

**2023 SENATE STATE AND LOCAL GOVERNMENT**

**SB 2303**

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

SB 2303  
2/9/2023

Relating to maximum basement depths in residential properties.

9:30 AM Chair Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

### Discussion Topics:

- Requirements
- Increased costs

Sen Luick, Dist 25, bill sponsor, testified in support #20312.

Karl Rockeman, Director of ND Water Quality, testified neutral #20034.

Aaron Carranza, Regulatory Director, ND Water Resources Dept., testified neutral #19823.

Michael Connelly, Bismarck, ND testified opposed with no written testimony.

Kayla Pulvermacher, Assoc. of Builders introduced Don Dabbet.

Don Dabbert, ND Assoc of Builders, testified via ZOOM opposed #20062.

Sen Lee moved a DO NOT PASS. Sen Cleary seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent – 0

Motion PASSED

Sen Lee will carry the bill.

### Additional written testimony:

Shawn Ouradnik, Fargo, ND opposed #20277

Doug Sharbono, Fargo, ND opposed #20260

James Schmidt, ND Building Board, opposed #19994

10:25 AM Chair Roers closed the hearing.

*Pam Dever, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2303: State and Local Government Committee (Sen. K. Roers, Chairman)** recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2303 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

**TESTIMONY**

**SB 2303**

**Testimony**  
**Senate Bill 2303 – Department of Water Resources**  
**Senate State and Local Government Committee**  
**Senator Kristin Roers, Chairwoman**  
**February 9, 2023**

Chairwoman Roers, and members of the Senate State and Local Government Committee – I am Aaron Carranza, Regulatory Division Director of the Department of Water Resources (Department). I am here today to provide neutral testimony for Senate Bill 2303, which relates to maximum basement depths in residential properties.

Senate Bill 2303 as written uses the term “Ordinary High Water Mark” (OHWM) to define the underlying ground water table. This conflicts with the existing definition of the term “OHWM” located in North Dakota Century Code (N.D.C.C.) § 61-33-01(4) relative to the identification and management of the State’s sovereign lands.

The OHWM currently identifies the boundary between the upland areas owned by the riparian (or adjacent) landowner and the public-owned State sovereign land. The OHWM has not historically been used to describe groundwater features. From the surrounding language in Senate Bill 2303, it appears the intent is to refer to the “upper limits” of a ground water table.

Additionally, N.D.C.C. ch. 43-36 provides the definition, professional duties, and licensing requirements for a Professional Soils Classifier practicing in the State of North Dakota. I believe this to be the proper discipline to employ to make this type of professional determination.

For these reasons, I would like to recommend the following amendments to SB 2303:

A one-family or two-family dwelling constructed after August 1, 2023, may not have a basement depth of more than one foot [30.48 centimeters] below the ~~ordinary high water mark~~ upper limits of the underlying water table as

~~established~~ identified by a ~~soil scientist or~~ Professional Soil Classifier ~~as~~ provided in Chapter 43-36. The department of commerce, in cooperation with the state building code advisory committee, shall adopt rules to implement and update the state building code to comply with this section.

Thank you for your time and attention this morning. I welcome any questions you may have.

**TESTIMONY OPPOSED TO SB 2303  
PRESENTED BY JAMES SCHMIDT  
MEMBER OF THE NORTH DAKOTA STATE BUILDING CODE  
ADVISORY COMMITTEE**

Chairman K. Roers and Members of the State and Local Government Committee:

I'm James Schmidt as a member of the North Dakota State Building Code Advisory Committee I believe this bill is unnecessary.

Our state building code committee is made up of experts in the field of construction and if this committee would have thought it necessary to install basements above the water table, they would have implemented that in building construction codes years ago so let the committee keep on administering the building code requirements. A drain tile system should always be installed where ground water is questionable but in a lot of cases the homeowner has the option whether to spend the money on a tile system or not.

If the local jurisdiction believes it is necessary they should ask the developer or contractor to provide the appropriate engineering reports to show the basement can withstand the hydrostatic pressures as well as showing how the system will dispel any unwanted moisture away from the structure. The engineer's evaluation would point out any deficiencies and propose actions to correct the deficiencies.

I therefore urge a do not pass vote on SB 2303.



Neutral Testimony regarding  
**Senate Bill No. 2303**  
Senate State and Local  
Government Committee  
February 9, 2023

TESTIMONY OF

**Karl Rockeman, Director of Water Quality**

Good afternoon, Committee Chair Roers and members of the Senate State and Local Government Committee. My name is Karl Rockeman, and I am the director of the Division of Water Quality within the North Dakota Department of Environmental Quality. The Division of Water Quality protects and monitors our water resources to ensure the quality of surface and groundwater for public use. I am here to provide information regarding SB 2303.

The Department of Environmental Quality was requested by the bill sponsor to provide information on environmental concerns related to depth of groundwater below a basement.

One concern would be if a high-water table causes moisture problems in the basement. If a building exhibits chronic moisture control problems, it is likely to have or to develop a mold problem.

Another concern is specific to homes served by a septic system. Septic systems must maintain separation distance above the water table to provide proper treatment of wastewater and protection of groundwater. As basements are placed deeper in the water table, pump systems are needed to raise the wastewater from the basement level to the septic system.

Finally, for homes connected to municipal sewer systems, sump pumps used to lower the water table to keep the basement dry are sometimes discharged into the municipal system. This can cause capacity issues for the municipal wastewater treatment plant.

Committee Chair Roers and committee members, this concludes my testimony, I would be happy to answer any questions.



# TESTIMONY



FEBRUARY 9, 2023

## **SB2303**

### **SENATE STATE & LOCAL GOVERNMENT COMMITTEE**

Chairman Roers and members of the committee:

My name is Don Dabbert, Jr., and I am the Chairman of Government Affairs Committee for the North Dakota Association of Builders. I also am a homebuilder in the Fargo area.

SB 2303 is unnecessary regulation and only adds to the rising cost of homeownership. For an average new home, regulatory costs already account for nearly 24% of the cost of the home. It would only create an additional layer of red tape that is not based on updated technology or current practices.

The bill, as written, will make building homes with basements in areas prone to flooding or that have high water tables close to impossible; and, as a result, making some of the most affordable home plans, like the split-level, unavailable in some areas of the state where it's needed most. Furthermore, dealing with moisture on home sites is an issue that is so "site-specific" that it can't be regulated and enforced at the state level. Not only that, but this "issue" isn't even a PROBLEM that needs to be addressed...it is merely a part of building in our region and prudent builders address it at every site on a case-by-case basis.

SB 2303 is a great example of why having a state building committee that develops our state building code is important. It ensures that the Building Code Advisory Committee consisting of cities, counties, and organizations that were deemed eligible under the Administrative Rule (Article 108-01) and N.D.C.C. 54-21.3-03 continues to update the state building code in a timely manner and reflects the necessary deviations of the jurisdictions of the state in amendments to those codes. And as a result of this process and its necessary deviations, suffice it to say sufficiently covered basements and has made adequate reference to what building requirements must be followed in all areas of the state.

Thank you, Chairman Roers and members of the committee, for allowing me to speak today. NDAB would appreciate a "do not pass" recommendation on SB 2303.

**Do Not Pass Testimony  
of Doug Sharbono, citizen of North Dakota  
on SB2303  
in the Sixty-eighth Legislative Assembly of North Dakota**

Dear Chair Roers and members of the Senate State and Local Government Committee,

I am writing as a citizen and believe SB2302 is well-intended and tries to address a specific problem but will cause difficulty in the general construction of basements. Please give it a Do Not Pass recommendation.

Section 1, Line 9 requires a soil scientist or soil classifier to establish the ordinary high water mark, which will be used to determine the maximum depth of basement. Within the last couple of years local to Fargo, it is near impossible to engage a geotechnical engineer for residential construction. A previous relationship with the property owner would have needed to be established to be eligible for services in many cases. Furthermore, even on commercial projects, it is difficult to get a geotechnical engineer to investigate soil conditions and do testing in rural outlying areas. Most home construction does not engage a geotechnical engineer. This new requirement would be a shock to the sticker price of ordinary home construction.

I would question the use of general maps of an agricultural soil scientist for determination of the ordinary high-water mark for building construction. These would not be adequately specific and could provide either a false confidence or be overly restrictive.

Finally, the ordinary high water mark for any location that doesn't have a published value given by the U.S. Army Corps of Engineers for bodies of water is suspect. This could prohibit residential construction in Fargo as an example. In the spring of the year, it would not be abnormal at my own residence to have the water table just a foot or less below the ground surface due to the fat clays below having a slow percolation rate. This bill would generally prohibit residential basement construction in Fargo as it is currently written.

Please give SB2303 a Do Not Pass.

Thank you,  
Doug Sharbono  
1708 9<sup>th</sup> St S  
Fargo, ND 58103

## **Testimony opposed to SB 2303**

Presented by Shawn Ouradnik

### **City of Fargo Inspections Director/ Building official and member of the North Dakota State Building Code Advisory Committee**

Chairman K. Roers and Members of the State and Local Government Committee:

I'm Shawn Ouradnik the Inspections Director/Building Official for the city of Fargo North Dakota and a member of the North Dakota State Building Code Advisory Committee.

I am writing in opposition to Senate Bill SB 2303. Contained within the adopted Residential Code for the state of North Dakota is language that would address this issue. The North Dakota codes allows local jurisdictions to ask the developer or contractor to provide appropriate engineering reports to show the basement can withstand the hydrostatic pressures as well as showing how the system will dispel any unwanted moisture away from the structure. The engineer's evaluation would point out any deficiencies and propose actions to correct the deficiencies. This provision has covered this topic in the past and has a history of success.

This bill would also have a detrimental effect on smaller cities and towns within our state and affordable housing. It has the potential to eliminate the option of building a basement, a bi-level, or a crawl space and force a new homes to be built as a slab-on-grade only even if they have a design that can meet the demands placed on the structure. It would force an undue burden on new home owners with undue cost having to hire a soils expert to do an analysis and establish the water table. This could stifle the growth for the smaller areas and force potential home owners out of that market.

In some areas water tables can change from season to season or year to year. If the establishment of the water table were to occur during a time that the water table were higher then it may limit or suppress the ability to build an affordable home. Also, because the water table may be constantly changing, if the home were to be built during a time where the water table is low it would not solve any problem when the water table changes and becomes higher.

I urge a do not pass vote on SB 2303

23.1046.01001  
Title.

Prepared by the Legislative Council staff for  
Senator Luick

January 25, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2303

Page 1, line 2, after "properties" insert "and required disclosures"

Page 1, line 6, after "**property**" insert "**- Required disclosures by developer**"

Page 1, after line 6 insert "1."

Page 1, line 9, after the underscored period insert "Before the sill height of the structure is determined, the basement depth must comply with this section.

2. Before a developer sells land to a purchaser for the construction of a one-family or two-family dwelling after August 1, 2023, the developer shall disclose to the purchaser, the ordinary high water mark of the underlying water table. The developer also shall disclose to the purchaser the risks associated with toxic black mold growth in a basement built below the ordinary high water mark of the underlying water table.

3."

Renumber accordingly