

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1331

2007 HOUSE POLITICAL SUBDIVISIONS

HB 1331

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1331

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3105

Committee Clerk Signature



Minutes:

Chairman Herbel opened the hearing on HB 1331.

Rep. Aarsvold: (see testimony #1)

Steve Thorson: Traill County Water District: Problems with moving water in the road ditches and it is really a problem in the Red River Valley. We are trying to put into law what is already a practice.

Rep. Kari Conrad Has there been court actions?

Steve Thorson: Yes, since we are the water authority in the county we have been dragged into it and spent several thousand dollars of the taxpayer money. Now we are subject to side issues because of a pile of dirt the size of a dog house. Discussed the litigation that has been going on.

Mike Dwyer: ND Water Resource District Associations. We support this bill.

Rep. Kim Koppelman: Is this a problem in other areas of the state as well or only Traill County?

Mike Dwyer: Most of our water counties has had issues where there are obstructions that have to be removed. A drain is defined as a natural water course or a drain. Second statute it

is just a natural drain. This bill deals with any kind of drains and is pretty much a state wide issue.

Rep. Nancy Johnson: Who would be able to remove that pile of dirt if this bill would have been in place?

Mike Dwyer: If you approve it as proposed with the amendments. The water resource district could order that. First they would have to get approval from the township or the county or the state highway department. If the landowner refused to remove it the water resource board could remove it and bill the landowner.

Rep. Lawrence Klemin This doesn't apply to culverts under the road?

Mike Dwyer: No this applies to drains and water courses the run along the road.

Opposition:

Larry Syverson: (see testimony #2)

Rep. Lee Kaldor: Am I reading tis wrong. It says in your testimony you said that road ditches may not be for drainage. The bill doesn't say that. The bill says if it is a water course or drain located within a road ditch. So it would only be road ditches or drainages so I am a little curious about your testimony. If I am interrupting this the way I it is intended, this would not be an issue with a road ditch that is not a water source.

Larry Syverson: Probaby not. Wouldn't that we at the discretion of the water board?

It is our position that existing statues already cover obstructed bridges, fences, section lines or roads.

Rep. Lawrence Klemin : Seems like the amendment says the county board or county commissioners must approve the timing and method of removal. First a notice has to be sent to the landowner; notice has to give the landowner a time period(15 days) and then they have to wait 15 days to request a hearing and the hearing is set within 15 days of the date of the

demand. Right in the middle of all this we put the amendment in that says timing and method of approval must be approved by the road authority. It doesn't seem to flow right or in the right spot for the statute?

Larry Syverson: Wording seems to be an attempt to have the landowner remove the obstruction on their own so further action would not be needed. They would have to notify the water authority.

Rep. Lawrence Klemin Now you don't want the landowner to go out there and remove the obstruction unless they know all the requirements. Do they know what they are? It seems to me we got the cart before the horse. Your amendment says it has to be approved by the road authority.

Rep. Dwight Wrangham The intent is you are hoping that notifying the landowner will take care of this problem?

Larry Syverson: Yes that is correct. I would note on the liability issue the adjacent land owner does share in that liability. Part of the bill was to deal with obstructions.

Chairman Herbel Why couldn't we take it and have the legislative counsel create the right language we when we notify them what our intent is.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1331

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 9, 2007

Recorder Job Number: 3391

Committee Clerk Signature



Minutes:

Chairman Herbel reopened the hearing on HB 1331. Handing out the proposed amendment
(see attached #1)

Moved Amendment Motion Made By Rep.Dwight Wrangham Seconded by Rep. Lee

Kaldor

Discussion: None

Voice Vote Carried.

Do Pass As Amended Motion made By Rep. Pat Hatlestad Seconded By Rep. Lee

Kaldor

Vote: 13 Yes 0 No 1 Absent Carrier:Rep. Lee Kaldor

Hearing closed.

**House Amendments to HB 1331 (78281.0101) - Political Subdivisions Committee
02/09/2007**

Page 2, line 2, after the second period insert "If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed."

Page 2, line 30, after the period insert "If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed."

Renumber accordingly

Date: 2-9-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1331

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Hatlestad Seconded By Rep. Kaldor

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|----------------------|-----|----|
| Rep. Gil Herbel-Chairman | ✓ | | Rep. Kari Conrad | ✓ | |
| Rep. Dwight Wrangham-V. Chair | ✓ | | Rep. Chris Griffin | ✓ | |
| Rep. Donald Dietrich | ✓ | | Rep. Lee Kaldor | ✓ | |
| Rep. Patrick Hatlestad | ✓ | | Rep. Louis Pinkerton | ✓ | |
| Rep. Nancy Johnson | ✓ | | Rep. Steve Zaiser | ✓ | |
| Rep. Lawrence Klemin | ✓ | | | | |
| Rep. Kim Koppelman | ✓ | | | | |
| Rep. William Kretschmar | ✓ | | | | |
| Rep. Vonnie Pietsch | ✓ | | | | |
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Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Kaldor

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1331: Political Subdivisions Committee (Rep. Herbel, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1331 was placed on the Sixth order on the calendar.

Page 2, line 2, after the second period insert "If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed."

Page 2, line 30, after the period insert "If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed."

Renumber accordingly

2007 SENATE POLITICAL SUBDIVISIONS

HB 1331

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1331

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4668

Committee Clerk Signature

Whitley Borg

Minutes:

Chairman Cook called the Senate Political Subdivisions Committee to order. All members (5) present.

Chairman Cook opened the hearing on HB 1331 relating to obstructions to drains.

Representative Aarsvold, District 20, introduced and testified in support of HB 1331.
(Attachment #1)

Senator Olafson: We recently had HB 1265 which dealt with water resource boards working on plans for assessment drains. What is the difference between HB1265 and HB 1331?

Representative Aarsvold: This bill would be another component in the whole big picture of drainage. Often times because of financial constraints we were not able to provide appropriate culverts and appropriate sizing so as a consequence it was done in a less than orderly fashion and HB 1265 would provide the authority with the consent of the affected road authorities to design a system including culverts and in HB 1331 remove obstructions if necessary with the consent of the affected authorities.

Senator Warner: My farm is at the last stop before it hits the lake which is also on our land which is no longer farmable since the 1960's because people have been dumping water on to

it. We have constructed at our own expense waterways across our land to try to keep the water out of the field because it is coming from everybody else's land.

Representative Aarsvold: I have been in your situation as well. I think HB 1265 and this bill together will serve to address the situation. There are times in our county and I have folks from my county who represent the water resource board and they will systematize all of that drainage and we hope this will remedy the situation you identified.

Gary Thompson, Chairman of the NDWRDA, testified in support of HB 1331. (Attachment # 2)

Senator Olafson: Would this bill apply to all road ditches not just the assessment drain?

Gary Thompson: I believe you are correct.

Chairman Cook: What is the process to remove the obstruction of a ditch and what say does the landlord have?

Gary Thompson: Right now we have a grey area. The townships basically are in the protecting of the road business and not in the drainage business, so if there is an obstruction they would look at the road and not the drainage for that person. When we come into play we don't have that authority to go in and order that obstruction out. The township would have that. This would let us work together to get that obstruction out of that ditch. Right now the individual who is being hurt by that would go to the township and ask for permission and it would be up to the township board to give that permission.

Mike Dwyer Represents the Water Resource District. The process is this. The water board notices an obstruction; they send a notice to the landowner saying they noticed this obstruction and have determined that it is negligent therefore you have to remove it. The landowner can request a hearing before the board, after that hearing the board can either reaffirm its previous order or change its mind. If it reaffirms its previous order that landowner can then appeal to

district court. If the landowner does not appeal to district court, they can remove it on their own or have the water board do it and they will assess the landowner for the cost.

Gary Peterson, Trail County Water Resource District, testified in support of HB 1331. From the history we have seen on these types of issues is they will start with the township board and they say take it to the water board and we get to the water board and we have no recourse other than to suggest that they do something. This bill will give us more leeway in getting these thing settled.

Ken Yantes, Executive Secretary, North Dakota Township Association, testified in support of HB 1331. In the spirit of cooperation with the water boards, the township officers of the state did reach out and shook hands with the water boards and said lets do this together in a cooperative manner.

No further testimony in support, opposed or neutral to HB 1331.

Chairman Cook closed the hearing on HB 1331.

Senator Olafson moved a Do Pass on HB 1331

Senator Anderson seconded the motion

Discussion:

Roll call vote: Yes 4 No 1 Absent 0

Carrier: **Senator Olafson**

REPORT OF STANDING COMMITTEE (410)
March 8, 2007 12:27 p.m.

Module No: SR-44-4726
Carrier: Olafson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1331, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman)
recommends **DO PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed
HB 1331 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1331

To: House Political Subdivision Committee
Representative Gil Herbel, Chair

①

Re: HB 1331

HB 1331, if enacted, would give water resource districts an additional tool to carry out their responsibility to manage watercourses and drains within their jurisdiction. While rivers, streams and legal drains are their major concern, it cannot be denied that road ditches are an integral part of the 'big picture'. A major portion of rainfall or spring runoff is brought to those watercourses via road ditches. If those water resource districts are to succeed in their mission, they must have certain authority to intervene in matters affecting the movement of water in road ditches. Specifically, 1331 would expand the board's authority to remove obstructions from road ditches that impede the flow of water to natural waterways and drains. Water resource boards already have the authority to remove obstructions in a watercourse or artificial drain.

Obstructions to water flow typically are 'man-made' and serve a selfish end. The end result is most often to the detriment of neighboring landowners. In some cases, major damage can and has been done to adjacent properties.

I encourage the committee to provide this important tool so that the water resource boards can more effectively serve property owners and protect their properties. I understand that townships have concerns related to conflicting authority over township right-of-ways. I do believe there is common ground as there was with the committee's amending of 1265 whereby the committee included language to require the approval of the affected road authority.

Rep. Ole Aarsvold
District 20

#2

To oppose HB1331

Good morning Chairman Herbel and members of the Political Subdivisions Committee.

I am Larry Syverson a farmer from Mayville; I am the Chairman of Roseville Township of Traill County. I am also a District Director of the North Dakota Township Officers Association. NDTOA represents the six thousand township officers that serve our eleven hundred and forty one dues-paying member townships.

NDTOA opposes HB1331, as written, for several reasons; firstly there is no mention of notice to the township that holds the perpetual easement on the right-of-way. The township is ultimately responsible for all safety within its right-of-way, should a mishap occur resulting in injury or death it is the township that would be forced to defend the construction and maintenance within that right-of-way. To allow any other authority to enter and work within township right-of-way without first notifying and receiving the permission of the township board is unacceptable.

HB1331 doesn't specify that construction site protection standards must be followed to protect public safety. This could result in a liability problem for the township. NDTOA must insist that proper safety precautions be mandated.

Township road ditches are just the place the dirt came from to build the road; there never was a requirement that they provide perfect drainage, many of them never have provided any. Would these be considered obstructed and the "obstructions" removed at the expense of the adjacent landowner? Some section lines have never been improved so there is no ditch; do other landowners surrounding these lines bear the responsibility to provide drainage to make up for them? And in each case would contractors enter township right-of-way without permission and make alterations?

It is said that HB1331 only applies to ditches within an assessment drain area, but in the Eastern counties that includes almost all lands; you might say, the only way to not be in an assessment district is to be in another assessment district. Each district is huge, often encompassing several townships and parts of townships.

I am not speaking this morning from personal experience of an adverse relationship between myself or Roseville Township and the Traill County Water Resource Board, far from it, but rather as a representative of NDTOA voicing concerns expressed by our member townships from other counties. They distrust their "drain boards" and fear any increase of their authority and simultaneous erosion of township authority. Their concerns bring me to ask, does a dispute between the Traill County Water Resource Board and Hillsboro Township warrant a change in state law?

I understand the conflict mentioned is headed to court, perhaps this is the better solution; if the Water Resource Board can prove their case, the existing statutes can be enforced.

We have passed out an amendment, developed along with the Association of Counties, which NDTOA would support.

Should this amendment not be accepted, Chairman Herbel and Committee Members, NDTOA asks you to give HB1331 a do not pass recommendation.

That concludes my prepared testimony now I will try to answer your questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1331

Page 1, line 14, after the period insert: "If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority and construction site protection standards must be followed."

Page 2, line 18, after the period insert: "If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority and construction site protection standards must be followed."

Renumber accordingly

To: Senate Political Subdivisions Committee
Senator Dwight Cook, Chair

Re: HB 1331

HB 1331, if enacted, would give water resource districts an additional tool to carry out their responsibility to manage watercourses and drains within their jurisdiction. While rivers, streams and legal drains are their major concern, it cannot be denied that road ditches are an integral part of the 'big picture'. A major portion of rainfall or spring runoff is brought to those watercourses via road ditches. If those water resource districts are to succeed in their mission, they must have certain authority to intervene in matters affecting the movement of water in road ditches. Upon the approval of the affected road authority, 1331 would expand the board's authority to remove obstructions from road ditches that impede the flow of water to natural waterways and drains. Water resource boards already have the authority to remove obstructions in a watercourse or artificial drain.

Obstructions to water flow typically are 'man-made' and serve a selfish end. The end result is most often to the detriment of neighboring landowners. In some cases, major damage can and has been done to adjacent properties.

Amendments were added on the House side to address the concerns of affected road authorities.

I encourage the committee to provide this important tool so that the water resource boards can more effectively serve property owners and protect their properties.

Rep. Ole Aarsvold
District 20

House Bill No. 1331

Mr. Chairman, Committee Members, my name is Gary Thompson and I would like to thank you for allowing me to testify here today on behalf of the North Dakota Water Resource Districts Assoc. of which I am the acting Chairman.

At the North Dakota Water Resource Districts Assoc. annual meeting which was held in December of 2006, we adopted a resolution regarding the obstruction of drains issue. We have also worked with the proper road authorities putting language that states," If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed."

Mr. Chairman and Committee Members I would ask that you would consider a do pass on House Bill 1331.

Questions:

Thank you

Gary Thompson, Chairman of the NDWRDA