisdiction over culverts along county roads.

Mr. Gunderson presented a bill draft [[23.0025.03000](#)] regarding the use of cost-benefit analysis for water projects and a corresponding memorandum entitled [Explanation of Bill Draft 23.0025.03000 Relating to Calculating Costs and Benefits for Assessment Projects](#). He noted the bill draft:

- Creates a new section in Chapter 61-16.1 regarding economic analysis for projects costing \$1 million or more.
- Requires a list outlining benefits, in dollars, for lands subject to assessments.

Ms. Thompson reviewed present conflicts between bill drafts [[23.0024.03000](#)] and [[23.0025.03000](#)], and how those conflicts would be reconciled if both bills were to pass during the legislative session.

Mr. Rodger Olson, Chairman of Maple River Water Resource District, member of the Cass County Joint Board, Red River Retention Authority, Red River Joint Board, and Diversion Authority, provided testimony ([Appendix G](#)) regarding the proposed bill draft [[23.0025.03000](#)] and his concerns with using the economic analysis tool for cost-benefit analysis. He noted the economic analysis tool does not evaluate all the benefits when assessing affected lands.

In response to questions from the committee, Mr. Olson noted he is in support of the bill draft [[23.0024.03000](#)] relating to a unified assessment process for water projects.

Mr. Leon Mallberg provided testimony on Drain 11 situated in Sargent and Ransom Counties. He noted:

- There is an ongoing conflict between the two counties regarding the watershed.
- He has concerns with the term "maintenance" and how water resource boards are using funds collected for maintenance to fund additional drainage projects.

Mr. Bryan Murphy, President, H2Over Viewers, provided information on the process he uses to conduct an economic analysis within a water drainage assessment district. He noted:

- Several factors are considered when conducting an economic analysis, including land values, drainage values, topography, and crop productivity indexes.
- His company generates a watershed map that is combined with in-person evaluations to develop land assessments within an assessment district.

In response to questions from committee members, Mr. Murphy noted:

- Noncontributing properties are isolated and removed from the evaluation.
- Federal lands are prohibited from benefits in Minnesota.

Mr. Gunderson presented a bill draft [[23.0145.01000](#)] combining bill drafts [[23.0024.03000](#)] and [[23.0025.03000](#)] into one uniform bill and a corresponding memorandum entitled [Explanation of Bill Draft 23.0145.01000 Relating to Assessment Project Procedures and Calculating Costs and Benefits for Assessment Projects](#). He noted the bill draft provides one uniform authority for cost-benefit analysis by adopting language in Section 61-16.1-21 regarding calculation of assessments and amending to include the requirements for cost-benefit analysis, in dollars, and the use of the department's economic analysis for projects costing \$1 million or more. Bill draft [[23.0145.01000](#)] resolves conflicts between bill drafts [[23.0024.03000](#)] and [[23.0025.03000](#)] in favor of bill draft [[23.0024.03000](#)].

Some committee members noted a preference for bill draft [23.0145.01000], which merges the two bill drafts, because all conflicts and issues are addressed in one bill. Other committee members expressed a desire for the two bill drafts to stand on their own and be heard separately, especially in light of the fact the majority of the opposition to the bill drafts seems to surround the use of the Department of Water Resources economic analysis tool.

It was moved by Senator Sorvaag, seconded by Representative Monson, and carried on a roll call vote that the bill draft [23.0024.03000] relating to a uniform assessment procedure for all water projects be approved and recommended to the Legislative Management. Senators Luick, Hogan, and Sorvaag; Representatives Monson and Nelson; and Citizen Members Frith, Lipsh, and Melvin voted "aye." No negative votes were cast.

It was moved by Representative Nelson, seconded by Senator Hogan, and failed on a roll call vote that the bill draft [23.0145.01000] merging to concepts in bill drafts [23.0024.03000] and [23.0025.03000] be approved and recommended to the Legislative Management. Senator Hogan, Representative Nelson, and Citizen Member Lipsh voted "aye." Senators Luick and Sorvaag, Representative Monson, and Citizen Members Melvin and Frith voted "nay."

It was moved by Senator Sorvaag, seconded by Ms. Lipsh, and carried on a roll call vote that the bill draft [23.0025.03000] relating to cost-benefit analysis for assessment projects be approved and recommended to the Legislative Management. Senators Luick, Hogan, and Sorvaag; Representatives Monson and Nelson; and Citizen Members Frith, Lipsh, and Melvin voted "aye." No negatives votes were cast.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

It was moved by Senator Hogan, seconded by Senator Sorvaag, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill drafts recommended by the committee and to present the report and the recommended bill drafts to the Legislative Management.

It was moved by Senator Sorvaag, seconded by Representative Monson, and carried on a voice vote that the committee be adjourned sine die.

No further business appearing, Chairman Luick adjourned the committee sine die at 2:45 p.m.

Austin Gunderson
Counsel

ATTACH:7