

2023 SENATE AGRICULTURE AND VETERANS AFFAIRS

SB 2037

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2037
2/2/2023

A BILL for an Act relating to calculations of costs and benefits for assessment projects; to amend relating to costs, benefits, and special assessments for water projects; to repeal section, relating to legislative intent; and to provide a penalty

8:27 AM Chairman Luick called the committee to order. Senators Weston, Weber, Luick, Myrdal, and Lemm were present. Senator Hogan was initially absent but returned at 9:21 AM.

Discussion Topics:

- Hearing rules
- Regulatory structure
- Fiscal burden
- Landowner concerns
- Local control

8:30 AM Austin Gunderson, Attorney, Legislative Counsel, introduced the bill and testified neutral #18840.

8:40 AM Leon Mulburg, Landowner, Drain 11, testified in favor verbally.

8:42 AM Bob Bandert, Landowner, Cogswell ND, testified in favor #18371.

8:47 AM Kurt Lysne, Board Member, ND Water Users Association, testified in opposition #18592.

8:53 AM Jack Dwyer, Executive Secretary, ND Water Resource Districts Association, introduced Keith Weston, and testified in opposition #18584.

8:54 AM Keith Weston, Executive Director, Red River Retention Authority, testified in opposition #18627.

9:02 AM Katie Vculek, Board Member, ND Corn Growers Association, testified in opposition #18756.

9:07 AM Dan Wogsland, Executive Director, ND Grain Growers Association, testified in opposition #18701.

9:09 AM Mike Wyum, Vice-Chairman, Sargent County Water Resource Board, testified in opposition verbally.

9:18 AM Jack Dwyer, Executive Secretary, ND Water Resource District, clarified earlier information.

9:19 AM Doug Zinck, Water Board Member, Foster County testified in opposition verbally.

9:27 AM Larry Skiftun, Board Chair, Wells County Water Resource Board, testified in opposition #17838

9:32 AM Justin Johnson, Richland County Resource District, testified in opposition.

9:40 AM Levi Otis, Director of Government Affairs, Ellingson Companies, testified in opposition #18657.

9:45 AM Sam Wagner, Ag and Food Field Organizer, Dakota Resource Council, testified neutral #18681.

9:50 AM Andrea Travnicek, Director, Department of Natural Resources, testified neutral verbally.

Additional written testimony:

Clifford Issendorf, Chairman, Bottineau County Water Resource District, in opposition #17579

Gary Heintz, Chaseley, ND, in favor #18676

Kathy Marquette, Ringdahl Family Farm, in favor #17621

Paul Matthews, Cogwell, ND, in favor #18361

Phil Murphy, NDSGA, in opposition #18169

Harrison Weber, Executive Director, Red River Valley Sugar beet Growers Association in opposition #18751

Matt Perdue, Government Relations Director, North Dakota Farmers Union in opposition #18754

9:54 AM Chairman Luick closed the hearing on SB 2037

David Owen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2037
2/3/2023

A BILL for an Act relating to calculations of costs and benefits for assessment projects; relating to costs, benefits, and special assessments for water projects; relating to legislative intent; and to provide a penalty

10:00 AM Chairman Luick called the committee work to order. Senators Hogan, Weston, Weber, Luick, Myrdal, Lemm were present.

Discussion Topics:

- Amendment delay
- Negotiation between parties

10:15 AM Chairman Luick called the committee work to a close.

Dave Owen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2037
2/16/2023

A BILL for an Act relating to calculations of costs and benefits for assessment projects; relating to costs, benefits, and special assessments for water projects; relating to legislative intent; and to provide a penalty

9:41 AM Chairman Luick called the committee to order. Senators Luick, Myrdal, Weber, Lemm, Weston, and Hogan were present

Discussion Topics:

- Joint water boards
- Needs assessment
- Water resource boards

9:42 AM Chairman Luick requests committee review amendments (#26940, 27599)

9:51 AM Jack Dwyer, Executive Secretary, Water Resource Districts Association, answered a question testimony ID #21018

9:54 AM Chairman Luick closed the committee work on SB 2037

Dave Owen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2037
2/16/2023

A BILL for an Act relating to calculations of cost and benefits for assessment projects; relating to costs, benefits, and special assessments for water projects; relating to legislative intent; and to provide a penalty
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10:27 AM Chairman Luick called the committee work to order. Senators Weston, Weber, Myrdal, Luick, and Lemm present. Senator Hogan is absent.

Discussion Topics:

- Amendment #3002
- Concerns
- Needs Assessments

10:28 AM Senator Myrdal moved to adopt amendment #23.0025.03002, testimony #26940

10:28 AM Senator Lemm seconded.

10:29 AM Jack Dwyer, answered a question, testimony ID #21018

10:52 AM Senator Myrdal withdrew her motion.

10:52 AM Senator Lemm withdrew his second.

10:55 AM Andrea Travnicek, Director, Department of Water Resources answered a question.

11:00 AM Chairman Luick adjourned the committee work on SB 2037

Dave Owen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2037
2/17/2023

Relating to calculations of costs and benefits for assessment projects; to costs, benefits, and special assessments for water projects; and to legislative intent; and to provide a penalty.

10:39 AM Chairman Luick called the committee to order.
Senators Luick, Myrdal, Weber, Lemm, and Weston were present.
Senator Hogan was absent.

Discussion Topics:

- Cost share percentages
- Project time
- Benefit to cost number
- Water commission
- Sunset clause
- Committee action

10:46 AM Austin Gunderson, Attorney, North Dakota Legislative Council, explained the amendment. #26940, LC 23.0025.03002

10:53 AM Andrea Travnicek, Director, North Dakota Department of Water Resources, answered a question verbally.

10:58 AM Jack Dwyer, Executive Secretary, Water Resource District Association, answered a question verbally.

11:09 AM Duane Pool, Economist, North Dakota Department of Water Resources, answered a question verbally.

11:38 AM Senator Myrdal moved amendment LC 23.0025.03002, with an additional 4-year sunset clause.

11:39 AM Senator Lemm seconded.

Roll Call Vote

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

Motion passed. 5-0-1

11:52 AM Senator Myrdal moved DO PASS as Amended.

11:52 AM Senator Lemm seconded.

Roll call vote.

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

Motion passed. 3-2-1

Chairman Luick will carry the bill.

12:01 PM Chairman Luick closed the meeting

Justin Boone, on behalf of Brenda Cook, Committee Clerk

At
2-17-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2037

Page 1, line 1, replace "a" with "two"

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

Page 1, line 2, after "projects" insert "and public informational meetings"

Page 1, line 6, remove "and"

Page 1, line 7, after "penalty" insert "; and to provide an expiration date"

Page 2, line 17, after "10." insert "\"Direct benefits\" and \"directly\" in regard to benefits mean a measurable or quantifiable benefit to a piece or parcel of land that is attributable to the project."

11."

Page 2, line 18, replace "11." with "12."

Page 2, after line 19, insert:

"13. \"Indirect benefits\" and \"indirectly\" in regard to benefits mean a public good or shared benefit that is not directly attributable to an individual piece or parcel of land."

Page 2, line 20, replace "12." with "14."

Page 2, line 25, replace "13." with "15."

Page 3, line 3, replace "6" with "7"

Page 6, line 7, replace "6" with "7"

Page 7, line 15, overstrike "profiles," and insert immediately thereafter "a preliminary engineering report which must contain the preliminary"

Page 7, line 15, overstrike the second comma

Page 7, line 16, after "~~thereof~~" insert "including acquisition of right of way, project design, and project construction. The preliminary engineering report also must identify any locations where the proposed project crosses a railroad, public road, or highway"

Page 7, line 17, remove "include the cost to acquire"

Page 7, line 17, overstrike "~~right of way and~~"

Page 7, line 20, replace "6" with "7"

Page 7, after line 20, insert:

"SECTION 6. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Public informational meeting and information presented - Procedure.

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1. Upon the filing of the engineer's preliminary report as provided for in section 61-16.1-17, the board or the board's agents shall create and by resolution approve a preliminary analysis of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed; the amount each would be benefited by the proposed project; and the amount assessed against each in accordance with section 61-16.1-21 and section 7 of this Act.
2. After satisfying the requirements in subsection 1, the board by resolution shall set a date and place for a public informational meeting on the proposed project. The place of the hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners included in the project's benefited area.
3. At least thirty days before the public informational meeting, the board shall mail notice of the meeting to all parties in the benefited area, including:
 - a. Each landowner affected by the assessments;
 - b. The governing body of each county, township, city, or other political subdivision affected by the assessments; and
 - c. An official from each railroad and road authority that may be crossed or impacted by the proposed project.
4. Each landowner must be notified at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The board shall send the notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board.
5. At the public informational meeting, the board or the board's agents shall present the proposed project and preliminary design, the board's methodology for determining benefits, and the approved preliminary cost-benefit analysis of the benefits and assessments to be made. The board also shall allow the parties to offer comments and recommendations. The board may alter the preliminary cost-benefit analysis as the board deems just and necessary to include alterations to the proposed project, the project's preliminary design, or assessments made under section 61-16.1-21.
6. The board's engineer shall file an updated engineer report which must include the preliminary project plans and an updated estimate of the total estimated costs of the project. The updated engineer's report also must identify any locations where the project crosses a railroad, public road, or highway."

Page 8, line 2, after the second "the" insert "following criteria for determining the direct benefits of a project:

- a. If the project will provide an increase in market value;
- b. If the project will provide an increase or improvement in agricultural production;

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- c. If the project will provide demonstrable residential, commercial, or industrial development;
 - d. If the project will provide or furnish an outlet for tile or surface drainage;
 - e. If the project will provide flood damage reduction benefits; and
 - f. Present use of the property including existing public or private easements.
3. To prepare the cost-benefit analysis, the board shall use the following criteria for determining indirect benefits of a project:
- a. Protection value of public or utility services including emergency, water, sewer, electric, telephone, internet, or other services or utilities;
 - b. Value provided to public safety;
 - c. Flood damage reduction benefits of public infrastructure;
 - d. Reduced costs of public services;
 - e. If the project will provide other consumptive or nonconsumptive value including recreational opportunities; and
 - f. Value to upstream landowners as beneficiaries of improvements to watershed management of surface waters.
4. In determining benefits, the board may use the"

Page 8, line 3, replace "and" with ". Upon analyzing the criteria for direct and indirect benefits, the board shall"

Page 8, line 7, replace "3." with "5."

Page 8, line 12, replace "4." with "6."

Page 8, line 28, overstrike "Upon" and insert immediately thereafter "Following the public informational meeting and upon"

Page 8, line 29, replace "6" with "7"

Page 8, line 30, after "board" insert ", by resolution"

Page 8, line 30, overstrike "fix" and insert immediately thereafter "set"

Page 9, line 11, replace "calculations required" with "assessments calculated"

Page 9, line 11, replace "6" with "7"

Page 9, line 11, remove "and the engineer's"

Page 9, line 12, replace "calculation of costs for the project" with "as well as the engineer's report, preliminary plans, estimate of total project costs, and any locations where the project crosses a railroad, public road, or highway"

Page 9, line 13, replace "calculations" with "assessments"

Page 9, line 14, after "benefits" insert "and costs"

Page 9, line 15, remove "and identifying the several costs for the project must be attached to the"

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2-17-23

Page 9, line 16, remove "results"

Page 9, line 17, replace "The" with "At least thirty days before the hearing, the"

Page 9, line 28, after "e." insert "Include a copy of the assessment list showing the amount of assessments against each lot, piece, or parcel of land and against each county, township, city, or other political subdivision that benefits from the project."

f."

Page 9, line 28, after "Include" insert "a method to access the"

Page 9, line 28, replace "and benefit calculations" with "benefit analysis"

Page 9, line 30, replace "f." with "g."

Page 10, line 1, overstrike "the"

Page 10, line 1, remove "cost and benefit calculations"

Page 10, line 1, overstrike "and"

Page 10, line 4, replace "g." with "h."

Page 10, line 11, remove "Each affected landowner"

Page 10, line 11, overstrike "and the"

Page 10, line 12, overstrike "governing body of any county, township, or city to be assessed"

Page 10, line 12, overstrike "must be informed at"

Page 10, line 13, overstrike "the hearing of the"

Page 10, line 14, remove "cost and"

Page 10, line 15, remove "benefit calculations"

Page 10, line 15, overstrike the period and insert immediately thereafter:

5. At the hearing, the board must inform those in attendance of:

- a. The project assessments and district boundary including total costs of the project and each party's share;
- b. A cost-benefit analysis summary;
- c. The project necessity and design; and
- d. The voting process under section 61-16.1-19."

Page 11, line 1, replace "6" with "7"

Page 13, line 4, after "a" insert "developed before the hearing on assessments under section 61-16.1-22"

Page 13, line 7, remove "project's"

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Page 13, line 7, after "benefits" insert "and cost of the project"

Page 13, line 12, remove the overstrike over "**Assessment**"

Page 13, line 12, remove "**Cost and benefit calculations**"

Page 13, line 17, replace "6" with "7"

Page 14, line 15, replace "6" with "7"

Page 14, after line 26 insert:

"SECTION 15. EXPIRATION DATE. This Act is effective through July 31, 2027,
and after that date is ineffective."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2037: Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2037 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

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3. At least thirty days before the public informational meeting, the board shall mail notice of the meeting to all parties in the benefited area, including:
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Page 14, line 15, replace "6" with "7"

Page 14, after line 26 insert:

"SECTION 15. EXPIRATION DATE. This Act is effective through July 31, 2027, and after that date is ineffective."

Renumber accordingly

TESTIMONY

SB 2037

January 29, 2023

Senate Agriculture & Veterans Affairs Committee
c/o Senator Larry Luick, Chair
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Senate Bill 2037 – Opposition

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

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

Recently, I served as a Citizen Member on the Interim Water Drainage Committee as a from the North Dakota Water Resource District Association. The Interim Water Drainage Committee was charged with studying many things, one of them being methods for assessing the cost of a project in relation to the benefits received and to recommend a method to ensure the cost of a landowner does not exceed the benefit to the landowner. The Interim Committee was afforded very little time to study the language in Senate Bill 2037 and to vet the Economic Analysis Worksheet method it promotes.

I submit this written testimony to make record that I am opposed to Senate Bill 2037. In addition, the Board of Managers of the Bottineau County Water Resource District reviewed Senate Bill 2037 and voted to submit this testimony in opposition to the bill.

Sincerely,

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

January 26, 2023

Kathy Ringdahl Marquette
9071 138th Avenue SE
Rutland, ND 58067
701.724.3191 (H)
701.899.1276 (C)
Marquette@drtel.net

Senator Luick and Members of 2023 ND Senate Ag Committee

RE: Senate Bill #2037

My name is Kathy Marquette, and I am writing to you today to voice my support of SB 2037 for three targeted groups of people in relation to our personal experience with water drains in southeast North Dakota in the counties of Sargent and Dickey. Those three groups of people are 1) my parents, Judy and the late Gerald Ringdahl, and their property located within Verner Township in Sargent County affected by Jackson Drain; 2) our neighbors in Sargent County who are affected by this drain and other drains such as Drain 11; and 3) for ALL farmers and property owners in the future who may have their land and property rights affected by a water drain.

Attached is a table of data specifically addressing how assessments were distributed for Jackson Drain on the Ringdahl family. Our fifth generation ND Centennial farm is located on top of a hill by the Scandinavian Hilltop Cemetery where my ancestors are buried, along with my father. It is surrounded by Lake Taayer, Pickell Lake and Kraft Slough. As you know, the cost of the project was initially \$5.2 million with a cost-share funding from the ND State Water Commission so it is currently around \$3.75 million. Due to the size of the assessment district and the total cost of the project, landowners became alarmed when they were notified by the Dickey-Sargent Joint Water Resource Board on October 6, 2014. Assessments payable over a 20-year period. We felt “blind-sided” by this project.

Several years ago, I—along with several other Jackson and Verner Township landowners—traveled to Bismarck to the legislative assembly to testify for proposed changes to HB 1339 to amend sections 61-16.1-22, 61-16.1-23 and 61-16.1-26 of the North Dakota Century Code relating to notice, appeals and refunds of special assessments. Though we had some success on some proposed changes, it was evident that the fight over “water” had the workings of a “good ‘ol boys club”. Some

members of our local joint water board and farmers who voted in favor of this project were rubbing shoulders with the State Water Commission as though they were the best of friends.

Our family has unsuccessfully tried to get changes to occur in the formula for calculating assessments in relation to “benefits”. Bottom line, no landowner should have to pay assessments that are not in proportion to benefits. Our family situation is a unique one because of where our farm is located; however, we feel that we have been dealt a “bad hand” because of the amount of money we are paying in relation to benefit. We feel we are carrying the burden for farmers who are benefitting with little to no cost assessed to them.

We do not trust our current water board. Members who are on it have self-serving interests. Several years ago, I tried to get the paperwork at the Sargent County Courthouse to protest the payment of taxes as my parents were paying more in special assessments than property taxes! I was told that wasn't an option. When you can't get any straight answers from the local water board, you try to protest so that people understand that you are upset and simply want someone to explain how the assessments are calculated. No one on the Dickey-Sargent Water Board has ever been able to articulate the formula for how special assessments for Jackson Drain were calculated. The whole project has had a pungent odor from the day we received notification of the drain project.

My mother has her 2022 Sargent County Real Estate Tax Statement. Her grand total on 16 statements is \$30,789.13, of which \$14,360.31 is special assessments. **Seven of those parcels have more money due in special assessments than the property tax owed on each one! On one 165.22- acre tract she owes \$4,035.92 combined in taxes and specials and on another 144.59- acre tract she owes \$4227.48.** It's been a tough pill to swallow for years. Honestly, it is from the urging of Paul Mathews and Bob Banderet that I am writing this testimony. Our family has tried numerous times to visit with the water board; however, members never address anything due to their attorney, Sean Fredricks, of Ohnstad Twitchell, P.C. Members are scared to talk; they refer EVERYTHING to Mr. Fredricks. How sad it is that I honestly believe members know that this whole project and other drain projects are not being handled correctly but are hiding behind their attorney. If board members were in the shoes of area landowners affected by these special assessments, they may have a completely different perspective.

If a transparent formula for calculating assessments so they do not exceed benefits in a public drain is not created, what will this mean for landowners? Drain assessments combined with property taxes will be too much of a financial burden and many will be forced to sell their land—the same handful of farmers who pushed for Jackson Drain and other drains in the works will be in line to purchase their land. Is this ethical? A landowner who is benefitting from Jackson Drain came to visit my father one day in the nursing home three years ago where he was residing. He knew of my father's

opposition to the drain due to the unfairness of the assessment formula. When my father and he discussed the topic, he stated, "Well Gerald, maybe it's time for you to sell your land." Needless to say, I have no respect for this individual. In fact, he was one who sat with the State Water Commissioners who patted his back after he came back to sit down with them after giving testimony in favor of not adding changes to HB 1339. Nothing like the "good 'ol boys club".

We care too much about our land and that of our neighbors and other landowners in North Dakota not to attempt to have current law changed to reflect a fairer process. We want to do our part to ensure that the assessment process by water resource boards is fair, impartial, ethical and bears no conflict of interest with any parties employed by the boards and the companies that represent them. Transparency is key—if water boards are confident that their plans are fair and equitable, then they should have no problem sharing how formulas are created and implemented. Water is a necessary evil; no one wants it in excess. Projects are necessary to control it; however, projects must be equitable for all parties in relation to benefits vs. assessment costs.

I leave you with this quote from Madeline Albright, former US Secretary of State:

"No matter what message you are about to deliver somewhere, whether it is holding out a hand of friendship, or making clear that you disapprove of something, is the fact that the person sitting across the table is a human being, so the goal is to always establish common ground."

Respectfully,

A handwritten signature in cursive script that reads "Kathy Ringdahl Marquette". The signature is written in black ink and is positioned below the typed name.

Kathy Ringdahl Marquette

Attachments: 3

Attachment A.

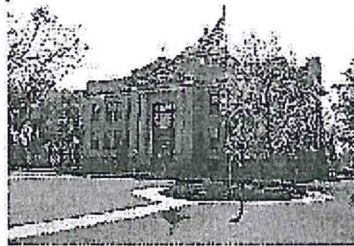
												FINAL	Proposed Vote
												Amount	Amount
#	Parcel #	Sec	Twp	Rng	Legal	Parcel Ac	Assessed Ac	Benef %	Factor Ac			Assessed	Assessed
RINGDAHL FAMILY													
	206097000	21	131	58	SE 1/4 of 21-131-58	159.58	25	50.00%	12.50			3,193.38	"
	206097000	21	131	58	SE 1/4 of 21-131-58	159.58	134.58	25.00%	33.65			8,595.29	17,078.25
	206102000	22	131	58	W 1/2 of SE 1/4 22-131-58	80	25	75.00%	18.75			4,790.06	4,013.25
	206117000	26	131	58	W 1/2 of SW 1/4 26-131-58	80	55	12.50%	6.88			1,756.36	1,471.53
	206123000	27	131	58	E 1/2 of SE 1/4 27-131-58	134.76	65	12.50%	8.13			2,075.69	1,739.08
	206123000	27	131	58	E 1/2 of SE 1/4 27-131-58	134.76	69.76	75.00%	52.32			13,366.19	11,198.57
	206127000	28	131	58	NW 1/4 28-131-58	144.59	144.59	75.00%	108.44			27,703.81	23,211.03
	206149000	33	131	58	NE 1/4 33-131-58	154.9	20	75.00%	15.00			3,832.05	3,210.60
	206150000	33	131	58	NW 1/4 33-131-58	104.59	95	75.00%	71.25			18,202.24	15,750.35
	206156000	34	131	58	SW 1/4 33-131-58	77.78	77.78	75.00%	58.34			14,902.84	12,486.02
	206159000	35	131	58	NW 1/4 35-131-58	153.46	112	75.00%	84.00			21,459.48	17,979.36
	206160000	35	131	58	SW 1/4 35-131-58	157.2	52	12.50%	6.50			1,660.56	1,391.26
	206160000	35	131	58	SW 1/4 35-131-58	157.2	17.2	50.00%	8.60			2,197.04	1,840.74
	206160000	35	131	58	SW 1/4 35-131-58	157.2	80	75.00%	60.00			15,328.20	12,842.40
	206162000	35	131	58	W 40 of SE 1/4 35-131-58	40	40	50.00%	20.00			5,109.40	4,280.80
	206124000	27	131	58	E 1/2 of NE 1/4 27-131-58	78.21	36	12.50%	4.50			1,149.62	963.18
	206126000	28	131	58	N 1/2 of NE 1/4 28-131-58	165.22	80	50.00%	40.00			10,218.80	"
	206126000	28	131	58	N 1/2 of NE 1/4 28-131-58	165.22	85.22	75.00%	63.92			16,328.37	26,522.77
	206130000	28	131	58	Lots in 28-131-58	30.7	25	75.00%	18.75			4,790.06	4,013.25
	206129000	28	131	58	Lots in 28-131-58	16.5	11.5	75.00%	8.63			2,203.43	1,846.30
	206126001	28	131	58	Steve & Michelle's lot 28-131-58	11.36	11.36	50.00%	5.68			1,451.07	1,823.62
							1,261.99					180,313.94	163,662.36

Attachment B.

**Sargent County
Forman, North Dakota**

County Commissioners:

Jason Arth
Mike Walstead
Bill Anderson
Sherry Hosford
David Jacobson



County Officers:

In Maloney- Auditor
Alison Toepke- Clerk, Treasurer, Recorder
Merril Engquist- Road Supt.
Lyle Bopp- State's Attorney
Travis Pacper- Sheriff
Sandra Hanson- Tax Equalization Director
Brenda Peterson- Coroner
Jon Hanna- Veterans Service Officer

PAYMENT OF TAX UNDER PROTEST

North Dakota law requires that state taxpayers take specific and timely steps in the event the taxpayer wishes to pay any tax under protest. In an effort to acquaint taxpayers with those steps, all of which must be completed in proper sequence for the protest to be valid, the following guidelines have been established:

1. Any person against whom a tax is levied, or who may be required to pay the same, may pay such tax under protest to the County Treasurer.
2. Any such protest must be given to the County Treasurer in writing at the time of payment, specifying the reason for the protest. (NOTE: Verbal transmission of the protest is not sufficient to implement the protest.)
3. Following the written protest, and thereafter, within sixty days, the taxpayer may apply in writing to the Board of County Commissioners for an abatement, adjustment, or refund of taxes paid, or any portion of those taxes paid. In the event the taxpayer does not elect to take any action on the protest within the specified time period, the protest shall be ruled non-existent and tax monies held as a result of the protest shall be entered in appropriate funds for distribution.
4. If the County Commission rejects, in whole or part, such application as filed within Section 3 above, it shall notify the applicant of the disposition of the application.
5. The Board shall notify the taxpayer of his right to appeal the action to the tax appeals board as provided by law.
6. All applications to the Board of County Commissioners shall show the post office address of the taxpayer and notice in that address by registered or certified mail shall be sufficient service of the notice of rejection or approval of the taxpayer's application.
7. It shall remain the duty of the taxpayer to carry out all of the above stipulations in order for the payment of tax under protest to be valid. Any questions should be directed to the County Treasurer regarding the above procedures.
8. The above steps required of taxpayers are in accordance with state law as carried in Section 57-20-20 of the North Dakota Century Code.

Attachment C.

Sargent County

NOTICE OF TAXES PAID UNDER WRITTEN PROTEST

Please return to: Alison Toepke, Sargent County Treasurer
355 Main Street South Suite 2
Farmor, ND 58037
(701)724-6241 Ext. 111

NOTICE IS HEREBY GIVEN THAT THE UNDERSIGNED: _____ OF _____ DOES PAY UNDER WRITTEN PROTEST AS PROVIDED BY SECTION 57-20-20 OF THE NORTH DAKOTA CENTURY CODE THE SUM OF \$ _____, HERewith, AS PAYMENT OF THE TAXES LEVIED FOR THE YEAR _____ AGAINST THE FOLLOWING DESCRIBED PROPERTY:

REASONS FOR FILING THIS PROTEST ARE AS FOLLOWS:

DATED AT _____, ND, THIS _____ DAY OF _____.

_____ TAXPAYER

_____ MAILING ADDRESS

57-20-20. PAYMENT OF TAX UNDER PROTEST. Any person against whom any tax is levied, or who may be required to pay the same, may pay such tax under protest to the county treasurer, by giving notice in writing to such treasurer at the time of payment, specifying the reasons for such protest, and thereafter, within sixty days, he may apply in writing to the board of county commissioners for an abatement, adjustment, or refund of taxes thus paid, or any portion thereof, and if such application is rejected, in whole or in part, or if the board fails to act upon his application within sixty days, it shall notify the applicant of the disposition of his application and of his right to appeal as provided by law. The application to the board of county commissioners must show the post-office address of the taxpayer and notice to such address by registered or certified mail is sufficient service of the notice of rejection or approval of the taxpayer's application.



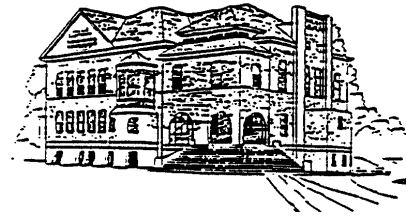
***SPECIAL ASSESSMENTS CANNOT BE PROTESTED.**

**The process of "paying under protest" merely places the funds in a "hold" account for 60 days while the person making the protest pursues further action. You will need to go through the abatement process for any action to be taken. Thank you.

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 Luick & Senate Agriculture and Veterans Affairs Committee Members:

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 testimony in opposition to Senate Bill 2307 and request the opportunity present further testimony before the committee in person.

Assessment drains are good for farmers, for local governments, for road authorities, and for our local and state economy. Assessment drains manage water locally and create a mechanism to tax those in the watershed who benefit from the engineering study and orderly management of water at the local level. Assessment drains reduce peak flows and downstream sediment delivery by creating storage in the watershed during normal conditions to help accommodate those ever-increasing storm events. SB 2037 impedes the development of good assessment drain projects.

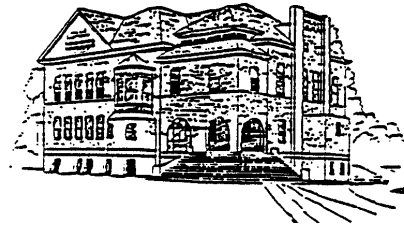
When a petition for an assessment drain is filed, petitioners file a bond to cover preliminary administrative, engineering, and legal expenses incurred by the water resource district before landowners vote whether to proceed with the project. Board managers must employ consultants to study the project with enough detail for landowners to be able to make an informed vote, without incurring too much expenses on projects that are voted down, so as to be good stewards of the petitioners' bond. SB 2037 increases the preliminary expenses covered by the landowner-petitioner bond because it requires the board to hire consultants to gather data and determine economic benefit, in dollars, before the landowners even vote to whether to proceed with the project.

Section 6 of SB 2037 requires water resource boards to use the economic analysis tool developed by the Department of Water Resources/State Water Commission for cost-share assistance. While the Economic Analysis Worksheet (EAW) may work well for SWC decision-making on cost-share assistance, it is an unworkable tool for deciding how to allocate local special assessment taxes. Here are some concerns with application of the EAW to local tax assessments:

- The EAW was not developed for this purpose; therefore, it was not developed with stakeholder input about how benefits should be recognized to parcels in the watershed.
- The EAW takes into account societal, economic factors that do not relate to the increase in market value and potential for increase in ag production factors that should be used to determine how local special assessment taxes are allocated to cropland, pasture, and local governments.

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



- The EAW does not recognize benefits to “new” acres that *could* be drained once the project is established; therefore, landowners who install drain tile after an assessment drain is constructed are given a free ride on the cost to construct assessment drain outlets.
- The EAW does not take into account property that is responsible for increased assessment drain maintenance or increased assessment drain capacity because of natural drainage alterations or modifications that accelerate the drainage of water from property. The EAW skews benefits to acres that are currently flooded and directly drained by the project. Since assessments will be based on benefits, SB 2307 unfairly shifts the tax burden of assessment drains on downstream acres which is contrary to longstanding state policy that “upstream landowners and districts that have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.”

SB 2037 takes the power away from local water resource boards and voting landowners. Section 6 of SB 2037 requires use of the flawed EAW tool for all projects estimated to cost \$1 million or more and if the benefits do not exceed costs, the project is barred from even proceeding to a landowner vote.

The Interim Drainage Committee worked hard on many water issues, but very little time was spent analyzing and discussing how economic benefits of assessment drains are calculated and determined. The Committee received a single demonstration of the EAW tool, but no time was given to demonstrate the EAW tool’s shortcomings for use to allocate local special assessments. The determination of economic benefits to individual parcels in the watershed is complex, is of great importance to the agricultural community, and deserved more attention and analysis.

As a farmer, and as a manager serving the Wells County Water Resource District, I strongly urge the Committee to vote no on SB 2307.

Sincerely,

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

Testimony opposed to 2037

Chairman Luick and Committee, my name is Phil Murphy representing the NDSGA. The Soybean Growers stand behind the Water Resource Districts in opposing 2037. Because most WRDs are composed of farmers and because farmers know their land, when a landowner votes to assess themselves by a majority vote of the assessment district, the result should stand. There are problems with the scope of economic analyses in this bill and there are disagreements of perception with local vs. state control here as well. Having attended or viewed all of the interim meetings of the Drainage committee, I find myself in agreement with the testimony of Cliff Issendorf and the Wells County testimony as well.

There is little doubt as to the noble intention of the Chair to find something that works better in his opinion, but in this case I believe 2037 should go down the assessed drain. I cannot attend the hearing as there is a bill directly dealing with the business of soybeans at the opposing end of the building at the same time. Thank you for your consideration.

January 31, 2023

Dear Senator Luick and Members of
2023 ND Senate Ag Committee

RE: Senate Bill #2037

First, I would commend the interim Water Drainage Committee's developing SB #2037 as a product of diligent work. Having Chairman Luick and Senator Hogan's already exposure to this bill's drafting is immeasurably important. ND Dept. of Water Resource's Dr. Pool's efforts and contribution should be applauded. **I support this bill as a start to remedy current treatment.**

In our society's use of special assessments, I have come to appreciate the axiom which public special assessments are rest. From State of Minnesota, who has for decades provided landowner protection, we can consider their positions as found at <http://www.house.leg.state.mn.us/hrd/pubs/specasmt.pdf>) :

"The assessment amount charged to the property cannot exceed the amount by which the property benefits from the improvement, as measured by the increase in the market value of the land due to the improvement. The assessment must be uniformly applied to the same class of property.

In order for a special assessment to be valid:

- *the land must receive a special benefit from the improvement being constructed,*
- *the assessment must be uniform upon the same class of property, and*
- *the assessment may not exceed the special benefit. **Special benefit is measured by the increase in the market value of the land owing to the improvement.***

A special assessment that does not meet these requirements is an unconstitutional taking."

On the following page, we can measure my own county's latest very expensive (>\$200,000 in consultant fees to develop) modeling for assessing drain benefits and one can wonder how their methodology is acceptable when a benefit is not measured in dollars. But this October, they advanced their model going forward after 6 years to develop. At various times, they were determined the interim Water Drainage Committee's work was inferior to theirs (Sargent County's). This October, realizing your proposed legislation was progressing, openly challenged their attorney **"To work his magic** and kill this bill." Please carefully consider the opposition's reasoning as to whether it's based upon sound logical principles or something much less.

It shouldn't be a surprise if a landowner might ask the governmental entity, **"How was my property's benefit calculated?"** only to be mystified by an answer that is stated in a "% of a full benefit" (instead of how much value was his property increased in and stated in dollars). Does Sargent County's new method (Matrix) have any resemblance to answer a landowner's question (increase value in dollars)? Does this very complex methodology comply to current ND Century Code's test to limit special assessments where its levies will not exceed benefits? My Sargent County presumes, by this complex "Matrix", it has computed levies that are less than the properties' increased value after a public drain is installed. That is the answer provided to me on that question, "What is my property's dollar benefit?". **But how do they know?** They don't and don't try to compute.

Perhaps this matrix's answer may have that result upon further computations by utilizing and stating its results in "dollars" too, but until then, we have what one member of the county water explained to attendees of a public meeting on its reassessment, **"Luck of the Draw"**.

The county's conceived "Matrix" is truly a paradox and I hope the Legislature see it for what this complex concept (Matrix) is. It leads to a conclusion that seems senseless and logically unacceptable. Without legislation, this kind of fallacy will continue which harms landowners who expect predictability and fairness from their government rather than **"Luck of the Draw"**.

I would hope your Ag Committee pursue the logic here and instill fairness back into the processes of properly assignment of public drain assessments. I believe we should leave **"Magic"** and **"Luck of the Draw"** behind and codify the bill's language. Currently, some landowners are being left essentially to pay for another property's benefit and are harmed significantly, a situation that I have also faced along with my neighbors. This situation needs to be corrected.

Paul Mathews landowner Cogswell ND 58017 701-724-6470 farmerpost@hotmail.com (preferred contact)

The following (copy /paste) is the new modeling for reassessment for Sargent County Drain # 11 as adopted in October 2022 (a process started in January 2017) with over \$200,000 consultants' fees accumulated to develop. **One should remain alert when reviewing their procedure as whether their calculated "Matrix" ever utilize "benefits" being consider in dollars.** The "Matrix" is a computation that reduces the presumption that all properties in watershed are assessed a full 100% "Benefited". This computation is theorized as being more simple and cheaper to compile than legislation's offer! Is it, or just a continuation of misapplication of society's expectation of fairness? The Sargent County's result only spreads cost and presumes dollar benefits exceed it.

Take note too, their methodology doesn't include all properties. Public benefits are paid and confined only to a watershed landowners. This ignores existing ND Century Code requiring all entities, public and private, share proportionally. This burden harms private landowners paying for benefits of public properties benefited. The two groups are different: watershed and public.

The "**Matrix**" consists of four primary categories which will total 100%:

- A. Proximity .55 %
- B. Land Crop Us .25
- C. Productivity .10
- D. Hydrologic Group .10
- Total 1.00 %

These four categories are further reduced by a revealed a "**Secondary Matrix**" by each categories' own reductions:

Proximity Assessment	
55.0%	

Buffer Distance	Buffer Percent
0.5	100%
1	90%
2	80%
3	70%
4	60%
5	50%
6	40%
7	30%
8	20%
9	10%
10+	10%

Crop Assessment	
25.0%	

Crop Group	Crop Percent
Background	0%
Crop	100%
Developed	10%
Forest	25%
Idle / Barren	50%
Pasture, Shrub & Grass	75%
Water	5%
Wetland	5%

Productivity Assessment	
10.0%	

Range	Productivity Percent
0	50%
10	50%
20	50%
30	50%
40	50%
50	50%
60	75%
70	75%
80	100%
90	100%
100	100%

Hydrologic Group	
10.0%	

Soil Group	Hydrologic Percent
A	10%
A/D	10%
B	70%
B/D	70%
C	85%
C/D	85%
D	100%
U	50%

Once this initial "**Matrix**" calculation determines a preliminary reduction from presumed 100% benefit, this newly determined percentage is adjusted further for "Reductions & Adjustments" as:

- E. Easements (determined % reduced by chart below – revealing even a "**Third Matrix**")
- F. And finally, any Drain Tile permits recorded (primary Matrix % is accordingly adjusted to 100% benefited)

Reductions & Adjustments		
Category	Description	Reduction Percent
Easements	Conservation	-15%
	Grassland	-15%
	Wetland	-15%
	WPA	-5%
	Non-Ease. Water	-20%
	Non-Ease. Wetland	-30%
Drain Tile	Adjustment for Permitted Tile	100%

Just a month after Board motion the above as being the final "Matrix" for assessing benefits, their next drain's reassessment the Board has added a new "Reduction" for City properties in watershed where to reduce determined calculations above by 90% (apparently a reduction to achieve reasonableness done by a guess?)

Testimony in support of SB 2037

Senator Larry Luick, Chairman and members of the Agriculture Committee

RE SB2037

Thank you, Mr. Chairman and members of the Committee, for giving me the opportunity to speak in support of SB 2037. My name is Bob Banderet from Cogswell, ND and a landowner in the infamous Drain 11 watershed. In my opinion, this legislation is the most important to be proposed by the Interim Drainage committee.

In a letter to Senator Wardner, dated March 31, 2020, from then State Engineer Garland Erbele, Mr. Erbele states that, according to Century Code, costs cannot exceed benefits:

Senator Rich Wardner

March 31, 2020

Page 3 of 4

In multiple other references (N.D.C.C. 61-21-15 & 61-21-1g among others) benefits are mentioned in comparison to cost which would require benefits to be determined in monetary units in order to be practically compared to costs to meet the requirements of those sections- The OSE's economic analysis tool focuses on a statewide perspective of the overall project in monetary terms. The economic analysis was not designed, nor directed, to partition individual, parcel -level benefits.

Mr. Erbele further states that WB's currently are not determining benefits in monetary units:

Page 4 of 4

Additionally, we do not believe WRBs consistently denote the dollar-value of benefits on a specific parcel, but instead choose to define benefits (indirect or direct) as a uniform, distance based, negotiated, or arbitrary percentage of costs. The WRBs then assume these assessment drains have monetary benefits that equal or exceed the project costs without having performed monetary comparison calculations- For a WRB to quantify benefits on all landowners in an assessment district at a dollar-of-benefit level would require additional work not currently being completed.

Over the last 4 years, I have watched my local WB attempt a reassessment of Drain 11 using, as Mr. Erbele describes, a distance based, negotiated, or arbitrary percentage assignment of costs. After many years and hundreds of thousands of dollars, the WB is still not determining benefits in monetary units, thus it is

impossible to determine if they are following Century Code that costs can't exceed benefits. A glaring example of negotiated or arbitrary determination of percentage of benefit is my pasture, under the recently completed reassessment of Drain 11, is determined to be 80-90% benefit because of its proximity to the drain. In the neighboring assessment district of Jackson drain, all pasture, regardless of distance from the drain is at 12.5%!! This is not a determination of benefit but rather an arbitrary distribution of cost.

Not available at the writing of Mr. Erbele's letter, the Department of Water Resources now has the economic analysis tool available to calculate individual parcels' benefits in dollars. The Department of Water Resources uses this benefit analysis to determine cost share decisions on projects, thus ensuring sound economic uses of taxpayer money. Shouldn't individual landowners, who bear the majority of the costs for these projects, be entitled to the same analysis and assurance that their costs haven't exceeded benefits?

You will hear much from the opponents of this bill that it costs too much and they will be giving up local control. Remember that the recently completed Drain 11 reassessment cost over \$200,000 and local control did nothing to ensure that costs did not exceed benefits. The US Supreme Court over one hundred years ago ruled that a government entity didn't have to physically take land to be a "taking". Costs in excess of benefits received amounted to an unconstitutional "taking" also.

In closing I would ask this committee to thoughtfully consider recommending passage of this bill so that current Century Code will finally be adhered to and that landowners will no longer be subject to a possible economic "taking" by their local WB.

Bob Banderet
Cogswell, ND

bobnlori@drtel.net
701-680-9738

Vote No on SB 2037

SB 2037 creates new challenges for **farmers and ranchers, water managers, and road authorities**. The bill would require local water resource districts to conduct an economic analysis on every single parcel included in an assessment area prior to holding a vote on any type of assessment project. This process would take power away from landowners and ag producers; will making managing water harder; and institutes an untested mandate on locals.

SB 2037 takes away local control.

- Today, producers are the drivers of assessment projects. This bill establishes a state mandate that would take local control away from those landowners. If this bill passes, water resource districts would have to follow an economic model created by economists and engineers, and not the knowledge and wishes of the local landowners, who know their land better than anyone. The outcome of the mandated economic analysis would tie the hands of water resource districts when it comes to setting assessments and would not allow landowners or facts-on-the-ground to influence the assessment analysis.
- The supporters of this bill have suggested this requirement is similar to other states; however, North Dakota's assessment process for water resource districts is actually far more transparent and landowner driven. Unlike other states, North Dakota requires assessment projects be voted on by all impacted landowners. In other words, under the current system, landowners vote to tax themselves for a project. Requiring this proposed analysis would limit the ability of landowners to influence their own assessment and would actually dilute the voice of the landowners in what should be a local process.

SB 2037 makes managing water harder.

- This type of parcel-by-parcel economic analysis is incredibly time-consuming and expensive; the landowners who need these projects will bear the cost of this burdensome, state-mandated, process. If this bill passes, projects would take much longer to develop, and this bill will make the assessment process unnecessarily complex. Meanwhile, the producers who need these projects will continue to lose valuable land and productivity.
- Additionally, while the focus of the discussion has been solely assessment projects that establish drains, this language would impact all water assessment projects, including the building of dams. Dams, built using assessment districts, provide flood protection for thousands of downstream landowners. Not only will passage of this bill make drainage harder, it will make these flood protection projects harder to complete as well.

SB 2037 institutes a largely untested mandate on locals.

- There are currently no parcel-by-parcel economic analyses used in North Dakota. This legislation was developed based on analyses conducted by the State Water Commission (SWC) for their cost-share grants. However, the SWC's analysis is not done on a parcel basis. The interim committee received a single demonstration of an analysis tool that would meet this new requirement, but, there is no practical use of parcel-by-parcel economic analysis in the state.

SB 2037 would take local control away from landowners who today have a large say in the assessment process. It would make constructing new water projects significantly more difficult and costly, which will negatively impact producers.

This is a step in the wrong direction for ag producers, road authorities, and rural North Dakotans.





DEDICATED TO PROTECTING, DEVELOPING, AND MANAGING NORTH DAKOTA'S WATER RESOURCES
 PO Box 2254, Bismarck, ND 58502-2254 701-223-4615 • 701-223-4645 (Fax)

SB 2037
Testimony of Kurt Lysne
Senate Agriculture and Veterans Affairs Committee

Chairman Luick and members of the Senate Agriculture Committee, my name is Kurt Lysne. I am a water resources engineer and have spent my entire career working with ag producers in the Red River Valley on drainage and flood risk reduction. I serve as a technical advisor to the Red River Joint Water Resources District and also serve on the North Dakota Water Users board. I rise today in strong opposition to SB 2037.

SB 2037 would burden local water resource districts with top-down red tape, requiring local water resource districts to conduct a state developed economic analysis process, or EA, on every single parcel included in an assessment area prior to holding a vote on any type of assessment project. This mandate puts the state over what is today a locally-driven process, and would make managing water harder. The current process has been used for hundreds of successful drainage projects over the past century, under present century code. These proceedings, for the most part, have all been managed by local boards made up largely of farmers, whose motive for serving is simply to help their neighbors with water issues.

The analysis envisioned by SB 2037 is based on the tools developed for the State Water Commission in its process for awarding state cost share. Based on—but not the same. The State Water Commission's analysis is done on the whole project with certain benefits built into the EA tool. Not parcel-by-parcel. The EA tool is intended to quantify direct flood damage reduction benefits for evaluating cost-share eligibility, and does not evaluate all the benefits that should be considered when determining individual parcel benefits. Water boards currently consider benefits to prevent flood damage, like the EA tool, but can also consider the following:

- Increased agricultural potential
- Cropland conversion to higher value crops
- Adequate outlet creation for future drainage, both surface and subsurface, for all landowners in the watershed
- Individual landowner needs driving the projects
- Any other unique considerations for a project

Yet, SB 2037 wouldn't just impact drainage projects. It would impact all projects developed under NDCC Chapter 61-16.1. This means it could also impact watershed dams and retention projects, as well as work on water conservation, flood control, water supply, sewer collection, and many other water management projects. When water boards establish these projects, they use the current method for evaluating and assessing benefits. This existing process has been successfully used to establish assessment districts for projects like the Sheyenne Diversion, the Maple River Dam, urban and rural legal drains, dams, and sewer projects. I have worked on several projects, the Maple River Dam and Sheyenne Diversion included, that have more than 5,000 parcels in the assessment district. These projects would not have been established with the requirements of SB 2037 in place.

The process mandated in SB 2037 would be time-consuming and expensive. It is the landowners who need these projects, not the water board, that would bear the added cost and

delay of this analysis. Today, when water boards analyze benefits, those benefits are reviewed with landowners prior to the vote. Then, the landowners vote whether to tax themselves commensurate with the benefits established by the board and landowners. This is the ultimate economic analysis. After the vote passes, landowners have a process to appeal benefit amounts. Water resource districts are the only political subdivision required to vote to establish an assessment district. This unique requirement ensures transparency in the process and accountability to landowners.

The bottom line is, if SB 2037 passes, projects will take much longer to develop, will cost more, and many projects will never happen due to the unfair apportionment of the tax burden. Meanwhile, the producers who need these projects will continue to lose valuable land and productivity due to a lack of drainage infrastructure. This is bad for North Dakota agriculture.

For these reasons, I ask you to give SB 2037 a Do Not Pass recommendation.

Thank you. I'd be happy to stand for any questions you may have.



**North Dakota
Water Resource
Districts Association**

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**SB 2037
Testimony of Keith Weston
Senate Agriculture and Veterans Affairs Committee**

Chairman Luick and members of the Senate Agriculture Committee, I am Keith Weston, the Executive Director of the Red River Retention Authority, as well as a member of my local water and joint water boards. I rise today in opposition to SB 2037.

SB 2037 would require local water resource districts to conduct an economic analysis on every single parcel included in an assessment area prior to holding a vote on any type of assessment project. This new mandate would interfere in what is today a grassroots process. Assessment projects, particularly drainage projects, allow agricultural producers to fully utilize their land. Today, these producers are the drivers of assessment projects.

Today, North Dakota's assessment process for water resource districts is transparent and landowner driven. Unlike other states, North Dakota requires assessment projects be voted on by all impacted landowners. In other words, under the current system, landowners vote to tax themselves for a project. If SB 2037 would pass, the economic analysis mandated would limit the ability of landowners to influence their own assessment and would dilute the voice of the landowners in what is today, and should be, a local process.

Additionally, if this bill passes, the outcome of the mandated economic analysis would tie the hands of water resource districts when it comes to setting assessments and would not allow landowners or facts-on-the-ground to influence the assessment analysis. Water resource districts would have to follow an economic model created by economists and engineers, and not the knowledge and wishes of the local landowners, who know their land better than anyone.

I would also note, that while much of the discussion today has revolved around drainage projects, assessments projects are also used to build other water management projects, like dams. Dams, built using assessment districts, provide flood protection for thousands of downstream landowners. Not only will passage of this bill make drainage harder, it will make these flood protection projects harder to complete as well.

As a water manager, I can tell you that the current assessment process works. It provides producers and landowners the ability to work with their neighbors and local water resource districts to establish and maintain the infrastructure needed to manage water and increase agricultural productivity. SB 2037 only makes this process less locally-driven. It takes control away from producers and landowners, making vital drainage projects harder to accomplish.

For these reasons, I ask you to give SB 2037 a Do Not Pass recommendation.

Thank you. I'd be happy to stand for any questions you may have.



February 1, 2023

Chairman Luick, and Members of the Committee,

I am writing to you this evening to encourage a 'NO' vote on Senate Bill 2037. This bill imposes a requirement that water boards conduct an economic analysis for any new assessment project. The mandatory analysis would identify a benefit for each parcel of land within an assessment district. The benefit determined by the analysis would set a limit on the assessment on each parcel.

As you know, for any new assessment project conducted by a water board, landowners vote to tax themselves based on the value those landowners perceive from any assessment project. The goal of this bill is to prevent any assessment from exceeding the benefit derived by any landowner, which is an honorable goal, but, in practice, creates legitimate concerns. There are concerns about methods used by economists and engineers in determining and allocating benefits. If these consultants conducting this study do not determine benefits exist that are recognized by landowners, or alternatively if those consultants skew the allocation of those benefits, the landowners could be barred from taxing themselves based on their own observations and perceptions. In other words, this requirement is taking away local control. In addition, this requirement adds cost, time, and red tape to any new water project.

The EAW tool that the bill will use for economic analysis shifts the tax burden for assessment drains to people downstream of tile projects. The people downstream of existing tile projects will be deemed the most benefited and will pay more and the people who have already tiled won't pay hardly anything at all. Maybe even nothing.

This bill doesn't include all the benefits and opportunities that drains have to offer, economic nor environmental. It is bad for water management, it is bad for farmers, it's bad for land improvement, which impacts positive economic growth, which makes it bad for schools.

I really appreciate your time and consideration.

Sincerely,

Levi Otis
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Director of Government Affairs & Public Policy
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Testimony for SB 2037

Date: submitted on 2-1-2023

By: Gary Heintz

19 1st. Avenue NW, Chaseley, ND 58423

Cell phone: 701-650-2064

Email: renespeech@gmail.com

My name is Gary Heintz from Chaseley, ND. I support this bill, SB 2037, to change the current rules and regulations regarding water drainage districts. I am a taxpayer within the Hurdsfield legal drain and pay an assessment for that project. The criteria for the assessment levels were set by the engineer hired by the Wells County Water Resource District. The assessment levels were set at 100%, 50%, and 10% depending on parcel location relative to the two lakes that act as reservoirs. These assessment levels did not take into account land use (crop vs. pasture), land value, or any type of appraisal.

My assessment amount is \$154 per acre on the land assessed at 100% and \$77 per acre on the land assessed at 50%. My present yearly assessment exceeds the amount of my land real estate taxes on these tracts. My total assessment for this project was \$51,000. If paid out over a multiple year bond it was projected to be over \$80,000 with the interest rate that was in place at the time the funding was acquired by the Wells County Water Resource District. This assessment is without any additional operational and maintenance costs. This may not seem like an excessive amount to some but the lake on my land is the final reservoir and as a result I have so far lost access to 8 acres of land and am holding the water for the project. Those of us that are holding the water in the reservoir lakes on our land are paying the highest assessment rates while the upstream landowners are paying lower assessment rates and are benefitting by being able to remove water on their land through continued tiling and draining.

In the time that this project has become operational, the pumps that were to draw down the water in the final reservoir lake (East Lake), partially located on my land, have not run as long as needed to meet projections in the operational plan. Due to the limited pumping time based on high sulfate levels (levels that were known prior to construction) the water levels on East Lake, remain at levels that flood land or make it inaccessible. Ironically, these parcels that are reservoirs for the project, are assessed at the highest levels.

Hopefully, making cost/benefit determination more consistent throughout the state, as provided by this bill, will provide a more equitable method of assessment that is based on more than just physical location and is more uniformly based on actual monetary benefit.

Further, as there are currently no methods for landowners to appeal the initial construction assessments, I would propose an amendment be added to provide for reassessment and/or reimbursement to the landowner, where it can shown that a parcel is or has been bearing costs that exceed benefits.

Thank you for this opportunity to testify on this bill.

Respectfully,
Gary Heintz

Testimony SB2037

Sam Wagner
Ag and Food Field Organizer
Dakota Resource Council
1720 Burnt Boat Dr. Ste 104
Bismarck ND 58503
Neutral Testimony for SB2037

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

Mr. Chairman,

DRC would like to first take this opportunity to thank the Interim Committee members for their work on this bill. We and our members have been watching this bill unfold now for the past 2 years since it was SB2008 and then converted into a study. It's good that we create clear concise water laws once and for all so that we have no contradictions. We'd like to admit that water laws are never easy and there are always winners and losers with these bills.

Our biggest concern when these laws are drafted are the following questions:

1. Are landowner rights protected from government overreach?
2. Is local control maintained?
3. Is the process for new projects fair?

We would like to address some concerns that we have with the bill.

Landowner Rights

On this bill notifications for any water projects seem fair and also will fix the problem of landowners in counties downstream that may not know about the project because it originated in a different county. We have to ask if a project costs more than 1 million dollars if that is a low bench mark for triggering a cost benefits assessment. What safeguards can be made to ensure the project is not split up into multiple projects to avoid an assessment? We also have to ask exactly how are their property values being determined and when will that be assessed when a vote is held?

Local Control

We would also like to ask how the 50% of the vote of landowners was determined and why each vote is based on dollars per assessment of the land? When the Townships, Counties, or Cities vote per their assessment, who determines what their vote is? Is there a percentage of votes if the city council, county commission, or township boards have a split vote? Multiple owners of land with differing opinions could be problematic. Is it the majority stakeholder in the property that makes the decision? Is this information going to be made immediately available?

Fairness

Finally we come to the most important question. Is this bill fair towards all parties involved or will it serve to benefit a select few? Our primary concern with current laws and regulations is that we have people elected by the people who are making decisions regarding assessments. From what we can gather we're concerned if these members of the water board are being appointed and making decisions about levying taxes, this would create a situation of taxation without representation. So how are these boards made up is the fundamental question we have to ask. The government doesn't have to steal land in order to violate property rights; they can also impose taxes and assessments that would make the property near worthless or extremely difficult to sell.

I would like to yield any of my remaining time to someone who could answer some of these questions at the Chair's Discretion.

Thank you for your time and consideration.



**North Dakota Grain Growers Association
Testimony in Opposition to
SB 2037
Senate Agriculture and Veterans Affairs
Committee
February 2, 2023**

Chairman Luick, members of the Senate Agriculture and Veterans Affairs 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 SB 2037.

First, NDGGA applauds the work of the Interim Legislative Water Drainage Committee for all of their work regarding the water management laws in the state. As this Committee and the Water Drainage Committee is well aware, dealing with water management laws in North Dakota is a daunting task. That said, NDGGA does not agree with SB 2037 because the legislation ultimately will take away local control of water management projects, institutes largely untested mandates on local entities and ultimately makes orderly water management more difficult in the state.

Some examples; SB 2037 mandates the water management assessment process be relegated to an economic model created by economists and engineers rather than today's model which is driven by local landowners and water management boards. This takes away from local control.

"You Raise; We Represent"

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Second, the bill institutes untested mandates on water management projects. SB 2037 was developed based on economic analyses conducted by the State Water Commission for their cost-share grants which is not conducted on a parcel by parcel basis. Currently there exists the possibility of analysis tools which could possibly accomplish parcel by parcel analysis but as yet there is no practical tool for such usage in the state.

Finally, SB 2037 will make orderly water management more difficult in North Dakota. While in theory a parcel-by-parcel analysis may appear attractive the fact remains that such an analysis would be incredibly time consuming and expensive. Landowners would be assessed the cost of the analysis further adding to the cost of a potential project. Additionally, projects would take much longer to develop placing an added burden on landowners.

Therefore the North Dakota Grain Growers Association respectfully requests that the Senate Agriculture and Veterans Affairs Committee give SB 2037 a Do Not Pass recommendation and would ask that the full Senate concur.



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February 2, 2023

68th Session Testimony on SB 2037
Chairman Larry Luick
Senate Agriculture and Veterans Affairs Committee

I am Mark DeMars, a farmer from Bathgate, North Dakota. I am a member of the Red River Valley Sugarbeet Growers Association (RRVSGA). RRVSGA represents the sugarbeet growers for the American Crystal Sugar Company (ACSC). Our members raise sugarbeets on approximately 400,000 acres and represent over one-third of the total sugarbeet production in the United States each year. I am writing this letter in opposition to SB 2037.

As a farmer led organization, RRVSGA opposes this bill because of the loss of local control, the added time, and increased costs to water projects. Drainage projects bring out strong emotions on both sides, however the current process operates as it should. When there is support for a project, it passes and when there isn't enough support, the project fails. The decisions are kept local and the process works.

Many farmers serve local water resource districts, we know when a project will benefit enough to tax ourselves. This bill will dilute the farmer's voice in choosing to tax or not tax ourselves. The current dispute resolution method that is in place works.

This bill will also slow down any water projects. Moving water is already a costly and burdensome task, and this bill makes it even more expensive and more time consuming. Further pushing water projects down the road.

Thank you for your consideration, we encourage you and the committee to vote NO on SB 2037.

Mark DeMars
RRVSGA ND Liaison

Cc: Harrison Weber – Executive Director – Red River Valley Sugarbeet Growers



Contact:

Matt Perdue, Lobbyist

mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
Senate Agriculture and Veterans Affairs Committee
February 2, 2023**

Chairman Luick and members of the committee,

Thank you for the opportunity to testify on the Senate Bill No. 2037. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmer Union's (NDFU) members. NDFU opposes SB 2037, because it imposes an untested mandate on landowner-driven drainage projects and compromises local control.

NDFU's Policy & Action supports "the authority of water resource districts to create, construct, operate, manage, maintain and improve legal assessment drains." During our recent annual convention, our members approved a special order of business outlining key priorities for this legislative session. Among those priorities, our members urged the legislature to streamline regulations governing water drainage projects. We appreciate the work of the Water Drainage Committee and support SB 2036. However, we believe SB 2037 is a step in the wrong direction.

Farmers, ranchers and landowners are the drivers of assessment projects. SB 2037 requires water resource districts to follow an economic model, not the wishes of local landowners. We are concerned that this would dilute the voice of landowners in what should be a locally led process.

We are also concerned that SB 2037 will make water management more difficult. SB 2037 would make assessment projects more complex and longer to develop. Furthermore, the proposed economic analysis is untested. There is currently no practical use of parcel-by-parcel economic analysis in the state.

NDFU respectfully requests a "Do Not Pass" recommendation on SB 2037. Thank you for your consideration. I will stand for any questions.



**Testimony of Katie Vculek
On behalf of the North Dakota Corn Growers Association
February 2, 2023**

In OPPOSITION to SB 2037

Chairman Luick and members of the Agriculture and Veteran Affairs Committee,

My name is Katie Vculek, and I am a board member of the North Dakota Corn Growers Association (NDCGA). NDCGA is the voice of the more than 13,000 corn growers across the state at the grass roots level. On behalf of our state's corn growers, I express our opposition to SB 2037.

I farm with my family near Oakes, ND, and consider water management one of the best ways we can improve our land and provide economic growth to our region. Under current law, local landowners can petition for an assessment project. The water resource district and its engineers then plan the project, notify landowners of their approximate assessment, and bring the project to a vote. From beginning to end, the assessment project keeps the decision making at the local level and allows the local majority to decide whether a project should be implemented or not.

My neighbors and I get to decide if the benefit outweighs the cost. The economic analysis required by SB 2037 shifts that analysis away from the district and its engineers to a system developed by the further removed State Department of Water Resources. Shifting this analysis away from the local level and to a State developed system will result in more bureaucracy, requiring landowners, farmers, and Districts to expend more time and money than ever before.

While I understand that issues have arisen in some water resource districts which has in part prompted this legislation and the preceding drainage study that occurred last year. Those concerns should be addressed for the very few instances and not trigger a wholesale "solution" statewide in search of problems where the process is working for the vast majority of the state.

These assessment projects are already an undertaking for a community to complete. Saddling these projects with additional processes and procedures can only slow progress in a local community. Assessment projects provide a major direct benefit of outlet access for landowners. But proper water management in a community also provides benefits for first responders and rural road maintenance. I attended a hearing last summer where a first responder expressed his concern with a delayed assessment project. The backed-up water caused roads to deteriorate and impacted his ability to respond to emergencies in his community. I trust my local water resource district and its engineers to understand these benefits and costs better than the economic analysis required by SB 2037.

We ask that you vote *for* local control and *against* this government overreach and oppose SB 2037 for the sake of farmers like us in North Dakota. Thank you for your time and consideration. I stand for any questions.



North Dakota Legislative Council

Prepared for the Water Drainage Committee

LC# 23.9338.01000

August 2022

EXPLANATION OF BILL DRAFT [23.0025.03000] RELATING TO CALCULATING COSTS AND BENEFITS FOR ASSESSMENT PROJECTS

BILL DRAFT OVERVIEW

Bill draft [23.0025.03000] creates a new section to North Dakota Century Code Chapter 61-16.1 to incorporate the use of a cost-benefit analysis for assessment projects costing \$1 million dollars or more, addresses conflicts and redundancies throughout Chapter 61-16.1, and makes form and style changes.

SECTION-BY-SECTION DESCRIPTION

- Section 1 of the bill draft amends the definitions section of Chapter 61-16.1, pertaining to the operation of water resource districts, to define "affected land," "assessment project," "benefited property," and "benefits."
- Section 2 of the bill draft amends Section 61-16.1-09.1, which allows for the financing of projects involving the snagging, clearing, and maintaining of natural watercourses through the use of special assessments. Currently, the benefits derived from an assessment project must be determined as provided under Section 61-16.1-17, which requires the board to determine the probable share of costs that will be assessed to each affected landowner. The bill draft replaces the reference to Section 61-16.1-17 with a reference to Section 6 of the bill draft, which creates a new section to Chapter 61-16.1 to provide a more detailed process for determining the costs and benefits of an assessment project.
- Section 3 of the bill draft amends Section 61-16.1-12.1, which allows a water resource board to enter an agreement with a federal or state agency to construct a project and finance that project with special assessments. Currently, the board is required to determine and levy assessments against benefited property and prepare the assessment list in accordance with Sections 61-16.1-21 through 61-16.1-24. This language has been amended to require the levy and assessment be determined and the assessment list be prepared in accordance with Section 6 of the bill draft and Sections 61-16.1-22 through 61-16.1-24. Sections 61-16.1-22 through 61-16.1-24 pertain to publication of cost and benefit calculations, the notice of the hearing on assessments, the manner in which assessments may be appealed, and the time when special assessments may be levied.
- Section 4 of the bill draft amends Section 61-16.1-15, which allows a water resource board to finance projects through the use of revenue bonds, general taxes, or special assessments. Language requiring special assessments be apportioned to lands benefitted by the project has been removed to eliminate redundancies with the requirements outlined in Section 6 of the bill draft.
- Section 5 of the bill draft amends Section 61-16.1-17, which pertains to declaring the necessity of a proposed project and designating a registered engineer to prepare project plans and specifications and determine the estimated cost of constructing a project. Currently, the engineer's report must be sufficiently detailed for the board to determine probable shares of the total costs to be assessed against the affected landowners in the proposed assessment district. This section has been amended to include a reference to Section 6 of the bill draft, pertaining to the new authority to conduct a cost-benefit analysis.
- Section 6 of the bill draft creates a new section to Chapter 61-16.1, which outlines the procedure for determining costs and benefits for assessment projects. The section requires assessment costs be apportioned in relation to the benefits accrued to each lot and requires a cost-benefit analysis and the use of the economic analysis process developed under Section 61-03-21.4 for a proposed project costing \$1 million or more. The section prohibits an individual assessment from exceeding the amount of benefits anticipated to accrue.
- Section 7 of the bill draft amends Section 61-16.1-18 to require the water resource board to file and mail the cost and benefit calculations generated pursuant to Section 6 of the bill draft and publish notice of the hearing on the project. A reference to the previous authority for a cost-benefit analysis under Section 61-16.1-21 has been replaced with a reference to Section 6 of the bill draft.

- Section 8 of the bill draft amends Section 61-16.1-19, relating to voting on proposed projects, to clarify a reference to the hearing process under Section 61-16.1-18 and replace a reference to the cost-benefit analysis under Section 61-16.1-21 with the new process outlined in Section 6 of the bill draft.
- Section 9 of the bill draft makes form and style changes to Section 61-16.1-20, relating to the voting rights of landowners. No substantive changes were made.
- Section 10 of the bill draft makes form and style changes to Section 61-16.1-21, relating to the assessment of projects costs, and clarifies no political subdivision or landowner may be assessed an amount that exceeds the benefits derived from the assessment project.
- Section 11 of the bill draft amends Section 61-16.1-22, relating to the publication and mailing of cost and benefit calculations and hearing notices. Currently, after entering an order establishing a project, the water resource board must publish an assessment list in the newspaper of general circulation. The reference to an assessment list has been replaced with a requirement to publish a notice including the results, in dollars, of the calculations required under Section 6 of the bill draft and the calculation of costs prepared by the engineer.
- Section 12 of the bill draft amends Section 61-16.1-23, relating to appeals to the Department of Water Resources, by clarifying any correction of assessments by the department is subject to the limitations provided in Section 6 of the bill draft.
- Section 13 of the bill draft repeals Section 61-16.1-01, which references the legislative intent and purpose of the chapter.

Concerns with amendments to S.B. 2037:

- Section 7 of the bill endorses the economic analysis process developed under section 61-03-21.4, which is known to have flaws as a tool for determining benefits to individual parcels within the proposed assessment district. The DWR has expressed commitment to work on improving the economic analysis tool for determining benefits, in dollars, to individual parcels. Those tool corrections should be developed and implemented, with stakeholder input, before the process is legislatively endorsed, even if the endorsement is permissive. The amended bill still allows for appeals to the DWR who may correct assessments subject to Section 7 of the Act.
- We are also concerned that the reference to a specific tool in the bill will create the perception to those opposed to assessment projects that if the water resource board used the analysis in section 61-03-21.4, the results would have been more favorable to them, which may not be the case.
- Section 7, paragraph 2 of the bill does not recognize benefits to property that is responsible for increased sedimentation in downstream areas of the watershed and property that is responsible for increased project maintenance or the need for increased project capacity because of alterations to natural drainage or modifications to property that accelerate the drainage of water. This is counter to the longstanding policy in ND that upstream landowners and districts that have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing or proper management and control of surface waters.
- Although Section 7, paragraph 2 of the amended bill appears to create a \$1m threshold for prohibiting projects where the estimated costs exceed the estimated benefits, in dollars, the prohibition will actually apply to all assessment projects. The cost-versus-benefit analysis in the bill eliminates the power of the local landowner vote.

23.0025.03002
Title.

Prepared by the Legislative Council staff for
Senator Luick
February 15, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2037

Page 1, line 1, replace "a" with "two"

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

Page 1, line 2, after "projects" insert "and public informational meetings"

Page 2, line 17, after "10." insert "Direct benefits" and "directly" in regard to benefits mean a measurable or quantifiable benefit to a piece or parcel of land that is attributable to the project.

11."

Page 2, line 18, replace "11." with "12."

Page 2, after line 19, insert:

"13. "Indirect benefits" and "indirectly" in regard to benefits mean a public good or shared benefit that is not directly attributable to an individual piece or parcel of land."

Page 2, line 20, replace "12." with "14."

Page 2, line 25, replace "13." with "15."

Page 3, line 3, replace "6" with "7"

Page 6, line 7, replace "6" with "7"

Page 7, line 15, overstrike "profiles," and insert immediately thereafter "a preliminary engineering report which must contain the preliminary"

Page 7, line 15, overstrike the second comma

Page 7, line 16, after "~~thereof~~" insert "including acquisition of right of way, project design, and project construction. The preliminary engineering report also must identify any locations where the proposed project crosses a railroad, public road, or highway"

Page 7, line 17, remove "include the cost to acquire"

Page 7, line 17, overstrike "~~right of way and~~"

Page 7, line 20, replace "6" with "7"

Page 7, after line 20, insert:

"SECTION 6. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Public informational meeting and information presented - Procedure.

1. Upon the filing of the engineer's preliminary report as provided for in section 61-16.1-17, the board or the board's agents shall create and by resolution approve a preliminary analysis of the benefits and assessments

to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed; the amount each would be benefited by the proposed project; and the amount assessed against each in accordance with section 61-16.1-21 and section 7 of this Act.

2. After satisfying the requirements in subsection 1, the board by resolution shall set a date and place for a public informational meeting on the proposed project. The place of the hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners included in the project's benefited area.
3. At least thirty days before the public informational meeting, the board shall mail notice of the meeting to all parties in the benefited area, including:
 - a. Each landowner affected by the assessments;
 - b. The governing body of each county, township, city, or other political subdivision affected by the assessments; and
 - c. An official from each railroad and road authority that may be crossed or impacted by the proposed project.
4. Each landowner must be notified at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The board shall send the notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board.
5. At the public informational meeting, the board or the board's agents shall present the proposed project and preliminary design, the board's methodology for determining benefits, and the approved preliminary cost-benefit analysis of the benefits and assessments to be made. The board also shall allow the parties to offer comments and recommendations. The board may alter the preliminary cost-benefit analysis as the board deems just and necessary to include alterations to the proposed project, the project's preliminary design, or assessments made under section 61-16.1-21.
6. The board's engineer shall file an updated engineer report which must include the preliminary project plans and an updated estimate of the total estimated costs of the project. The updated engineer's report also must identify any locations where the project crosses a railroad, public road, or highway."

Page 8, line 2, after the second "the" insert "following criteria for determining the direct benefits of a project:

- a. If the project will provide an increase in market value;
- b. If the project will provide an increase or improvement in agricultural production;
- c. If the project will provide demonstrable residential, commercial, or industrial development;

- d. If the project will provide or furnish an outlet for tile or surface drainage;
 - e. If the project will provide flood damage reduction benefits; and
 - f. Present use of the property including existing public or private easements.
3. To prepare the cost-benefit analysis, the board shall use the following criteria for determining indirect benefits of a project:
- a. Protection value of public or utility services including emergency, water, sewer, electric, telephone, internet, or other services or utilities;
 - b. Value provided to public safety;
 - c. Flood damage reduction benefits of public infrastructure;
 - d. Reduced costs of public services;
 - e. If the project will provide other consumptive or nonconsumptive value including recreational opportunities; and
 - f. Value to upstream landowners as beneficiaries of improvements to watershed management of surface waters.
4. In determining benefits, the board may use the"

Page 8, line 3, replace "and" with ". Upon analyzing the criteria for direct and indirect benefits, the board shall"

Page 8, line 7, replace "3." with "5."

Page 8, line 12, replace "4." with "6."

Page 8, line 28, overstrike "Upon" and insert immediately thereafter "Following the public informational meeting and upon"

Page 8, line 29, replace "6" with "7"

Page 8, line 30, after "board" insert ", by resolution"

Page 8, line 30, overstrike "fix" and insert immediately thereafter "set"

Page 9, line 11, replace "calculations required" with "assessments calculated"

Page 9, line 11, replace "6" with "7"

Page 9, line 11, remove "and the engineer's"

Page 9, line 12, replace "calculation of costs for the project" with "as well as the engineer's report, preliminary plans, estimate of total project costs, and any locations where the project crosses a railroad, public road, or highway"

Page 9, line 13, replace "calculations" with "assessments"

Page 9, line 14, after "benefits" insert "and costs"

Page 9, line 15, remove "and identifying the several costs for the project must be attached to the"

Page 9, line 16, remove "results"

Page 9, line 17, replace "The" with "At least thirty days before the hearing, the"

Page 9, line 28, after "e." insert "Include a copy of the assessment list showing the amount of assessments against each lot, piece, or parcel of land and against each county, township, city, or other political subdivision that benefits from the project."

f."

Page 9, line 28, after "Include" insert "a method to access the"

Page 9, line 28, replace "and benefit calculations" with "benefit analysis"

Page 9, line 30, replace "f." with "g."

Page 10, line 1, overstrike "the"

Page 10, line 1, remove "cost and benefit calculations"

Page 10, line 1, overstrike "and"

Page 10, line 4, replace "g." with "h."

Page 10, line 11, remove "Each affected landowner"

Page 10, line 11, overstrike "and the"

Page 10, line 12, overstrike "governing body of any county, township, or city to be assessed"

Page 10, line 12, overstrike "must be informed at"

Page 10, line 13, overstrike "the hearing of the"

Page 10, line 14, remove "cost and"

Page 10, line 15, remove "benefit calculations"

Page 10, line 15, overstrike the period and insert immediately thereafter:

5. At the hearing, the board must inform those in attendance of:

- a. The project assessments and district boundary including total costs of the project and each party's share;
- b. A cost-benefit analysis summary;
- c. The project necessity and design; and
- d. The voting process under section 61-16.1-19."

Page 11, line 1, replace "6" with "7"

Page 13, line 4, after "a" insert "developed before the hearing on assessments under section 61-16.1-22"

Page 13, line 7, remove "project's"

Page 13, line 7, after "benefits" insert "and cost of the project"

Page 13, line 12, remove the overstrike over "**Assessment**"

Page 13, line 12, remove "**Cost and benefit calculations**"

Page 13, line 17, replace "6" with "7"

Page 14, line 15, replace "6" with "7"

Renumber accordingly

23.0025.03002

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2037

Introduced by

Legislative Management

(Water Drainage Committee)

1 A BILL for an Act to create and enact ~~atwo~~ new ~~section~~sections to chapter 61-16.1 of the North
2 Dakota Century Code, relating to calculations of costs and benefits for assessment projects and
3 public informational meetings; to amend and reenact sections 61-16.1-02, 61-16.1-09.1,
4 61-16.1-12.1, 61-16.1-15, 61-16.1-17, 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-21,
5 61-16.1-22, and 61-16.1-23 of the North Dakota Century Code, relating to costs, benefits, and
6 special assessments for water projects; to repeal section 61-16.1-01 of the North Dakota
7 Century Code, relating to legislative intent; and to provide a penalty.

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

9 **SECTION 1. AMENDMENT.** Section 61-16.1-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-16.1-02. Definitions.**

12 In this chapter, unless the context or subject matter otherwise provides:

- 13 1. "Affected land" or "affected property" means land or property subject to special
14 assessment or condemnation for a project.
- 15 2. "Affected landowners" means landowners whose land is subject to special
16 assessment or condemnation for a project.
- 17 ~~2.3.~~ "Assessment drain" means any natural watercourse opened, or proposed to be
18 opened, and improved for the purpose of drainage, and any artificial drain of any
19 nature or description constructed for the purpose of drainage, including dikes and
20 appurtenant works, which are financed in whole or in part by special assessment. This
21 definition may include more than one watercourse or artificial channel constructed for
22 the purpose of drainage when the watercourses or channels drain land within a
23 practical drainage area.

- 1 ~~3.4.~~ "Assessment project" means any project financed in whole or in part by a special
2 assessment.
- 3 ~~5.~~ "Benefited property" means property that accrues benefits from a project.
- 4 ~~6.~~ "Benefits" means the extent to which society and economies impacted by a project are
5 made better off through lower costs, fewer damages, or enhancements.
- 6 ~~7.~~ "Commission" means the state water commission.
- 7 ~~4.8.~~ "Conservation" means planned management of water resources to prevent
8 exploitation, destruction, neglect, or waste.
- 9 ~~5.9.~~ "Costs of the frivolous complaint" means all reasonable costs associated with the
10 requisite proceedings regarding the removal of obstructions to a drain, removal of a
11 noncomplying dike or dam, or closing a noncomplying drain, including all reasonable
12 construction costs; all reasonable attorney's fees and legal expenses; all reasonable
13 engineering fees, including investigation and determination costs; compliance
14 inspections; and necessary technical memorandum and deficiency review; and all
15 costs associated with any hearing conducted by a district, including preparation and
16 issuance of any findings of fact and any final closure order.
- 17 ~~6.10.~~ "Direct benefits" and "directly" in regard to benefits mean a measurable or quantifiable
18 benefit to a piece or parcel of land that is attributable to the project.
- 19 ~~11.~~ "District" means a water resource district.
- 20 ~~7.11.12.~~ "Frivolous" means allegations and denials in any complaint filed with a district made
21 without reasonable cause and not in good faith.
- 22 ~~13.~~ "Indirect benefits" and "indirectly" in regard to benefits mean a public good or shared
23 benefit that is not directly attributable to an individual piece or parcel of land.
- 24 ~~8.12.14.~~ "Project" means any undertaking for water conservation; flood control; water supply;
25 water delivery; erosion control and watershed improvement; drainage of surface
26 waters; collection, processing, and treatment of sewage; or discharge of sewage
27 effluent; or any combination thereof, including of purposes in this subsection, and
28 includes incidental features of any such the undertaking.
- 29 ~~9.13.15.~~ "Water resource board" means the water resource district's board of managers.

30 **SECTION 2. AMENDMENT.** Section 61-16.1-09.1 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

- 2 1. A water resource board may undertake the snagging, clearing, and maintaining of
3 natural watercourses and the debris removal of bridges and low-water crossings. The
4 board may finance the project in whole or in part with funds raised through the
5 collection of a special assessment levied against the land and premises benefited by
6 the project. The benefits of a project must be determined in the manner provided in
7 section ~~61-16.1-17~~67 of this Act. Revenue from an assessment under this section may
8 not be used for construction of a drain or reconstruction or maintenance of an existing
9 assessment drain. Any question as to whether the board is maintaining a natural
10 watercourse or is constructing a drain or reconstructing or maintaining an existing
11 assessment drain must be resolved by the department of water resources. All
12 provisions of this chapter apply to assessments levied under this section except:
- 13 a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on
14 agricultural lands and may not exceed fifty cents annually for each five hundred
15 dollars of taxable valuation of nonagricultural property; and
- 16 b. If the assessment is for a project costing less than one hundred thousand dollars,
17 no action is required for the establishment of the assessment district or the
18 assessments except the board must approve the project and assessment by a
19 vote of two-thirds of the members and the board of county commissioners of the
20 county in which the project is located must approve and levy the assessments to
21 be made by a vote of two-thirds of its members.
- 22 (1) If a board that undertakes a project finds the project will benefit lands
23 outside water resource district boundaries, the board shall provide notice to
24 the water resource board where the benefited lands are located together
25 with the report prepared under section 61-16.1-17.
- 26 (2) The board of each water resource district containing lands benefited by a
27 project must approve the project and assessment by a vote of two-thirds of
28 its members. The board of county commissioners in each county that
29 contains lands benefited by a project must approve and levy the
30 assessment to be made by a vote of two-thirds of its members.

1 (3) If a project and assessment is not approved by all affected water resource
2 boards and county commission boards, the board of each water resource
3 district and the board of county commissioners of each county shall meet to
4 ensure all common water management problems are resolved pursuant to
5 section 61-16.1-10. In addition, the water resource board that undertakes
6 the project may proceed with the project if the board finances the cost of the
7 project and does not assess land outside the boundaries of the district.

8 c. All revenue from an assessment under this section must be exhausted before a
9 subsequent assessment covering any portion of lands subject to a prior
10 assessment may be levied.

11 2. Before an assessment may be levied under this section, a public hearing must be held
12 and attended by a quorum of the affected water resource boards and a quorum of the
13 affected boards of county commissioners. The hearing must be preceded by notice as
14 to date, time, location, and subject matter published in the official newspaper in the
15 county or counties in which the proposed assessment is to be levied. The notice must
16 be published at least ten days but not more than thirty days before the public hearing.

17 **SECTION 3. AMENDMENT.** Section 61-16.1-12.1 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-16.1-12.1. Water resource boards - Agreements with state or federal agencies for**
20 **certain improvements.**

21 1. A water resource board may enter into an agreement with any federal or state agency,
22 or any combination thereof federal or state agencies, for the construction of a
23 project, under the terms of which the contract for the work is to be let by the federal or
24 state agency or any combination thereof federal or state agencies. If under the terms
25 of the agreement at least fifty percent of the total cost of constructing the project is to
26 be paid by the agency or agencies and if any portion of the cost of the project is to be
27 paid by the levy of special assessments, the board may by resolution may create a
28 project assessment district for the purpose of levying to levy special assessments to
29 finance the amount that the district will be obligated to pay in accordance with the
30 agreement, over and above any other funds which are on hand and properly available
31 for that purpose. The assessment district must be of a size and form as to include all

1 ~~properties which in the judgment of~~ benefited property as determined by the board,
2 after consultation with a registered engineer designated by the board for that purpose,
3 ~~will be benefited by the construction of the proposed project,~~ and the board shall direct
4 the engineer to prepare a map showing the boundaries of the proposed assessment
5 district.

- 6 2. The board by resolution shall ~~by resolution~~ declare the necessity of the project, set
7 forth the general nature and purpose of the proposed project, estimate the total cost of
8 the project; and the approximate amount or fraction of the cost ~~which~~ the district will be
9 obligated to pay under the agreement, and the fact ~~that~~ this amount, or a lesser
10 amount as the board may specify, is proposed to be paid by the levy of special
11 assessments upon benefited property within the assessment district ~~determined to be~~
12 ~~benefited by the project.~~ The board shall ~~cause~~ email the resolution of necessity
13 ~~together with,~~ a copy of the map showing the boundaries of the assessment district,
14 and a notice stating the date and time by which the owners of any property liable to be
15 specially assessed for the proposed project must ~~file their~~ cast votes on the proposed
16 project with the secretary of the board ~~to be mailed~~ to each affected landowner
17 ~~affected by the proposed project~~ as determined by the tax rolls of the county in which
18 the affected property is located. The board may send the material by certified mail or
19 by regular mail attested by an affidavit of mailing signed by the attorney or secretary of
20 the board. The notice must ~~also~~ set forth the time and place ~~where~~ the board shall
21 meet to determine whether the project is approved. The notice must ~~also~~ be published
22 once in a newspaper of general circulation in the district and once in the official county
23 newspaper of each county in which the ~~benefited lands are~~ affected property is located.
24 Within five days after the first mailing of the resolution the board shall ~~cause~~ serve a
25 copy of the resolution ~~to be personally served~~ upon any county, city, or township, in its
26 corporate capacity which may be benefited directly or indirectly from the construction
27 of the proposed project and upon any county ~~which~~ that may become liable for any
28 deficiency in the fund to be created for the project, by delivering a copy of the
29 resolution to any member of the governing body ~~thereof~~ of the county, city, or township.
30 3. The meeting must be held not less than thirty days after the mailing of the resolution,
31 at which time the board shall determine whether the project is approved. If the board

1 finds that fifty percent or more of the total votes filed are against a proposed project,
2 then the board may not proceed further with the proposed project. If the board finds
3 that less than fifty percent of votes filed are against the proposed project, the board
4 may proceed with the project. In any assessment district created under this section,
5 the board may dispense with ~~all other~~the requirements of this chapter, other than
6 those stated in this section.

7 4. After the contract for the work has been let, the board may issue warrants on the fund
8 of the project for the total amount of the cost ~~thereof~~of the project, and the board,
9 without holding the hearing required by section 61-16.1-18, shall ~~proceed to~~ determine
10 and levy any assessments against benefited property ~~benefited by the project~~ and
11 prepare an assessment list ~~all~~ in accordance with the procedures required by
12 section 67 of this Act and sections 61-16.1-21~~61-16.1-22~~ through 61-16.1-24. The
13 provisions of sections 61-16.1-25 through 61-16.1-36 are applicable to the
14 assessments and the special warrants issued pursuant to this section.

15 **SECTION 4. AMENDMENT.** Section 61-16.1-15 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **~~61-16.1-15. Financing project through revenue bonds, general taxes, or special-~~**
18 **~~assessments – Apportionment of benefits~~Initiating an assessment project - Policy.**

19 A water resource board ~~shall have the authority~~, either upon request or by its own motion,
20 ~~to~~may acquire needed interest in property and provide for the cost of construction, alteration,
21 repair, operation, and maintenance of a project through issuance of improvement warrants or
22 with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a
23 combination of general ad valorem tax, special assessments, and revenue bonds. ~~Whenever a~~
24 ~~water resource board decides to acquire property or interests in property to construct, operate,~~
25 ~~alter, repair, or maintain a project with funds raised in whole or in part through special~~
26 ~~assessments, such assessments shall be apportioned to and spread upon lands or premises~~
27 ~~benefited by the project in proportion to and in accordance with benefits accruing thereto. The~~
28 ~~board shall assess the proportion of the cost of the project, or the part of the cost to be financed~~
29 ~~with funds raised through levy and collection of special assessments which any lot, piece, or~~
30 ~~parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or~~
31 ~~township which is benefited thereby.~~ In determining assessments, the water resource board

1 shall carry out to the maximum extent possible the water management policy of this chapter that
2 upstream landowners must share with downstream landowners the responsibility to provide for
3 the proper management of surface waters.

4 **SECTION 5. AMENDMENT.** Section 61-16.1-17 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.1-17. Financing of special improvements - Procedure.**

7 ~~When it is proposed to finance in whole or in part the construction of a project with funds~~
8 ~~raised through the collection of special assessments levied against lands and premises~~
9 ~~benefited by construction and maintenance of such project~~ an assessment project is proposed,
10 the water resource board shall examine the proposed project, and if in its opinion. If the water
11 resource board decides further proceedings are warranted, ~~if the board~~ shall adopt a resolution
12 ~~and declare that it~~ declaring constructing and maintaining the proposed project is necessary to
13 ~~construct and maintain the project. The resolution shall briefly state, identifying~~ the nature and
14 purpose of the proposed project, and shall ~~designate~~ designating a registered engineer to assist
15 the board. For the purpose of making examinations or surveys, the board or ~~its employees~~ the
16 board's agents, after written notice to each landowner, may enter upon any land on which the
17 proposed project is located or any other lands necessary to gain access. The engineer shall
18 prepare ~~profiles,~~ a preliminary engineering report which must contain the preliminary plans, and
19 specifications of the proposed project and estimates of the ~~proposed project's~~ total cost thereof
20 including acquisition of right of way, project design, and project construction. The preliminary
21 engineering report also must identify any locations where the proposed project crosses a
22 railroad, public road, or highway. The estimate of costs prepared by the engineer shall include
23 ~~acquisition of~~ must include the cost to acquire right of way and shall be in sufficient detail to
24 ~~allow~~ sufficiently detailed for the board to determine the probable share of the total costs that
25 ~~will~~ to be assessed against each of the affected landowners in the proposed project assessment
26 district under section 67 of this Act.

27 **SECTION 6.** A new section to chapter 61-16.1 of the North Dakota Century Code is created
28 and enacted as follows:

29 **Public informational meeting and information presented - Procedure.**

30 1. Upon the filing of the engineer's preliminary report as provided for in section
31 61-16.1-17, the board or the board's agents shall create and by resolution approve a

1 preliminary analysis of the benefits and assessments to be made, setting forth each
2 county, township, or city assessed in its corporate capacity as well as each lot, piece,
3 or parcel of land assessed; the amount each would be benefited by the proposed
4 project; and the amount assessed against each in accordance with section 61-16.1-21
5 and section 7 of this Act.

6 2. After satisfying the requirements in subsection 1, the board by resolution shall set a
7 date and place for a public informational meeting on the proposed project. The place
8 of the hearing must be in the vicinity of the proposed project and must be convenient
9 and accessible for the majority of the landowners included in the project's benefited
10 area.

11 3. At least thirty days before the public informational meeting, the board shall mail notice
12 of the meeting to all parties in the benefited area, including:

13 a. Each landowner affected by the assessments;

14 b. The governing body of each county, township, city, or other political subdivision
15 affected by the assessments; and

16 c. An official from each railroad and road authority that may be crossed or impacted
17 by the proposed project.

18 4. Each landowner must be notified at the landowner's address as shown by the tax rolls
19 of the county or counties in which the affected property is located. The board shall
20 send the notice by regular mail attested by an affidavit of mailing signed by the
21 attorney or secretary of the board.

22 5. At the public informational meeting, the board or the board's agents shall present the
23 proposed project and preliminary design, the board's methodology for determining
24 benefits, and the approved preliminary cost-benefit analysis of the benefits and
25 assessments to be made. The board also shall allow the parties to offer comments
26 and recommendations. The board may alter the preliminary cost-benefit analysis as
27 the board deems just and necessary to include alterations to the proposed project, the
28 project's preliminary design, or assessments made under section 61-16.1-21.

29 6. The board's engineer shall file an updated engineer report which must include the
30 preliminary project plans and an updated estimate of the total estimated costs of the

project. The updated engineer's report also must identify any locations where the project crosses a railroad, public road, or highway.

SECTION 7. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Determining costs and benefits for assessment projects - Limitations on assessments.

1. For each proposed assessment project, the board or the board's agents shall inspect all lots, pieces, and parcels of land which may be subject to assessment for the proposed project to gather information necessary to calculate the benefits, in dollars, of the project to each lot, piece, or parcel. The calculation of benefits must occur before the hearing on the project under section 61-16.1-18.

2. For each proposed assessment project that will cost one million dollars or more, the water resource board shall prepare a cost-benefit analysis of the project before the board may hold a hearing on the project under section 61-16.1-18. To prepare the cost-benefit analysis, the board shall use the following criteria for determining the direct benefits of a project:

a. If the project will provide an increase in market value;

b. If the project will provide an increase or improvement in agricultural production;

c. If the project will provide demonstrable residential, commercial, or industrial development;

d. If the project will provide or furnish an outlet for tile or surface drainage;

e. If the project will provide flood damage reduction benefits; and

f. Present use of the property including existing public or private easements.

3. To prepare the cost-benefit analysis, the board shall use the following criteria for determining indirect benefits of a project:

a. Protection value of public or utility services including emergency, water, sewer, electric, telephone, internet, or other services or utilities;

b. Value provided to public safety;

c. Flood damage reduction benefits of public infrastructure;

d. Reduced costs of public services;

1 e. If the project will provide other consumptive or nonconsumptive value including
2 recreational opportunities; and

3 f. Value to upstream landowners as beneficiaries of improvements to watershed
4 management of surface waters.

5 4. In determining benefits, the board may use the economic analysis process developed
6 under section 61-03-21.4 ~~and~~. Upon analyzing the criteria for direct and indirect
7 benefits, the board shall calculate, in dollars, the total benefits anticipated from the
8 project and the total costs anticipated for the project. If the calculated dollar amount of
9 benefits does not exceed the calculated dollar amount of costs, the board may not
10 levy special assessments for the project.

11 ~~3.5.~~ Although the costs of a project must be assessed against property in proportion to
12 benefits received from the project, a water resource board may not assess any lot,
13 piece, or parcel of land or any county, city, or township an amount exceeding the dollar
14 amount of benefits anticipated to accrue to the lot, piece, parcel, county, city, or
15 township from a project.

16 4.6. Property belonging to the United States is exempt from assessment for projects unless
17 the United States has provided for the payment of any assessment that may be levied
18 against the property for benefits received. Benefited property belonging to counties,
19 cities, school districts, park districts, and townships is not exempt from assessment,
20 and political subdivisions whose property is assessed shall provide for the payment of
21 the assessments, installments, and interest by the levy of taxes according to law. Any
22 county, township, or city assessed in its corporate capacity for benefits received shall
23 provide for the payment of the assessments, installments, and interest from the
24 political subdivision's general fund or by levy of a general property tax against all the
25 taxable property in the political subdivision in accordance with law. A tax limitation
26 provided by any statute of this state does not apply to tax levies made by a political
27 subdivision for the purpose of paying any special assessments made in accordance
28 with this chapter.

29 **SECTION 8. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-16.1-18. Hearing - Notice - Contents - Results of cost and benefit calculations.**

- 2 1. Upon Following the public informational meeting and upon the filing of the engineer's
3 report provided for in section 61-16.1-17, and after satisfying the requirements of
4 section ~~61-16.1-21~~67 of this Act, the water resource board, by resolution shall ~~fix~~set a
5 date and place for a public hearing on the proposed project. The place of hearing must
6 be in the vicinity of the proposed project and must be convenient and accessible for
7 the majority of the affected landowners ~~subject to assessment for the project or whose~~
8 ~~property is subject to condemnation for the proposed project. The board shall cause a~~
9 ~~complete list of the benefits and assessments to be made, setting forth each county,~~
10 ~~township, or city assessed in its corporate capacity as well as each lot, piece, or parcel~~
11 ~~of land assessed, the amount each is benefited by the improvement and the amount~~
12 ~~assessed against each.~~
- 13 2. At least ten days before the hearing, the board shall file with the county auditor of each
14 county ~~or counties~~ in which the project is or will be located the list showing the
15 ~~percentage assessment against each parcel of land benefited by the proposed project~~
16 ~~and the approximate assessment in terms of money apportioned thereto~~ results, in
17 dollars, of the ~~calculations required~~assessments calculated under section 67 of this
18 Act and the engineer's calculation of costs for the project as well as the engineer's
19 report, preliminary plans, estimate of total project costs, and any locations where the
20 project crosses a railroad, public road, or highway. A certificate signed by a majority of
21 the members of the board attesting the ~~calculations~~assessments constitute a true and
22 correct valuation of the anticipated benefits and costs of the proposed project
23 described to the best of the members' judgment ~~and identifying the several costs for~~
24 ~~the project must be attached to the results.~~ Notice of the filing must be included in the
25 notice of hearing. Notices
- 26 3. The At least thirty days before the hearing, the water resource board shall provide
27 notice of the hearing which must contain:
- 28 a. Include a copy of the resolution of the board ~~as well as to~~ proceed with the
29 project.
- 30 b. Specify the time and place ~~where the board will conduct~~of the hearing. The notice
31 of hearing ~~must specify~~

- 1 c. Specify the general nature of the project as finally determined by the engineer
2 and the board. The notice of hearing must also specify
- 3 d. Specify when and where votes concerning the proposed project may be filed. The
4 assessment list showing the percentage assessment against each parcel of land
5 benefited by the proposed project and the approximate assessment in terms of
6 money apportioned thereto, along with
- 7 e. Include a copy of the assessment list showing the amount of assessments
8 against each lot, piece, or parcel of land and against each county, township, city,
9 or other political subdivision that benefits from the project.
- 10 f. Include a method to access the cost and benefit calculations benefit analysis a-
11 copy of the notice of the hearing, must be,
- 12 f.g. Be mailed to each affected landowner at the landowner's address as shown by
13 the tax rolls of the county or counties in which the affected property is located.
14 The board may send ~~the assessment list~~cost and benefit calculations and notice
15 by regular mail attested by an affidavit of mailing signed by the attorney or
16 secretary of the board. ~~The board shall cause the notice of hearing to be~~
- 17 g.h. Be published once a week for two consecutive weeks in the newspaper or
18 newspapers of general circulation in the area in which the affected landowners
19 reside and in the official county newspaper of each county in which the
20 benefited~~affected~~ lands are located.
- 21 4. The date set for the hearing must not be less than twenty days after the mailing of the
22 notice. A record of the hearing must be made by the board, ~~including~~include a list of
23 affected landowners present in person or by agent, and the record must be preserved
24 in the minutes of the meeting. ~~Affected landowners,~~Each affected landowner and the
25 governing body of any county, township, or city to be assessed, must be informed at
26 the hearing of the probable total cost of the project and their individual share of the
27 cost and the portion of their property, if any, to be condemned for the project~~cost and~~
28 benefit calculations.
- 29 5. At the hearing, the board must inform those in attendance of:
- 30 a. The project assessments and district boundary including total costs of the project
31 and each party's share;

- 1 b. A cost-benefit analysis summary;
- 2 c. The project necessity and design; and
- 3 d. The voting process under section 61-16.1-19.

4 **SECTION 9. AMENDMENT.** Section 61-16.1-19 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.1-19. Voting on proposed projects.**

7 At the hearing under section 61-16.1-18, the affected landowners, and any county,
8 township, or city to be assessed, must also be informed when and where votes concerning the
9 proposed project may be filed. Affected landowners, and the governing body of any county,
10 township, or city to be assessed, have thirty days after the date of the hearing to file ~~their~~the
11 votes for or against the project with the secretary of the water resource board ~~concerning the~~
12 ~~project~~. Once the deadline for filing votes has been reached, ~~no more~~ votes may not be filed
13 ~~and no person may withdraw a vote~~or withdrawn. Any withdrawal of a vote concerning the
14 proposed project before that time must be in writing. When ~~the votes have been filed and the~~
15 deadline for filing votes has passed, the board immediately shall ~~immediately~~ determine
16 whether the project is approved. If the board finds ~~that~~ fifty percent or more of the total votes
17 filed are against the proposed project, ~~then~~ the vote constitutes a bar against proceeding further
18 with the project. If the board finds ~~that~~ the number of votes filed against the proposed project is
19 less than fifty percent of the votes filed, the board shall issue an order establishing the proposed
20 project and ~~may proceed~~, after complying with the requirements of ~~sections~~
21 ~~61-16.1-21~~section 67 of this Act and section 61-16.1-22, ~~to~~may contract or provide for the
22 construction or maintenance of the project in substantially the manner and according to the
23 forms and procedure provided in title 40 for the construction of sewers within municipalities. The
24 board may enter ~~into~~ an agreement with any federal or state agency under the terms of which
25 the contract for the project is to be let by the federal agency, the state agency, or ~~a combination~~
26 ~~thereof~~both. ~~In projects in which~~If there is an agreement thatfor a party other than the board
27 ~~will~~to let the contract, the board may dispense with all of the requirements of title 40. Upon
28 making an order establishing or denying establishment of a project, the board shall publish
29 notice of the order in a newspaper of general circulation in the area in which the affected
30 landowners reside and in the official county newspaper of each county in which the

1 benefited~~affected~~ lands are located. Any right of appeal begins to run on the date of publication
2 of the notice. ~~As used in this section, "board" means water resource board.~~

3 **SECTION 10. AMENDMENT.** Section 61-16.1-20 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-16.1-20. Voting right ~~or powers~~ of landowners.**

6 In order that there may be a fair relation between the amount of liability for assessments
7 and the power of objecting to the establishment of a proposed project, the voting rights of
8 affected landowners on the question of establishing the project are as provided in this section.
9 ~~The landowner or landowners of tracts of land affected by the project~~ Affected landowners have
10 one vote for each dollar of assessment ~~that~~ to which the land is subject ~~to~~ or one vote for each
11 dollar of the assessed valuation of land condemned for the project, as determined in
12 accordance with title 57. The governing body of any county, township, or city to be assessed
13 ~~also~~ has one vote for each dollar of assessment against ~~such~~ the county, township, or city. There
14 may be only one vote for each dollar of assessment, regardless of the number of owners of
15 ~~such~~ the tract of land. ~~Where~~ if more than one owner of ~~such~~ the land exists, the votes must be
16 prorated among ~~them~~ the owners in accordance with each owner's property interest. A written
17 power of attorney authorizes an agent to protest a project on behalf of ~~any~~ the affected
18 landowner ~~or landowners~~ that executed the power of attorney.

19 **SECTION 11. AMENDMENT.** Section 61-16.1-21 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-16.1-21. Assessment of cost of project.**

22 ~~Whenever~~

23 1. ~~If~~ If the water resource board proposes to make any special assessment under the
24 ~~provisions of this chapter, the board, prior to~~ before the hearing required under section
25 61-16.1-18, shall inspect ~~any and all~~ lots and parcels of land, which may be subject to
26 assessment and shall determine from the inspection the particular lots and parcels of
27 ~~lands~~ land which, in the opinion of the board, will be especially benefited by the
28 construction of the work for which the assessment is made ~~and~~. The board shall
29 assess ~~the proportion of~~ the total cost of acquiring right of way and constructing and
30 maintaining ~~such improvement in accordance with~~ the assessment project in proportion
31 to the benefits received ~~but not exceeding such benefits,~~ against:

- 1 1. Any any county, township, or city, in its corporate capacity, which may be benefited
2 directly or indirectly ~~thereby~~.
- 3 2. Any and any lot, piece, or parcel of land which is directly benefited by ~~such~~
4 improvement. However, no political subdivision or landowner may be assessed an
5 amount that exceeds the benefits the political subdivision or lands owned by the
6 landowner will derive from the assessment project.
- 7 2. In determining benefits the board shall consider, among other factors, property values,
8 degree of improvement of properties, and productivity, and the water management
9 policy as expressed in section 61-16.1-15. Property belonging to the United States
10 ~~shall be~~ exempt from ~~such~~the assessment, unless the United States has provided for
11 the payment of any assessment ~~which may~~to be levied against its property for benefits
12 received. Benefited property belonging to counties, cities, school districts, park
13 districts, and townships ~~shall not be~~ not exempt from ~~such~~the assessment, and
14 political subdivisions whose property is ~~so~~ assessed shall provide for the payment of
15 ~~such~~the assessments, installments ~~thereof~~, and interest ~~thereon~~, by the levy of taxes
16 according to law. Any county, township, or city assessed in its corporate capacity for
17 benefits received shall provide for the payment of ~~such~~the assessments, installments
18 ~~thereof~~, and interest ~~thereon~~ from ~~its~~the political subdivision's general fund or by levy
19 of a general property tax against all the taxable property ~~therein~~in the political
20 subdivision in accordance with law. ~~No tax limitation~~Tax limitations provided by any
21 statute of this state ~~shall do not~~ apply to tax levies made by ~~any such~~a political
22 subdivision for the purpose of paying any special assessments ~~made in accordance~~
23 ~~with the provisions of~~under this chapter. There shall be attached to the
- 24 3. Each list of assessments developed before the hearing on assessments under
25 section 61-16.1-22 for an assessment project under this chapter must have an
26 attached certificate signed by a majority of the members of the board certifying that ~~the~~
27 ~~same~~the list of assessments is a true and correct assessment of the ~~benefit~~
28 ~~therein~~project's benefits and cost of the project described to the best of ~~their~~the board
29 members' judgment and stating. The certificate also must identify the several items of
30 expense included in the assessment.

1 **SECTION 12. AMENDMENT.** Section 61-16.1-22 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-22. ~~Assessment list~~Cost and benefit calculations to be published - Notice of**
4 **hearing on assessments - Alteration of assessments - Confirmation of assessment list -**
5 **Filing.**

6 After entering an order establishing ~~thean assessment~~ project, the water resource board
7 shall ~~cause the assessment list to be published~~publish a notice including the results, in dollars,
8 of the calculations required under section 67 of this Act and the calculations of costs prepared
9 by the engineer once each week for three successive weeks in the newspaper ~~or newspapers~~
10 of general circulation in the district ~~and in the official county newspaper of each county~~area in
11 which the ~~benefited~~affected lands are located ~~together with a notice of.~~ The published notice
12 also must specify the time when, and place where, the board will meet to hear objections to any
13 assessment by any interested party, or an agent or attorney for that party. The board also shall
14 mail a copy of the published notice ~~of the hearing~~ in an envelope clearly marked
15 "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as shown by
16 the tax rolls of the county ~~or counties~~ in which the affected property is located. The date set for
17 the hearing may not be less than thirty days after the mailing of the notice. At the hearing, the
18 board may ~~make such alterations in~~alter the assessments as ~~in its opinion may be~~the board
19 deems just and necessary to correct any error in the assessment ~~but must make the aggregate~~
20 ~~of all assessments equal to the total amount required to pay the entire cost of the work for~~
21 ~~which the assessments are made, or the part of the cost to be paid by special assessment.~~ An
22 assessment may not exceed the benefit as determined by the board to the parcel of land or
23 political subdivision assessed. The board shall ~~then confirm thean~~ assessment list ~~and theat the~~
24 hearing. The secretary shall attach to the list a certificate that the samestating the list is correct
25 as confirmed by the board and shall file the list in the office of the secretary.

26 **SECTION 13. AMENDMENT.** Section 61-16.1-23 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.1-23. Appeal to department of water resources.**

29 After the hearing provided for in section 61-16.1-22, affected landowners and any political
30 subdivision subject to assessment, having not less than twenty percent of the possible votes as
31 determined by section 61-16.1-20, ~~whewhich~~ believe the assessment was not made fairly or

1 equitably or the project is not located or designed properly, may appeal to the department of
2 water resources by petition, within ten days after the hearing on assessments, to make a review
3 of the assessments and to examine the location and design of the proposed project. Upon
4 receipt of the petition the department shall examine the lands assessed and the location and
5 design of the proposed project, and if it appears the assessments were not made equitably, the
6 department may correct the assessments, subject to section 67 of this Act, and the
7 department's correction and adjustment of the assessment is final. If the department believes
8 the project was located or designed improperly, the department may order a relocation and
9 redesign that must be followed in the construction of the proposed project. Upon filing a bond
10 for two hundred fifty dollars with the board for the payment of the costs of the department in the
11 matter, any landowner or political subdivision claiming the landowner or political subdivision will
12 receive no benefit from the construction of a new project may appeal that issue to the
13 department within ten days after the hearing on assessments. Upon an appeal by an individual
14 landowner or political subdivision, the department may determine whether there is any benefit
15 to the landowner or political subdivision, but not the specific amount of benefit. The
16 determination of the department regarding whether there is a benefit is final.

17 **SECTION 14. REPEAL.** Section 61-16.1-01 of the North Dakota Century Code is repealed.