

2023 HOUSE ENERGY AND NATURAL RESOURCES

HB 1391

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1391
2/2/2023

Relating to the publication and distribution of water resource board meeting minutes and maintenance of an assessment drain

2:44 PM Chairman Porter opened the hearing.

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Olson, Roers Jones, and Ruby.
Absent: Rep Kasper.

Discussion Topics:

- Watershed
- Time limit for published Minutes
- 6 year max levy
- Administrative costs
- Drains affected
- FEMA

In Favor:

Rep Mike Schatz, District 29, SW corner of ND, introduced HB 1391, oral testimony
Leo Mallberg, Dickinson, family farm in Sargent County ND. Testimony 19109
Bob Banderet, Cogswell, Sargent County, ND, Testimony 18375

Opposition:

Doug Zink, farmer and member of Foster County Water Board, oral testimony
Larry Skiftun, Testimony 17862
Dan Wogsland, ND Grain Growers Association, Testimony 18819
Justin Johnson, Richland County Water Resource District, oral testimony

Additional written testimony:

Philip Murphy, Testimony 18184
Paul Mathews, Testimony 18363
Cliff Issendorf, Testimony 18588
Jason Siegert, Testimony 18629

3:11 PM Chairman Porter closed the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1391
2/10/2023

Relating to the publication and distribution of water resource board meeting minutes and maintenance of an assessment drain

10:27 AM Chairman Porter opened the meeting.

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

Discussion Topics:

- Proposed amendments.

Chairman Porter: Proposed amendment from Mr. Dwyer, Water Resource District Association, proposed amendment remove section 2 of the bill and amend section 1 to read: the minutes of the meeting must be provided to the official newspaper of the county for publication or posted to the water resource board's website within ten days.

Rep Dockter, moved to adopt amendment.

Rep Anderson Seconded. (#20584) LC [#23.0779.01001]

Voice Vote: Motion carried.

Rep. Conmy, Move for a Do Pass as amended.

Rep. Novak seconded.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	Y
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y

Representative Matthew Ruby	AB
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Motion Carries 13-0-1

Bill Carrier: Rep Bosch

10:30 AM Chairman Porter closed the meeting.

Kathleen Davis, Committee Clerk

February 10, 2023

LA
2/10/23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1391

Page 1, line 1, replace "sections" with "section"

Page 1, line 1, remove "and 61-16.1-45"

Page 1, line 3, remove "and maintenance of an assessment drain"

Page 1, line 10, remove "The minutes of the meeting must be published and distributed within"

Page 1, line 11, replace "seventy-two hours after any meeting date" with "The minutes of the meeting must be provided to the official newspaper of the county for publication or posted to the water resource board's website within ten days"

Page 1, remove lines 16 through 23

Page 2, remove lines 1 through 26

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1391: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1391 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections" with "section"

Page 1, line 1, remove "and 61-16.1-45"

Page 1, line 3, remove "and maintenance of an assessment drain"

Page 1, line 10, remove "The minutes of the meeting must be published and distributed within"

Page 1, line 11, replace "seventy-two hours after any meeting date" with "The minutes of the meeting must be provided to the official newspaper of the county for publication or posted to the water resource board's website within ten days"

Page 1, remove lines 16 through 23

Page 2, remove lines 1 through 26

Renumber accordingly

2023 SENATE AGRICULTURE AND VETERANS AFFAIRS

HB 1391

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1391
3/10/2023

A bill relating to the publication and distribution of water resource board meeting minutes.

8:30 AM Chairman Luick opened the meeting. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Water Board meeting publication
- Maintenance of drainage projects
- Drain #11 Improvement project

8:33 AM Representative Mike Schatz, District 39, introduced HB 1391 and gave testimony on behalf of Leon L. Mallberg, Landowner, Drain #11 Watershed, Dickinson, ND. # 23412, #23601, #23602

8:45 AM Senator Luick closed the hearing on HB 1391.

8:46 AM Chairman provided information on HB 1391.

Senator Hogan discussed the timeline.

8:51 AM Dani Quissell, ND Water Resource Districts Association, clarified information for the committee. No written testimony.

Additional Testimony: #23366, #27069

5:54 AM Chairman Luick closed the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1391
3/10/2023

A bill relating to the publication and distribution of water resource board meeting minutes.

10:12 AM Chairman Luick called the Committee work meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Klein, Senator Boehm.

Discussion Topics:

- Open Meeting & records
- Meeting time regulations
- Posting time frames

10:12 AM Committee discussion on HB 1391.

10:20 AM Chairman Luick adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1391
3/17/2023

A bill relating to the publication and distribution of water resource board meeting minutes.

10:04 AM Chairman Luick opened the Committee Work meeting. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Code guidelines
- Timelines
- Committee action

10:04 AM Senator Myrdal moved to amend HB 1391.

10:04 AM Senator Lemm seconded the motion to amend HB 1391.

10:11 AM Senator Myrdal withdrew her motion to amend HB 1391.

10:11 AM Senator Lemm withdrew his second to amend HB 1391.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0 TO WITHDRAW THE MOTION TO AMEND HB 1391

10:12 AM Chairman Luick closed the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1391
3/30/2023

A bill relating to the publication and distribution of water resource board meeting minutes.

9:58 AM Chairman Luick called the meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Amendments to HB 1391

9:58 AM Senator Myrdal asked about the clarification of the amendments to HB 1391.

9:58 AM Committee discussion.

10:06 AM Chairman Luick closed the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1391
3/30/2023

A bill relating to the publication and distribution of water resource board meeting minutes.

10:39 AM Chairman Luick called the meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Amendment

10:40 AM Senator Myrdal provided information. No written testimony.

10:43 AM Chairman Luick adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1391
3/31/2023

A bill relating to the publication and distribution of water resource board meeting minutes.

9:15 AM Chairman Luick called the meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Committee action

9:15 AM Senator Weston moved to adopt an amendment to HB 1391. Seconded by Senator Myrdal. LC 23.0779.02001

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0 Motion passed.

9:16 AM Senator Weston moved to DO PASS HB 1391 AS AMENDED. Seconded by Senator Myrdal.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0 Motion passed.

Senator Weber will carry the bill.

9:17 AM Chairman Luick adjourned.

Committee reconsidered HB 1391 on 4-6-23 at 9:15 AM

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1391
4/6/2023

A bill relating to the publication and distribution of water resource board meeting minutes.

9:15 AM Chairman Luick called the meeting to order. Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Committee action

9:15 AM Senator Myrdal moved to Reconsider HB 1391.

9:15 AM Senator Lemm seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0-DO PASS TO RECONSIDER HB 1391.

9:16 AM Senator Myrdal moved to adopt an amendment LC 23.0779.02002. #27398

9:16 AM Senator Lemm seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0 Motion TO ADOPT AN AMENDMENT TO HB 1391.

9:17 AM Senator Myrdal moved to DO PASS AS AMENDED HB 1391.

9:17 AM Senator Lemm seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Vote: 6-0-0- DO PASS HB 1391 AS AMENDED.

Senator Weber will carry the bill.

9:17 AM Chairman Luick adjourned.

Brenda Cook, Committee Clerk

23.0779.02002
Title.03000

Adopted by the Senate Agriculture and
Veterans Affairs Committee
April 5, 2023

AG
4-6-23
(1-1)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1391

Page 1, line 9, after "The" insert "unofficial"

Page 1, line 10, replace "or" with "and, if applicable."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1391, as engrossed: Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1391 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 9, after "The" insert "unofficial"

Page 1, line 10, replace "or" with "and"

Renumber accordingly

2023 CONFERENCE COMMITTEE

HB 1391

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1391
4/17/2023

Conference Committee

Relating to the publication and distribution of water resource board meeting minutes and maintenance of an assessment drain

4:33 PM Chairman Hagert opening the meeting.

Members present: Chairman Hagert, Rep Conmy, Rep Olson, Chairman Luick, Sen Hogan and Sen Weston.

Discussion Topics:

- Publication of minutes
- Publication deadline

Sen Luick moved the Senate recede from Senate amendments and further amend 23.0779.02002, seconded by Rep Olson.

Motion carried. 6-0-0

Chairman Hagert is the House carrier. Chairman Luick is the Senate carrier.

4:41 PM meeting adjourned.

Kathleen Davis, Committee Clerk

April 17, 2023

AG
4-17-23
(1-1)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1391

That the Senate recede from its amendments as printed on page 1796 of the House Journal and pages 1477 and 1478 of the Senate Journal and that Engrossed House Bill No. 1391 be amended as follows:

Page 1, line 9, after "The" insert "unofficial"

Page 1, line 10, after "or" insert ", if applicable,"

Page 1, line 10, after "website" insert "or the official county website"

Renumber accordingly

**2023 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION HB 1391as (re) engrossed

House Energy and Natural Resources Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged, and a new committee be appointed

Motion Made by: Sen Luick Seconded by: Rep Olson

Representatives	4/17/23			Yes	No	Senators	4/17/23			Yes	No
Chairman Hagert	✓			✓		Chairman Luick	✓			✓	
Rep Conmy	✓			✓		Sen Hogan	✓			✓	
Rep Olson	✓			✓		Sen Weston	✓			✓	
Total Rep. Vote				3		Total Senate Vote				3	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Hagert Senate Carrier Luick

LC Number 23.0779 .02004 of amendment

LC Number 23.0779 . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment:

That the Senate recede from its amendments as printed on page 1796 of the House Hournal and Pages 1477 and 147ui of the Senate Journal and that Engrossed HB 1392 be amended as follows:

- Page 1, Line 9, after “The” insert “unofficial”
 - Page 1, Line 10, after “or” insert “, if applicable,”
 - Page 1, Line 10, after “website” insert “or the official county website”
- Renumber accordingly

Insert LC: 23.0779.02004
House Carrier: Hagert
Senate Carrier: Luick

REPORT OF CONFERENCE COMMITTEE

HB 1391, as engrossed: Your conference committee (Sens. Luick, Hogan, Weston and Reps. Hagert, Conmy, J. Olson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1796, adopt amendments as follows, and place HB 1391 on the Seventh order:

That the Senate recede from its amendments as printed on page 1796 of the House Journal and pages 1477 and 1478 of the Senate Journal and that Engrossed House Bill No. 1391 be amended as follows:

Page 1, line 9, after "The" insert "unofficial"

Page 1, line 10, after "or" insert ", if applicable."

Page 1, line 10, after "website" insert "or the official county website"

Renumber accordingly

Engrossed HB 1391 was placed on the Seventh order of business on the calendar.

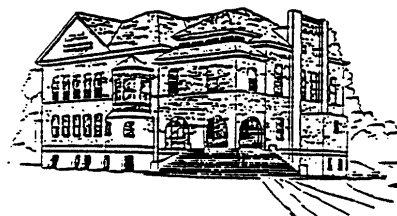
TESTIMONY

HB 1391

Wells County Water Resource District

Tammy Roehrich, Secretary
700 Railway St N #244
Fessenden, ND 58438
Phone: 547-2537
Cell:341-1359
Fax: 701-547-3188
troehric@nd.gov

WELLS COUNTY COURTHOUSE



Chairman Porter & House Energy & Natural Resources Committee Members:

Thank you for the opportunity to testify on House Bill 1391.

My name is Larry Skiftun. I am a lifelong farmer in Wells County, a landowner, and also the current Chairman of the Wells County Water Resource District Board of Managers.

I submit this written testimony in opposition to House Bill 1391. I am not opposed to conducting a landowner vote when the cost of the cleaning out and repairing an assessment drain project justifies the administrative cost of conducting a landowner vote. House Bill 1391 creates a situation where the water resource board may need to incur administrative costs of conducting a landowner vote even when only a small tax assessment, or even no local tax assessment at all, is being levied.

I encourage a “Do Not Pass” recommendation on House Bill 1391. I request the opportunity to testify in person before the committee and will stand for any questions. Thank you for your consideration of my testimony.

Sincerely,

Larry Skiftun, Board of Managers Chair
Wells County Water Resource District

Testimony opposed to 1391

Chairman Porter and Committee, my name is Phil Murphy representing the ND Soybean Growers Association. The NDSGA supports Water Resource Districts, the local entities made up almost exclusively of farmers across our state. We also attend most state-level water meetings to stay up to date with current practice. Especially in the eastern portion of our state but certainly relevant to every county, drainage is critical. In the bottom of the bathtub that is ancient Lake Agassiz, aka the Red River Valley, if you can't drain, you can't farm.

Because water issues often have some dissatisfaction that comes along with every project, the WRDs have developed what I call a dispute resolution protocol when they set up a plan for a drainage project. Those farmers/landowners impacted by a project vote to assess themselves or not, depending of the merits of the project in their view. This is a democratic process which is, after all, famously the way of our country. Some refuse to accept the verdict and raise a stink. This bill appears to be anti WRD with its 72 hour posting of minutes and unreasonable in its maintenance strictures. If I cannot be there for the hearing, I wanted to send in this testimony. Thank you for your consideration.

January 31, 2023

Representative Todd Porter, Chairman
And Members of House Energy and Natural Resources

RE: HB # 1391

Today I will offer my support of this proposed amendment to our State’s Century Code as landowner **property rights** are being marginalized without it.

I will confine my testimony to the amending language of:

“The cost of cleaning and repairing a drain must include the engineer's probable cost or contracted costs, without consideration of any cost-share opportunities, and may not be reduced by general funds, account funds, or any other available funds.”

One may wonder why a definition like this is required. I have witnessed first-hand how as apparently in absence of a clear definition; some water board consultants have defined their own interpretation.

I am a landowner in Sargent County’s Drain #11 District which in 2016 eventually alerted to an impending project. Being advised by State Water Commission’s office that “cost share had been approved”, the SWC answered my question if a landowner vote would occur on a significant project, the SWC suggested I attend a water board meeting to ask them directly. This occurred only a few days before existing law’s 30-day appeal period would pass – a law no landowner was aware of. As Board minutes of that meeting reveal, it seems the water board knew our ability to appeal was waning towards expiration.

*“A request was made to conduct a vote of the assessment district members, but the board explained the vote process would take five months and is very costly to conduct. More importantly, under North Dakota law, a vote of the assessment district is not required as long as the project will not exceed the maximum maintenance levy the Board may assess per acre against the properties within the Drain 11 assessment district in any six-year period. In other words, a vote of the assessment district is only required if the cost will exceed the maximum \$4 per acre annual maintenance levy levied over a six-year period. ... **noted nobody timely appealed.**”*

It was only weeks later we understood that ND Century Code included a statute which requires landowner vote to ratify projects that exceed 6 years of maximum levies (\$4.00 /ac.) One might expect common sense would alone signal to board members to hold public meetings to inform the landowners who will be obligated to pay for projects, regardless of the statute. This did not occur before the Resolution and District Court Judge’s decision labeled their actions as “morally deficient” but dismissed our group’s attempt for justice because we missed the 30-day appeal period.

As we demanded an answer why this law wasn’t complied to, we then learned of their mathematics used utilized to justify. The following has been repeated several times including answering to State Water Commission’s questioning if compliance occurred:

The Project cost estimate as of October of 2016, and the District’s funding and financing plan, were as follows:

- Total project cost: \$3.9M
- State Water Commission Cost-Share: \$1.4M
- Sargent County Commission Cost-Share: \$200K
- Local Share total: \$2.28M paid as follows:
 - Six-year Bond Amount Max: \$1.7M (approx. \$283K maximum levy over six years)
 - Remainder of local share: Funds on hand

Today I suggest readers here utilize their 4-grade math and consider if this explanation matches Legislative intent for the codified Landowner Protection from excessive special assessment levies in existence since at least 1955.

Focus on two specific facts: Cost of project = \$3,900,000 and 6 years of levies = \$1,700,000. Does it pass the 4-grade test?

Does the cost of this project exceed Legislative intent? Sargent County Water Board and their advisors, and in a vacuum of a better definition, they have proceeded forward with absolute conviction on the Drain #11 project and other drain projects with same belief. Using the example above, the “Remainder of local share -Funds on hand \$580K” equates to another 2 years of maximum levies expended on a project – **without a vote**. In conjunction with another Century Code limitation limiting only 6 years of maximum levies can be accumulated in maintenance funds, this opens the door to essentially 12 years of maximum levies – **without a vote**.

Just recently, in Sargent County Drain #12’s project, advisors explained that they could “borrow from their general funds” to achieve their purpose – **without a vote**. Think about that position, by “borrowing” from general funds can result in a project unlimited in size and obligating landowners well past 6 or 12 years – **without a vote**. A pattern is developing in Sargent County upon consultants’ advice.

I sense you will hear water boards’ disenchantment with the proposed amendment that “good projects will be stymied” because of limiting unvoted projects to 6 years of maximum levies.

BUT REMEMBER, IF THE PROJECT IS PERCIEVED AS “GOOD”, THEN ALL THAT IS NECESSARY IS A LANDOWNER VOTE!

How burdensome is it to have landowners vote on projects they essentially are paying for via special assessments? Or is the issue here water board members don’t want to take time to be transparent and let landowners bear the responsibility of deciding the outcome of substantial projects they obligate themselves to?

Today that is a question for the Legislature is whether a clear definition is needed on how to compute this landowner protection is read and applied. Further, shall cost of projects be reduced by other factors such as possible cost share and/or available funds?

Our Century Code currently has numerous mill levy limitations that County Commissioners must adhere and some have been put to a county-wide vote for an excess levy. I would sense past Legislatures saw the wisdom for appointed water boards too (that seemingly are not supervised by County Commissioners nor do landowners have opportunity to vote on water board members who have this power of near unlimited levies.)

From my county water board experiences, it would appear the “guardrails” need a clear definition of what Legislature believes is the “cost of a project”. Removing all these other undefined items (only manufactured and produced in the minds of aggressive consultants) of subtraction can dispel all doubt for a clear meaning. If the Legislature conclude the result is too limiting, then consider if 6 years or \$4.00 /acreⁱ is too constraining. I don’t believe ND is ready for this “free for all” letting these undefined subtractions be acceptable to avoid landowner votes. We must have faith in our citizens with their votes. We are a democracy yet.

Currently, existing Century Code leaves **property rights** under threat and I would encourage Legislators amend to protect property rights.

Paul Mathews, landowner

Cogswell ND 701-724-6470

farmerpost@hotmail.com (preferred contact)

ⁱⁱ For historical perspective, the ND Century Code in 1955 had limited maximum levy to \$.50/ac and one year. Therefore, a 48x fold increase from 1955 already exists on these century old drains with prior legislative amendments from 1955 to present.

Representative Todd Porter
and members of the House Energy and Natural Resources Committee

RE HB 1391

Thank you, Mr. Chairman and members of the committee, for giving me the opportunity today to speak in support of HB 1391. I will limit my testimony to the Section 2 amendment of this bill, specifically paragraphs 2 & 3 of 61-16.1-45 on page 2.

In 2016 the Sargent County WRB passed a Resolution of Necessity for an improvement project on Drain 11. It was proposed to be a \$3.9 million project funded as follows:

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The District plans to fund and finance the Project as follows:

- 1. Total project cost: \$3.9M***
- 2. State Water Commission Cost-Share: \$1.4M***
- 3. Sargent County Commission Crossing Cost-Share (for drain/road crossing improvements): \$200K***
- 4. Local Share total: \$2.28M paid as follows:***
 - a. Six-Year Bond Amount Max: \$1.7M (approximately \$283K max levy over six years)***
 - b. Remainder of local share: Funds on hand***

Let's go back to paragraph 3 of the proposed amendment. "If the cost of, or obligation for, cleaning and repairing of any drain exceeds the total amount that may be levied by the board in any six year period, the board shall obtain the approval of the majority of the landowners before obligating the district for the costs." Nothing is said there about reducing the local share cost of the project by funds on hand. The Sargent County WRB is deliberately ignoring the "cost" aspect of paragraph 3 and instead, focuses on a whacky "obligation" definition. Obligation to them is only the \$1.7 million bond and interest on the bond is in addition to the \$1.7 million! The \$1.3 million that had already been spent on engineering and ROW acquisition before the purchase of the bond and the bond

interest, mysteriously don't count as obligation to the Drain 11 landowners. Believe me I know it was an obligation as I helped pay for it!

Paragraphs 2 & 3 of current legislation, in my mind, speak to Legislative intent of landowner protection. The WRB can accumulate a fund equal to six years of maximum levy but if the costs exceed the six-year maximum, landowners should have a say in how their money is spent. That six-year maximum levy is the tipping point for landowner protection. But in Sargent County, in 2021 landowners in Drain 11 paid the sixth year of maximum levy to build up a reserve fund to help pay for the Drain 11 improvement project. Now six more years of maximum levy are required to finance the \$1.7 million dollar construction bond. That is at least 12 years at maximum levy and likely will go beyond 12 years. Yet that is being ignored by my WB solely for the purpose of constructing a \$4 million project without a landowner vote.

The question for this committee is, "Do you feel the legislative intent of current legislation is being followed?" If not, the addition of that extra sentence of proposed legislation to paragraph 3 will end the misinterpretation that is taking place and landowners will be guaranteed a vote. Please consider giving this bill a "Do Pass" recommendation.

February 1, 2023

House Energy & Natural Resources Committee
c/o Representative Todd Porter, Chair
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: House Bill 1391 – Opposition

Dear Chairman Porter and Members of the House Energy & Natural Resources Committee:

Thank you for the opportunity to submit this testimony in opposition to House Bill 1391.

My name is Clifford Issendorf. I am a lifelong farmer in Bottineau County, a landowner, and currently the Bottineau County Water Resource Board Chair. I have served on the Bottineau County Water Resource District Board for over 40 years.

The Bottineau County Water Resource Board supports transparency and affected-party participation on all assessment matters. The Board supports notifying landowners of proposed projects and providing landowners an opportunity to be heard. The Board also supports the regular inspection, maintenance, and repair of assessment drains in order to protect the value of property taxed for establishment of the project.

The Board is not unsympathetic to individual cases that House Bill 1391 seeks to address. We believe there is a threshold at which the time, cost, and delay of conducting a landowner vote is well-justified. House Bill 1391 does not accomplish a balanced approach to setting that threshold. House Bill 1391 creates a situation where even though funds other than the special assessment tax could be available to cover all costs to maintain important drainage infrastructure, a vote of the landowners is still required.

I submit this written testimony to make record that the Bottineau County Water Resource Board is opposed to House Bill 1391 in its current form. We urge the Committee to vote “Do Not Pass” on this bill.

Sincerely,

Clifford Issendorf
Board of Managers Chair,
Bottineau County Water Resource District

Testimony by Jason Siegert
Chairman - Traill County Water Resource District
Before the House Energy and Natural Resources Committee
In Opposition to HB 1391
North Dakota Legislature
68th Legislative Assembly

Chairman Porter, Vice-Chair Anderson, and members of the Committee, I appreciate the opportunity to testify before you today in opposition to HB 1391. My name is Jason Siegert, and I am the Chairman of the Traill County Water Resource District. Our water resource district (“WRD”) Board operates and manages 52 legal assessment projects in Traill County, the majority of which are legal drains. This bill seeks to significantly modify how water resource districts operate in two ways.

72-Hour Minute Preparation and “Publication” Rule

Section 1 of the bill would mandate an unreasonable 72-hour rule for preparation and “publication” of meeting minutes. That requirement would only apply to water boards and not to any other public entities, and would create an unreasonable burden for our Board’s Secretary-Treasurer. Our Board manages a lot of important public facilities; our Secretary spends a good portion of her days managing our business, managing tax dollars, and interacting with the public; and she always responds to record requests in a reasonable time. This 72-hour requirement would be unfair and would create an arbitrary and burdensome deadline for our Secretary, who does great work and we do not want to lose her. I want to spend the majority of my time explaining the detrimental impacts Section 2 of this bill would have, but I did want to comment on how unfair and unreasonable this 72-hour rule would be.

Votes for Existing Projects

Section 2 of this bill would basically require WRDs to conduct a full assessment district vote of all landowners within the drain assessment district, to see if they want us to maintain, repair, or reconstruct an *existing* legal drain. Farmers rely on legal drains to provide drainage and flood relief. They pay their annual levies so WRDs can maintain and operate the drains; they do *not* want us to have to go through a lengthy and expensive assessment district vote every time we have to do any significant work on a drain. HB 1391 would basically be similar to requiring NDDOT to conduct a lengthy and expensive vote of all taxpayers in North Dakota to ask if they want NDDOT to replace a bridge that collapsed. In our mind, that makes no logical sense; requiring WRDs to go through a lengthy and expensive vote of landowners to see if they want their *existing* legal drain to function properly is the exact same thing.

Section 2 of HB 1391 would amend Section 61-16.1-45 of the Century Code, the statute that governs assessment district annual levies. WRDs levy these annual levies to generate dollars to maintain, operate, and improve our assessment facilities (including legal drains, dams, and other water facilities). Under Section 61-16.1-45, the maximum annual levy is \$4 per acre for ag acres, and we cannot collect any more than six years' worth of annual levies, and we cannot use those dollars for any other project or any other purpose.

Under current law, if one of our existing legal drains requires repairs, reconstruction, or improvements, as long as we do not "obligate" that drain's assessment district for more than the equivalent of six years of maximum levies, we move ahead with the project. We do what we need to do to ensure the drain functions properly, and to ensure the drain provides the drainage

the landowners expect and rely on for their farms and ranches. No lengthy or expensive vote, no new assessments. We get the job done, and landowners just pay their same annual levies.

Alternatively, HB 1391 would require WRDs to conduct assessment votes for most WRD projects to repair/reconstruct/improve existing legal drains. That might sound fair and might seem reasonable at first glance, but you have to understand the mechanics of how legal drains function and how the existing annual levies work to really grasp the impact this proposal would have.

Consider this example:

- Our WRD owns Drain A, a legal assessment drain constructed in 1960.
- Drain A is a five-mile legal drain that provides important drainage and flood relief for farmers in the surrounding watershed.
- The WRD issued bonds in 1960 to construct Drain A and assessed the landowners who benefit for the costs of construction.
- The Board retired the bonds in 1975, and the landowners similarly have not paid assessments for the costs of constructing the drain since 1975.
- The landowners in the Drain A watershed and assessment district simply pay their annual levies (up to \$4 per acre, per year).
- Let's say under this scenario that a maximum annual levy on Drain A brings in \$100K.
 - Under Section 61-16.1-45, the Board can only have up to \$600K in the Drain A fund (six-year maximum).
- The spring thaw results in culvert damages, channel erosion, and slope failures.
- The repair project (channel repair, laying back side slopes, installing larger culverts to meet Stream Crossing Standards) will cost \$700K.
- The State Water Commission will provide \$300K in cost-share. The Drain A fund has \$300K. The WRD will have to borrow \$100K against the assessment district, under Section 61-16.1-45.
- **Under current law**, the project will only “obligate” the assessment district for one-year’s worth of levies (since the WRD only has to borrow \$100K).
- No vote is required, the WRD completes the project before fall, and the drain functions properly the next spring.
- **Under HB 1391**, even though the project will only “obligate” the assessment district for one-year’s worth of levies, because the ***total*** project cost is more than six-years’ worth of levies (more than \$600K), the project requires a vote.

- A vote takes approximately six months and costs between \$25K and \$30K.
- Due to the time it takes to conduct the vote, the WRD cannot even bid the project until the following year. The drain does not function properly in the spring of '24 and landowners lose hundreds of acres due to inundation.

Example #2:

- Same facts as above, except FEMA (miraculously) agrees to provide 100% grant funding for the project, the full \$700K.
- Under HB 1391, even though the project will not cost the drain fund a single cent, because the *total* project cost is more than six-years' worth of levies (more than \$600K), the project requires a vote.
- Because of 1391, the WRD would have to conduct a lengthy and expensive vote, even though the project will not cost landowners a single penny, and landowners would lose hundreds of acres as they wait for the project.

Do Not Pass on HB 1391

Mr. Chairman and Committee members, the end result of this bill will be wasted tax dollars and lost (inundated) acreage. Farmers need these drains to function; this bill would be an impediment to reasonable water management and to sensible agriculture.

The Traill County Water Resource District strongly opposes HB 1391, and we respectfully urge a Do Not Pass.

Thank you for your consideration. I'd be happy to stand for any questions.



**North Dakota Grain Growers Association
Testimony in opposition to
HB 1391
House Energy and Natural Resources
Committee
February 2, 2023**

Chairman Porter, members of the House Energy and Natural Resources Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association (NDGGA). NDGGA, through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council, engages in domestic policy issues on the state and federal level on behalf of North Dakota wheat and barley farmers. I am providing testimony for you today on behalf of NDGGA in opposition to HB 1391.

Chairman Porter, members of the House Energy and Natural Resources Committee, HB 1391 is well intentioned legislation which seeks more transparency in the water resource board operations. Unfortunately, it is NDGGA's opinion that the new requirements in Section 1 of the bill are simply unworkable. Mandating that water resource board meeting minutes must be published and distributed in a seventy-two-hour timeframe is unworkable, especially for rural water resource districts who may not have full-time employees to help to accomplish this task. Additionally, would this new language then mandate extra water resource board meetings to approve the minutes prior to publication? Where would the minutes be published, especially if the official newspaper of the county doesn't go to print at the same time the new deadline mandates? These are but a few of the unintended consequences of HB 1391 NDGGA sees as problematic in the legislation.

"You Raise; We Represent"

Phone: 701-282-9361 | Fax: 701-404-5187 | 1002 Main Ave W. #3 West Fargo, N.D. 58078

Similarly, why would the state mandate that alternate sources of revenue not be used or accounted for when informing the public regarding the cleaning and repairing of a drain as proposed in Section 2 of the bill? As a landowner I would hope the water resource board would look at every avenue possible to fund drain maintenance; it would only seem to be good business to inform the public regarding the costs as well as the funding sources needed to complete a drain maintenance project.

Therefore the North Dakota Grain Growers Association respectfully requests that the House Energy and Natural Resources Committee give HB 1391 a Do Not Pass recommendation and would hope the full House concur.

Testimony with regard to House Bill No. 1391

My name is Leon Mallberg and I am asking for a Do Pass on House Bill No. 1391. I live in Dickinson, North Dakota but I also manage the family farm in Sargent County, North Dakota. The property is located in what is known as the Drain # 11 Watershed, the largest watershed of its kind in North Dakota. I am not a paid lobbyist nor do I represent any special interest or industry group. I am a "run of the mill" citizen.

The Drain # 11 watershed has been highlighted for seven years. That would not be the case if House Bill No. 1391 had been in effect. Two items in the bill are presented for your consideration:

First, the bill states that the minutes of the Water Board meetings must be published and made available within seventy-two hours after the meeting date. This could be amended to state "three business days" which would alleviate the vocal concern that the minutes would be due on Sunday if the Water Board meeting was on Thursday.

On October 20, 2016, the Sargent County Water Board had their monthly meeting and passed a "Resolution of Necessity" with respect to Drain # 11. This action was not published in advance. It passed unanimously. The only people at the meeting were the board members, the board secretary and one land owner who had no interest or concern in Drain # 11. The statute states that if any affected landowner objects to the board action they must do it via the courts within thirty (30) days. Unchallenged it would eliminate any possible vote of approval by the affected landowners. No landowner was notified that there was a window of 30 days. On the 27th day of the 30 day window at 2:30 PM the minutes of the meeting that offered the "Resolution of Necessity" were made available. With the 30th day being a Saturday (November 19, 2016) it left 2 days to come to decision, find an attorney, prepare an objection and present it to the Clerk of Court. One would expect that a "**Public Board**" would notify affected parties that they were subject to a 30 window. After seven years and spending \$100,000.00 in legal fees trying and failing to get a landowner vote, we now have a \$4,100,000.00 4.5 mile ditch without a monetized benefit and no approval from the ones who pay. We are left with 40 miles of remaining ditch in Drain # 11 with no available maintenance money.

In the second suggested change, the bill states that if any project where the projected cost is more than six (6) times the annual maximum dollar assessment for the effected watershed, the project must go to a vote of the landowners of the watershed for approval. It is a simple step to protect and involve the landowners. Present practices by the water board have completely ignored or bent the intent of the law and prevented votes by the affected landowners. The item, as stated on the second page, is self explanatory without detail

Please reading the enclosed letter. You should have received a copy on or around December 26, 2022, via E-mail. It includes additional information.

Respectfully -- Leon L Mallberg

Dear North Dakota Legislator:

December 26, 2022

Sargent County now has 4.5 miles of 90 foot wide ditch costing \$4,100,000.00 where those that pay were excluded. Autocratic actions of Public Boards, at any level, should be questioned and corrected. I refer to the Water Board of Sargent County, ND. This situation has left the affected landowners frustrated and dismayed and questioning the word "Public" in Public Board. A quote from a County Commissioner in the Sargent County Teller on July 10, 2015: ***"(County Commissioner) Anderson pointed out that, while the County Commission appoints members to the water Board, it is a self-governing entity and does not answer to the commission." The question is who do they answer to?*** Over a substantial period of time, they have not seen fit to allowed landowner to be involved. If you are a remote landowner living outside the County you have little standing. In a memorandum prepared for the Water Board for Forum Communication Outlets on March 14, 2019, it states: ***"The District had no legal obligation to take the Project to a vote (of affected landowners), and did not even have any obligation to discuss the Project with the public (taxpayer)."*** Apparently they feel the law allows them the latitude to say that. Reviewing State law, the Water Boards truly do not answer to anyone.

The construction in question is called the Drain # 11 Improvement Project, involving the largest watershed of its kind in North Dakota. The area includes land in Sargent, Ransom, and Dickey Counties in ND and at one time Marshall County, SD. For 106 years, the only land to be assessed for its construction / up-keep was Sargent County. The other Counties were not assessed but contributed approximately 40% of the water in the drain. Sargent County carried the whole load for 106 years!

Several requests were made to include all counties in the watershed and provide a vote of the affected landowners ***to no avail***. A "Resolution of Necessity" by five (5) unelected board members was all that was needed to exclude all landowner in three counties.

The project has progressed with the following result: Drain # 11 has a total of 44 miles of ditch of which 10.5 miles were to be improved. Once a "Motion to Proceed" was passed, the Water Board found they could only afford 3.5 – 4.5 miles of the proposed 10.5 miles. Presently we now have a new 90 foot wide ditch in the middle of nowhere with a 106 year old, 40 foot wide ditch on both ends at a cost \$4,100,000. Presently there is no benefit or return to anyone in the watershed. Not one additional shovel of dirt will be moved for another 6 – 7 years because of the way it was financed. The board committed all of the maintenance money allowed by law for 7 years to secure the construction bonds leaving no money for maintenance of the remaining 41.5 miles of Drain.

There was a solution that only the landowners could provide but the board would not consider it. However there is a Water Board in Bottineau County that seems to work very well but their first priority and concern is the landowner. As a suggestion, the Legislature should consider changing the law so that all land in a watershed is included and water board maintenance or improvement projects over \$100,000.00 are voted on by the effected landowners to make sure they are involved and agreed. Additional details are available upon request.

Leon L Mallberg, Landowner – Drain # 11 Watershed

941 13th Street West, Dickinson, ND 58601-3538

Phone Line: 701 483 8338 Cell Phone: 701 590 9370

E-mail: llmallberg@ndsupernet.com

From: Jack Dwyer <Jack@dwyerlawnd.com>
Sent: Wednesday, February 8, 2023 2:38:39 PM
To: Porter, Todd K. <tkporter@ndlegis.gov>
Cc: Danielle Quissell <dquissell@ndwater.net>
Subject: RE: HB 1462 and HB 1391

Representative Porter,

Here is the language that governs cities:

Beginning with the 1996 biennial municipal elections, and every four years thereafter, all cities in North Dakota, regardless of their form of government, must put on the ballot the question of whether the minutes of its governing body shall be published in its official newspaper. If voters approve publication, the governing body shall, within seven days after each of its meetings, give its official newspaper, for publication, the complete minutes, or a complete summary showing the substantive actions taken at the meeting.

Below is language proposed for an amendment to HB 1391:

The water resource board shall keep accurate minutes of its meetings and accurate records and books of account, clearly setting out and reflecting the entire operation, management, and business of the district. ~~The minutes of the meeting must be published and distributed within seventy-two hours after any meeting date.~~ The minutes of the meeting must be provided to the official newspaper of the county for publication or posted to the water resource board's website within 10 days. These books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and residents. The books and records shall be open to public inspection during reasonable business hours.

Is that fair?

Thanks,



Jack Dwyer
North Dakota Water Resource Districts Association
Office 701-235-2040
Mobile 701-730-5469
PO Box 2254
Bismarck, ND 58502

**North Dakota
Water Resource
Districts Association**

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

**HB 1391
Testimony of Jack Dwyer
Senate Agriculture and Veteran Affairs Committee
March 10, 2023**

Dear Chairman Luick and members of the Senate Agriculture and Veteran Affairs Committee:

My name is Jack Dwyer and I serve as the Executive Secretary of the North Dakota Water Resources Association (NDWRDA). The NDWRDA was opposed to HB 1391 in its initial form, but the NDWRDA does not oppose the version of HB 1391 that passed the House.

The intent behind HB 1391 is to provide uniformity for constituents in accessing information about decisions made by their local water board—a concept the NDWRDA is not opposed to. In its current form, HB 1391 would require water resource boards to either send draft minutes to the official newspaper of the county or post draft minutes to the water resource board’s official website, within 10 days of any open meeting of the water resource district. This requirement will provide uniform transparency of the decisions of water resource boards across the state and is fair to both constituents and water boards.

I would ask you to resist any attempt to amend HB 1391.

Thank you.

March 10, 2023

2023 ND Senate Energy and Natural Resources Committee – **HB 1462**

Dear Senators:

Reviewing committee discussions on HB #1462, comments are offered. The Committee discussion seems to re-emphasize the bill's purpose as it was introduced.

The Sargent County and or Pembina County are used to spotlight an injustice. The ND Supreme Court has twice written that existing ND Century Code prevented them from offering financial justice to prevailing landowners.

You can read that current Legislative language forced the Court to leave the financial injuries in place. As committee discussion may reveal, this is not acceptable and not a situation that "locals" can solve. It requires legislative action. The original HB 1462 corrects this. As this bill left the House Committee, attorney fees, were stripped without any amendment as to intent. Without a change, governmental entities are "armed" with leverage to avoid legal challenges to their poor decisions. It would seem only four words added to NDCC 11-11-39 are needed; "... board of county commissioners **or their appointed boards, ...**"

Also Rep. Klemin rewrote the "notice" portion of the bill which would appear to address the situation and match existing laws involving street special assessments. That is acceptable.

A concern is HB #1391 only requires timely publication of minutes. Adequacy of notice by minutes may fall short for the Courts to rule if a special assessment drain project can be appealed. Local board's minutes alone may not include all the necessary information in deciding to appeal. Minutes alone can be quite curt in detail. Perhaps both proposed House Bills are necessary.

Included is the exact language from the two ND Supreme Court Decisions that essentially show the harm to property rights. **ND Water Boards should not be isolated from the same requirements other State Governmental entities must adhere to.**

Sincerely yours,

Leon L Mallberg

=====

“(28-34-01) The legislature may want to consider extending the time for appeal or consider triggering the time for appeal...”

<https://www.ndcourts.gov/supreme-court/opinion/2019ND57>

Robert Banderet, et al. vs. Sargent Count Water Resource District, et al. (2019)

Our decisions in *Zajac* and this case recognize an abbreviated time frame for a party to appeal from a decision by a local governing body is imposed under the plain language of N.D.C.C. § 28-34-01. The legislature may want to consider extending the time for appeal or consider triggering the time for appeal from a decision by a local governing body from service of the notice of the decision on the affected party or from publication of the decision.

[¶19] We again recognize the abbreviated time frame for an appeal that is imposed by the plain language of N.D.C.C. §§ 61-16.1-54 and 28-34-01; however, nothing in N.D.C.C. § 61-16.1-45 required the District to notify the Landowners of its decision to finance the Drain 11 project through the maintenance levy. Regardless of whether or not any notice was given, N.D.C.C. §§ 61-16.1-54 and 28-34-01 require an appeal to be taken within thirty days of a water resource district’s decision. Because the Landowners failed to appeal the District’s resolution of necessity within thirty days, the district court did not err in dismissing the Landowners’ complaint.

=====

“Although (11-11-39) authorizes an award of attorney fees from a board of county commissioners, it does not ... from a water board.”

<https://www.ndcourts.gov/supreme-court/opinion/2005ND106>

Klindt, et al. v. Pembina Co. Water Resource Bd., et al. (2005)

[¶32] The Board argues the district court had no authority to award the landowners their attorney fees from the Board.

[¶33] Successful litigants are not entitled to attorney fees unless authorized by contract or statute. *Eg., Danzl v. Heidinger*, 2004 ND 74, ¶ 6, 677 N.W.2d 924. The landowners rely on N.D.C.C. § 11-11-39 as authorizing attorney fees from the Board in this case. Section 11-11-39, N.D.C.C., provides, in relevant part:

An appeal may be taken to the district court from any decision of the board of county commissioners by any aggrieved person. . . . The district court may at its discretion award costs and reasonable attorney's fees to appellants when three or more aggrieved persons have joined in an appeal from a decision of the board of county commissioners and the court rules in favor of the appellants.

[¶34] Although this statute authorizes an award of attorney fees from a board of county commissioners, it does not authorize an award of attorney fees from a water resource board. The landowners have cited no other authority allowing an award of attorney fees against the Board, and we have found none. Therefore, the award of attorney fees to the landowners is reversed insofar as it is assessed against the Board.

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December 26, 2022

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Phone Line: 701 483 8338 Cell Phone: 701 590 9370
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Respectfully -- Leon L Mallberg

23.0779.02001
Title.

Prepared by the Legislative Council staff for
Representative Schatz
March 9, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1391

Page 1, line 1, after "61-16.1-04" insert "and 61-16.1-45"

Page 1, line 2, after "minutes" insert "and maintenance of an assessment drain"

Page 1, line 9, remove "provided to the official newspaper"

Page 1, line 10, replace "of the county for publication or posted to the water resource board's website within ten days" with "published and distributed within seventy-two hours after any meeting date"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Section 61-16.1-45 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-45. Maintenance of drainage projects.

1. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for the maintenance may not exceed four dollars per acre [.40 hectare] on any agricultural lands benefited by the drain. The district, at its own discretion, may utilize either of the following methods for levying special assessments for the maintenance:
 - a. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of four dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full four dollars per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment.
 - b. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed two dollars for each five hundred dollars of taxable valuation of the nonagricultural property.
2. In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years.
3. If the cost of, or obligation for, the cleaning and repairing of any drain exceeds the total amount that may be levied by the board in any six-year

period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 before obligating the district for the costs. The cost of cleaning and repairing a drain must include the engineer's probable cost or contracted costs, without consideration of any cost-share opportunities, and may not be reduced by general funds, account funds, or any other available funds."

Renumber accordingly

23.0779.02002

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1391

Introduced by

Representatives Schatz, Bellew, Dockter, Hauck, VanWinkle

Senators Boehm, Luick, Paulson

1 A BILL for an Act to amend and reenact section 61-16.1-04 of the North Dakota Century Code,
2 relating to the publication and distribution of water resource board meeting minutes.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 61-16.1-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.1-04. Minutes, books, and records.**

7 The water resource board shall keep accurate minutes of its meetings and accurate records
8 and books of account, clearly setting out and reflecting the entire operation, management, and
9 business of the district. The unofficial minutes of the meeting must be provided to the official
10 newspaper of the county for publication ~~or~~ and, if applicable, posted to the water resource
11 board's website within ten days. These books and records shall be kept at the principal office of
12 the district or at such other regularly maintained office or offices of the district as shall be
13 designated by the board, with due regard to the convenience of the district, its customers, and
14 residents. The books and records shall be open to public inspection during reasonable business
15 hours.