

2013 HOUSE JUDICIARY

HB 1067

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1067
January 14, 2013
17166

Conference Committee

Committee Clerk Signature

Caamen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to the State Water Commission acting as a public corporation

Minutes:

Testimony attached 1

Chairman Koppelman: opened the hearing on HB 1067

Dave Laschkewitsch, Director of Administrative Services with the ND State Water Commission: See attached testimony. State Water Commission received a request from the State Auditor to meet with them to discuss changes in financial reporting and auditing of the Commission. They believe because of N.D.C.C. 61-02-09 set up the Commission as a public corporation. The Commission is legally separate from the state and therefore should be reported as a component unit of the state. This bill would remove the public corporation references. The Commission has always acted and been treated as a state agency. This bill removes the public corporation references.

Rep. Rep. Bill Kretschmar: Are you certain this is the only spot that would need to be changed to become a state agency?

Dave Laschkewitsch: Our legal staff attempted to do a search to see if there is any other reference and we believe we have them all.

Rep. Rep. Kathy Hogan: Do you know the history of why it was originally defined as a public corporation versus a state agency?

Dave Laschkewitsch: We don't know. We think it was back to 1937 when the agency was created. It has been there a long time.

Chairman Koppelman: I am wondering if this has other consequences. Have you checked into that, as state agencies has some authorities under law that public corporations do not?

Dave Laschkewitsch: We did again run it through the Attorney General's office and asked them if they saw any effects of removing this. We have some outstanding bond issues but in their opinion it did not affect those. We don't think it has any other ramifications.

House Judiciary Committee

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Chairman Kim Koppelman: What about authorities? State agencies have the authorities to do certain things like make rules, do other things that corporations may not. I assume you are already doing that.

Dave Laschkewitsch: A part of me wondered if we should take it out. In answer to your question if it would preclude us from exercising anything we're not doing right now.

Rep. Roger Brabandt: Does it change the status of your employees?

Dave Laschkewitsch: I don't think so at this point. OMB does our payroll we don't do our own payroll. OMB processes our checks we are operating completely as a state agency. So I don't believe so.

Rep. Roger Brabandt: You're employees are under the PERS then?

Dave Laschkewitsch: Yes they are.

Chairman Kim Koppelman: Asked for other testimony. No other testimony.

Chairman Kim Koppelman: Closed the hearing on HB 1067.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1067
January 15, 2013
Job 17257

Conference Committee

Kristi Helgeson

Explanation or reason for introduction of bill/resolution:

Relating to the State Water Commission acting as a public corporation.

Minutes:

Chairman Koppelman: Re-opens HB 1067 and review some questions previously asked. Intern did some checking. Rep Schmidt indicated he has a bill that is very similar to this one and he will be referring it over to us. We will take a look at them side by side and decide from there.

Closed

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1067
February 12, 2013
Job 18780

Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to the State Water Commission acting as a public corporation.

Minutes:



Chairman Koppelman: I think that State Water Commission already acts like a state agency. It makes administrative rules and goes through most of the procedures that a state agency does. But it is not officially named that way.

Rep Hogan moved to Do Pass.

Rep Boehning seconded.

Roll Call Vote:

Yes: 14

No: 0

Absent: 0

Rep Maragos will carry.

Date: 2-12-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1067

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hogan Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Maragos

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

REPORT OF STANDING COMMITTEE

HB 1067: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1067 was placed on the
Eleventh order on the calendar.

2013 HOUSE APPROPRIATIONS

HB 1067

2013 General Discussion
(Check appropriate box)

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date of meeting/discussion: February 8, 2013

Recorder Job Number: 18580

Committee Clerk Signature 

Minutes:

Chairman Skarphol: We had a number of technology issues yesterday. Does the administrative part of the water commission run on a pc platform?

Lisa Feldner, ND Information Technology Department: I'm think the administrative side runs on pc.

Chairman Skarphol: Would it seem logical that they should be migrating toward the common standard that we've been using? Should we just let them operate on that unique environment? How do you feel about their security of their hardware?

Lisa Feldner: They had been talking with us a while back about putting some of their equipment in the data center. (Showing a map of the data center)

Chairman Skarphol: Would that be a more secure area than what they're currently in?

Lisa Feldner: Yes.

Chairman Skarphol: Do we have issues with regard to security on the others? What conversations are taking place there?

Lisa Feldner: I talked with the PSC about putting their stuff in the data center; instead of having it in the tower; and it wasn't very well received.

Mike Ressler, Deputy CIO, ND Information Technology Department: When we had the power outage, we upgraded that data center; and we created that second room. Agencies that said they had an exemption or waiver still had the opportunity to put their equipment in a facility that was secure. We won't let agencies go into the main data center; that is only for ITD staff. After that became available, we went to each agency and offered that service; understanding that they'd probably pay more to put their stuff in their than they would pay to keep it their own location. Nobody took us up on the offer.

Representative Grande: You want the server boxes all in a certain room?

Lisa Feldner: Yes.

Representative Grande: You're saying oil and gas theirs over in their building down the street?

Mike Ressler: Correct.

Representative Grande: But the PSC wants to keep theirs in their offices?

Mike Ressler: They have theirs upstairs.

Representative Grande: How hard is it to move it from there to there?

Mike Ressler: Very easy; there's just additional cost.

Representative Streyle: Is there enough room in that for the industrial commission, water commission?

Mike Ressler: There's plenty of room.

Lisa Feldner: Cyber security is a really critical thing right now; and the Chinese and the Russians are targeting oil and gas infrastructure. That's what they're after when they're attacking servers and things like that; that's what they're looking for. They want to know where those pipelines are and the valves; and we have servers sitting out in a building unsecured.

Representative Grande: What difference does it make? Are we talking about the fact that somebody would go in and steal that box?

Lisa Feldner: They could.

Representative Grande: I always thought that this cyber thing that we were dealing with was that somebody typed in all these different codes, like on the movies; and broke in and stole stuff.

Lisa Feldner: That's correct. Here's how easy it would be up there; all you have to do is go in an unsecured wiring closet in the building, and plug something into the circuit on the wall with their computer and they're half way home.

Representative Grande: It will download into their computer?

Lisa Feldner: Yes, if they have enough hacking tools.

Chairman Skarphol: If you physically locate that hardware in the facility down the hall, what's to prevent them from plugging into that same jack in that same office and accessing this information? What makes it more secure?

Lisa Feldner: We have physical fire walls; technological fire walls here in our data center to prevent that.

Chairman Skarphol: You're relocating your staff elsewhere. What does that mean in relation to this room?

Lisa Feldner: It would stay here and the operators who man the center stay here also.

Chairman Skarphol: What kind of security does that room have so that if someone comes down in the middle of the night and kicks in the door.

Mike Ressler: There's security that facility management manages; so, it's wired with cameras and an alarm would be set off. Whoever's doing the night time cameras would see that.

Chairman Skarphol: That's a summation of the hardware aspect of this; of those entities that are not part of what's in that secured room. Those are the only ones that you're aware of that are out there?

Representative Grande: To what advantage is it to have it all in one place? Why is it that some agencies feel it's to their advantage to have it in their own offices?

Mike Ressler: Control.

Representative Grande: Is there something you have to do that they're controlling?

Mike Ressler: People telling them what they can and can't do.

Representative Grande: Is there a cost factor?

Mike Ressler: I believe there's a cost factor. I believe today they would have to put money in their budget to help pay for this room. If you look at the state as a whole, we're paying the total bill today. So, whatever they're paying to run their own infrastructure, is probably extra to the state as a whole. The way ITD allocates cost, I believe these three agencies could see an increase in their fees.

Chairman Skarphol: How significant an increase would it amount to?

Mike Ressler: I don't know what they're paying today; because they don't share that information. The way we handle the agency server room is we take the amount of space they use and have a rate.

Representative Grande: When you're talking about the space portion of that, are we also talking about the capacity?

Mike Ressler: If they stay in the agency server room, it's all there hardware; they buy it, so, all they pay for is the space.

Chairman Skarphol: In calculating the cost to an agency aren't there multiple factors that are considered?

Mike Ressler: It's based on volume.

Chairman Skarphol: So it is relative in that respect.

Mike Ressler: It is.

Representative Streyle: I don't see why hardware should be anyplace else but there.

Mike Ressler: Another big risk that we always forget about is that when these entities leave; they really have no way to back them up.

Representative Boe: These offices that don't have their servers with ITD, what do their offices look like? Where are their servers at?

Lisa Feldner: The last time I was at oil and gas it was in a room that would have been an office. I haven't been up to PSC; so I have no idea. I assume for the water commission the servers are in the basement.

Sheila Peterson, Fiscal Analyst, ND Office of Management and Budget: I understand that several agencies are exempt through statute. The Attorney General is one; are there any others that the exemption was statutory versus one that the director of OMB did?

Mike Ressler: There are two others; the retirement and investment office and public employee's retirement. In both cases, those two entities bring all their stuff into ITD. Long term, the Century Code gives them the authority to do their own thing.

Chairman Skarphol: Are they or are they not on the state agency servers?

Mike Ressler: They're in our data center. They let us manage all their equipment.

Chairman Skarphol: So the fact that they are exempt by law is meaningless; and they are as if they were consolidated?

Mike Ressler: Correct.

Chairman Skarphol: The legislative branch, the judicial branch and the attorney general are the three that have in law exemptions?

Mike Ressler: That's correct.

Chairman Skarphol: Last session we had a discussion in this subsection with regard to the historical society about requiring them to do a business analysis. Has any agency gone through that process?

Mike Ressler: Yes.

Chairman Skarphol: Can you give us a summary of what value that has and why it should have been considered?

Mike Ressler: In the past anytime there's been a study done on IT; to some extent that is business analysis. In the past we would always have our system programmers do that; but, we've determined that it's more than just a technical analysis. There is a curriculum for business analysis; so you do it properly. We've sent people to training; I believe we have four certified right now. Their purpose is to truly understand what the business problem is that an entity is having. It doesn't always mean that there will be a technology solution; there purpose is not to find technology to solve it. We've done this a number of times.

Chairman Skarphol: Have the results indicated better success? What's the benefit of doing this?

Mike Ressler: It's focused them in on a solution. It's defined those requirements, documented them and given an audit trail as to the solution.

Lisa Feldner: Now that we have the executive steering committee in charge of the WSI project; we're going to make them go through business analysis before they recede again. They have 2,015 requirements and it's unworkable.

Chairman Skarphol: How many were on MMIS?

Lisa Feldner: I'd have to check.

Vice Chairman Monson: What do you mean by that?

Lisa Feldner: Cases that we would have to program for. They asked us to do an estimate for them to redo their system; and we received this analysis document this

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week and there were 2,015 cases. We've never seen anything like that; and so we said that we wouldn't do an estimate for them.

Vice Chairman Monson: This is something you can mandate to them? Is this something that we need to legislate that say you have to do this?

Lisa Feldner: It is something we can mandate now. The governor's executive order went into effect about a year ago; HB2034 codifies that executive order.

Representative Streyle: We haven't seen that document from DPI yet have we?

Chairman Skarphol: No.

Representative Streyle: I think some of that should be moved immediately and not studied.

Chairman Skarphol: There's a proposed amendment to HB1206 on the podium. That's a proposed amendment the governor made to a bill dealing with the water commission. I was puzzled by HB1067 and we're trying to create some guidance or recommended practices for the water commission. See attachment 2. Can we put those provisions in place?

John Bjornson: Certainly you can. The question arises of separation of powers issue.

Chairman Skarphol: From the perspective of separation of government, would it be the neatest for us to say the water related overview committee shall establish the priority list to bring forward to the next legislative session for recommendation. That doesn't exclude anyone else from preparing theirs as well. But it states we have the responsibility to put together what we believe to be a priority list.

John Bjornson: I think that would work.

Chairman Skarphol: This amendment was at the request of the governor's office; this isn't something that's being legislatively imposed. It was the governor's office that proposed this amendment as a directive to be put into this bill; not the water commission budget, but rather HB1206. I don't see that in conflict with us having a priority list either; that's what this process is about is to resolve those differences. Is that not a correct statement?

John Bjornson: I wouldn't disagree with you.

Chairman Skarphol: Do we want them to draft an amendment to that effect?

Representative Streyle: I like the bill as it was presented without the amendment.

Chairman Skarphol: I think for our purposes in this committee it's expected that we will give some direction to the water commission. Is that a direction we want to go? Does this committee want him to draft something in regard to that?

John Bjornson: I'm understanding you to be asking us to prepare an amendment to HB1206?

Chairman Skarphol: No, the water commission budget.

John Bjornson: That would amend the section of the code setting forth the duties of the water related overview committee to include planning functions.

Chairman Skarphol: To establish a priority list for water projects to be recommended in the next legislative session.

Representative Dosch: Is it the water resource board?

Chairman Skarphol: Water coalition.

Representative Dosch: How does that tie into the water commission?

Chairman Skarphol: It's a quasi governmental agency that seems to exert substantial influence over what the water commission recommends as far as priority lists.

Representative Dosch: Who controls them? Shouldn't we be controlling from the top down?

Chairman Skarphol: That's what I suggest the amendment I'm proposing would endeavor would do.

Representative Dosch: I don't see where it involves them?

Chairman Skarphol: My amendment would have nothing to do with this one; this was just for informational purposes only. The governor's office has a proposed amendment to a bill that states this; with regard to executive branch policy and how they're supposed to follow that procedure. I'm saying from a legislative perspective, we should have our opinion about water project priorities with a separate entity; and interim committee that's already been in existence.

Representative Streyle: The problem I have with the water coalition is there is no elected official.

Chairman Skarphol: That's what I'm endeavoring to do is to get more legislative participation in the creation of that list. We think there is a need for a more adequate auditing process of water projects that's reflective of best practices. Who do we ask about insuring that? I want this to apply to all projects; that there has to be additional

oversight that provides that state resources are used appropriately. How do we accomplish that? We need to have you incorporate that into an amendment as well.

Representative Dosch: I would imagine Gordy from the auditor's office should be involved in that conversation.

Chairman Skarphol: I did ask him to be here and he told me he doesn't have anything that he would consider input at this time.

Representative Dosch: What they're lacking is total policies. What's going to be the state's policy on funding municipal water sources, water pipelines, granting money to water pipelines, loaning money to pipelines. What's going to be the policy of getting involved with water projects; the public and private competition amongst them. There should be a policy where they will get involved and where they won't.

Chairman Skarphol: That's a third issue. Whatever provisions that you think we need to put into place; there's really nothing out there that gives us the opportunity for reassurance.

John Bjornson: Is it appropriate that they have some sort of audit function built in? They have the expertise supposedly; but, they may not have the people that are overall appropriate for auditing.

Chairman Skarphol: Maybe there needs to be language that we need to have a study done. In the past they didn't have any money to deal with; now they have \$500 million to spend on water projects. Times have to change when the resources change to that extent. There's a lot of discomfort from a lot of different viewpoints; and we need to make them adopt the proper policies so people can know and understand how this is going to operate.

Representative Streyle: There's no cost benefit analysis; there's nothing done. The other problem is the engineering side; there's no step down scale on that. We're essentially giving projects to specific private businesses; there's no policy, there's no cap, or procedure in place for the engineering fees.

Chairman Skarphol: I agree with what you say and it may be difficult to accomplish it all in one step. If we get their policies defined; those policies should be able to be refined later as we move forward.

Representative Streyle: I wasn't picking on them; but, the same thing happened in Minot. It essentially was not bid. The city of Minot said this is what they want to use; so they made fit for them and partnered with two other firms in Bismarck to make it work. Now they're slated to get \$60-\$70 million in engineering fees. We should be trying to get the best price; and not making the rules fit so one firm gets it over another.

Chairman Skarphol: Let's go to HB1067. Unbeknownst to me there are those that think that the water commission is not a state agency.

John Bjornson: I hadn't seen that bill until this morning. I have no idea why it's introduced or what the concern might be. I assume when the water commission was created it stated that the water commission is a public corporation. A public corporation is a government entity in essence. There are some definitions in the code and several places where public corporation is used; for instance, under the fiscal depositories of public funds, public corporation includes a city, county, township, school district, and anybody corporate except a private corporation. I'm not sure what the point of the bill draft is; if people actually believe that the commission isn't a governmental entity, they're wrong because it's created by statute.

Chairman Skarphol: Does the designation that's currently law preclude them from having to go through administrative rules process and develop rules? Is that what this may be about? Do the provisions requiring administrative rules refer to state agencies having to do it and not include commissions technically?

John Bjornson: I haven't looked at that. The public corporation part if that had anything to do with giving them the authority to bond; I don't know if that's the case or not. That may have been one of the thoughts in the past. I do not see the water commission excluded from that list.

Representative Streyle: This was put in in response to HB1206. It was put in hastily to try to kill this bill. This wasn't talked to the governor's office about; it was just quickly put in to try to quash HB1206.

Chairman Skarphol: Recessed the discussion.

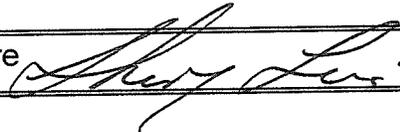
2013 General Discussion
(Check appropriate box)

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date of meeting/discussion: February 8, 2013

Recorder Job Number: 18600

Committee Clerk Signature



Minutes:

Chairman Skarphol: We talked about your IT issue but we're having you here because of HB1067 and the fact that you are or aren't a state agency. It is a public corporation and you want to be changed to a state agency. What does that mean?

David Laschkewitsch, ND Water Commission: This is precipitated by the state auditor's recommendation. We are a state agency; we've always been a state agency. Other public corporations are going to be Garrison Diversion, Southwest Water Authority; those are entities that wouldn't be considered part of the CAFR. We convinced them that we were a state agency and they said as long we pursued legislation to have the public corporation language stricken, they would let us report as we have always historically.

Chairman Skarphol: There are no other implications of the language change?

David Laschkewitsch: We asked the attorney general's office and asked if there was anything that this takes away, changes, alters; and they didn't think that there were any changes. We have been acting as a state agency.

Chairman Skarphol: To the best of your knowledge, the only other entities that are public corporations are Southwest Water?

David Laschkewitsch: Maybe state mill and elevator, Bank of North Dakota some of those entities that operate a little differently than we do.

Sheila Peterson, Fiscal Analyst, ND Office of Management and Budget: I can have my staff check on that as to how it needs to be reported in the CAFR.

David Laschkewitsch: We got a pass for staying in CAFR for one more year as long as we pursued the elimination of this language.

Chairman Skarphol: So the supposition that this was motivated by another proposal is erroneous in your opinion?

David Laschkewitsch: Yes.

Chairman Skarphol: Do you know what the prospects are for this bill? Have they passed it out of committee?

David Laschkewitsch: They have not.

Representative Streyle: Did the governor's office know about this bill and support it?

David Laschkewitsch: They did.

Chairman Skarphol: I am being asked as chairman to make sure we have provisions in your budget that provide for the water overview committee and the legislature having input and creating a priority list for water projects on a biannual basis. The amendment that has been prepared to HB1206 ; has been suggested to me that it was prepared by the governor's office to establish the language with regard to the comprehensive water development plan. Do you have that amendment?

David Laschkewitsch: I do not have the amendment.

Chairman Skarphol: Are you familiar with this amendment?

David Laschkewitsch: I am.

Chairman Skarphol: Was this the recommendation from the governor's office? Do you know the origin?

David Laschkewitsch: We assisted with this at the request of Representative Schmidt and the governor's office. This would replace all of the language in HB1206.

Chairman Skarphol: We're probably going to have some language referencing the need for audits of water projects. We think they should be audited at least every biennium as they're being constructed and configured. We feel we should get a report of the cost benefit ratios and some of the other aspects. Can you tell us how the water commission oversees Western Area Water, for example?

David Laschkewitsch: In most cases we are offering grants to local project sponsors who are responsible for those projects. In most cases financial audits are done on the city of Fargo.

Chairman Skarphol: That's an entity that you granted money too?

David Laschkewitsch: Correct.

Chairman Skarphol: The city receives the audit and any responsibility for the appropriate use of that grant money should be in that audit?

David Laschkewitsch: That's correct. We receive from the state auditor's office on a quarterly basis the results of all of the audits. They send us a spreadsheet that states if there were any findings on any audits that they have performed that affect water, we're notified of that.

Chairman Skarphol: All too often, when you have components of an entity. There are many components to the city of Fargo's audit. Most often, every component doesn't get a great deal of scrutiny.

David Laschkewitsch: I couldn't tell you.

Chairman Skarphol: The concern that we're hearing and is being expressed is if that money is working in the best interest of everyone and whether or not some of the aspects are what they should be.

David Laschkewitsch: There is century code for state agencies to select architects, engineers; again that will come back to if it's the Southwest Pipeline or the Northwest Area Water Supply Pipeline. As a state agency, we follow that section of Century Code.

Chairman Skarphol: The configuration of the governess has some determination in what rules apply.

David Laschkewitsch: Yes. With that being said, that statute says you form a selection committee, you have all your engineers come and present their credentials, concepts; you're not discussing the finances at that point. The selection committee will recommend the engineer; we negotiate with that engineer for the rates.

Chairman Skarphol: Who sets the criteria for the project that determines who may want to come in and re-qualify for it?

David Laschkewitsch: There is a request for proposal and the commission has laid out in broad terms the project that we are wanting to build. We negotiate for the terms of their reimbursement after their selection.

Chairman Skarphol: How often do you get someone new coming that far into the process? Are there a half dozen firms that get to that level?

David Laschkewitsch: There are engineering firms that are more specialized in water projects.

Chairman Skarphol: You anticipate more or less the same people coming to the table on a project.

David Laschkewitsch: There are new players every once and awhile.

Representative Streyle: Was it not true that the city of Minot being a sponsor of the project, how is the granting of that engineering contract worked? From everything I know about it, there were no other bidders.

David Laschkewitsch: I would agree that's part of the negotiation. The size of the project would perhaps have some sway in negotiating what the engineering fees would be.

Chairman Skarphol: Who does that negotiating in that particular instance?

Michele Klosey, Assistant State Engineer, ND Water Commission:

Sheila Peterson: They were aware of the question that was raised by the state auditor's office last summer in the preparation of the latest CAFR. They continued to be reported as a state agency on the condition that they get the statute changed. There are no other public corporations that are in our CAFR.

Chairman Skarphol: The Bank of ND or the state mill are not public corporations?

Sheila Peterson: No.

Becky Deichert, Fiscal Analyst, ND Office of Management and Budget: The BND is a business type; but, it's not a separate corporation. We call it a business type activity and it's reported a little differently. There are several different business types in the CAFR.

Chairman Skarphol: Any rule that applies to a state agency applies to those business types?

Becky Deichert: Correct.

Chairman Skarphol: Who made that decision as to what the engineering fees would be; is that the City of Minot, the water commission? What's the level of participation?

Michele Klosey: That contract that was worked out for the preliminary work was ran through the state water commission. We put together a selection panel that may have included representatives from that region. That was more of a planning study rather than actual construction or development. On construction there is no firm guidelines on

how the rates are set. When the state water commission is involved with those negotiations, we typically do set up an hourly rate schedule so the time put towards those contracts is actually work on those contracts. That's how we're monitoring those. When we have contracts that have a longer term working relationship with that engineering firm we have discounted off their current rate schedule. In their rates they do figure out new business opportunities and marketing; when you have a longer term contract, or a contract with a higher dollar value, you don't have as much risk with assigning new engineers onto the staff or not knowing if that business is going to be continued into the future.

Chairman Skarphol: What do you mean by the owner?

Michele Klosey: I'm talking about those that would work with the engineer to set up the project. In our case, the water commission would be the owner if we're developing the project. If the city or county is working on the project, they would be considered the owner.

David Laschkewitsch: When I answered my questions I was looking at construction engineering. The construction engineering is where you may be looking at a percentage up front. With preliminary engineering there is no percentage of the project; because they're designing it. It's hourly work.

Vice Chairman Monson: It sounds to me like there aren't that many companies that bid on them. How many firms typically do bid on a project?

Michele Klosey: It depends on the work that you're asking the engineering company to do. When you're in the water business, we're already typically specialized for drinking water. When you're dealing specifically with pipeline work, rural work is different from city work. You're going to have more companies with pipeline work. As soon as you get to treatment plants and high service pump stations, we don't have as much expertise in North Dakota; so, a lot of our firms that are here would partner with a larger firm that can give them additional expertise. We have requirements as a state agency how we do our contracting; and for engineering selection it's described in the law what pieces we can look at, but, it still allows the agency decide how those factors can be used to review the engineering firms.

Chairman Skarphol: You said it's set out in the law what you can use to evaluate. Would you like to see other things included that aren't in the law? Is there a reconsideration that needs to be given to the criteria that you are able to use based on changing technologies and business practices since that law was last looked at?

Michele Klosey: I haven't looked at that recently, there may be some things. If you do that, you may want to do that in cooperation with DOT.

Chairman Skarphol: It's not specific to you?

Michele Klosey: No.

Vice Chairman Monson: Do you ever step in and help them get the best price? Do you pretty much let them negotiate and set their own criteria to pick who they want; then you just fund it? How does that work?

Michele Klosey: There are times with counties or water resource boards when we offer technical assistance to help them put together that selection committee. We would offer to be a member of that selection committee to help them. In the larger cities they're familiar with contracting so they're not asking for additional help and they don't have to follow the same state requirements that we follow; because they're a city or county that have their own rules that they would follow.

Chairman Skarphol: Does it make a difference how much you have invested in the program in grants? Do you put any parameters around your contribution to give you more or less influence?

Michele Klosey: One piece to add to the conversation is on our cost sharing for smaller projects we do not have engineering costs as eligible costs. There are certain parts of our program where we've increased the cost share eligibility to account for the costs for what the engineering in the past have been.

Vice Chairman Monson: With as much money as everyone knows that we have; they can come in and inflate it. How are you assured that we're getting the best bang for our buck?

Michele Klosey: There is some difficulty there. We have some firms that do lump sums and some that do hourly rate. We don't recommend that you do lump sum for the engineering design work. By encouraging that hourly rate you're making sure what they're paying their employee; you're getting the time and effort back.

Representative Streyle: Is it not true that there was only one bidder in Minot?

Chairman Skarphol: Was there anything unique about those projects that made that the case?

Michele Klosey: On the waterside that I've been involved with in Minot, they've involved three or four different parts to the project. I had seen that they were trying to spread work around engineering firms to accomplish the work a little more.

Representative Streyle: I'm specifically referring to the flood control project.

Michele Klosey: There was a brief period of time with the emergency underway that there were certain firms were offering technical assistance. So it might get to be specialized when you're in an emergency situation.

Representative Streyle: The firm that was hired as the lead; really had no expertise in specifically flood protection. That's why they partnered with other firms; that's why I had

the problem. You might encourage them; but, in some cases it's not the practice as far as trying to broaden the scope on it.

Representative Dosch: Each of these projects are unique. At what level does the water commission assume control and responsibility?

David Laschkewitsch: If we own the project, we will assume complete responsibility. That will take us to Northwest Area Water, Southwest, Devil's Lake and the outlets. The only projects the state water commission owns is Southwest Water and Northwest Area Water and the outlets in Devil's Lake.

Representative Dosch: So the other projects, they don't have to listen to you. You have no control over those?

David Laschkewitsch: Our control goes somewhat with cost share; it's not true control.

Michele Klosey: In our contracts with that entity, if it's grant funding, we will have the requirements. Each of the projects are a little bit different.

Representative Dosch: There's no set policy that you have.

Michele Klosey: On the cost share it is set in those contracts what the responsibilities of the owners will be in those contracts. When you're looking at the rural water, we have guidance on the federal funds coming in and we use that similar guidance for the state funds that are also coming in.

Representative Dosch: What's your policy for getting involved with the pipeline between commercial and domestic?

Michele Klosey: We established 3 additional policies after WAS was formed to address those issues. The first one was domestic supply had to be a priority; we established that for all the projects.

Chairman Skarphol: What does that mean?

Michele Klosey: When you're providing water service, you only have a certain capacity that can flow through your lines and only a certain capacity that your treatment plant can produce. You will serve the cities and rural customers first. You will call the depots and tell them we have no water available to fill trucks because we need it for our domestic supply. Industrial gets shut off; and Southwest does that as well.

Representative Dosch: The criticism that we're hearing out there is that these general policies are in place; but yet, we hear these projects are being built and spect out for commercial usage. Since our money statement is being used to help finance these projects which are being oversized for the purpose of providing commercial water.

David Laschkewitsch: That project didn't flow through normal commission channels. That was legislatively authorized. Everything came from the legislative body on that project.

Representative Dosch: It seems to me that it would be extremely important you're your policies have specific dollar amounts. Without those types of policies these firms know that they can charge whatever they want.

David Laschkewitsch: You're proposing capping engineering fees?

Representative Dosch: When you're dealing with state government and with a unique project, there's a limited amount of bidders out there. If they know there aren't any limits, they can come in and demand whatever they want to.

David Laschkewitsch: There are more firms than one; so we fall back to competition driving that a bit. If you attempt to cap the engineering at a certain price, what they end up doing is billing more of their costs as a direct cost instead of an overhead cost.

Chairman Skarphol: What you're suggesting is that people are equally creative in finding ways around laws as we are at creating them?

David Laschkewitsch: I might suggest that.

Chairman Skarphol: Are there things you would like us to do that would benefit you in your negotiations?

Chairman Skarphol: It was my understand for western area water that they received one bid. How do they decide that bid was appropriate enough that they needed to proceed? How do they make the determination as to reasonableness when they get one bid? I know on the pipelining itself they had one bid.

Michele Klosey: On the construction?

Chairman Skarphol: On the construction.

Michele Klosey: There are over 30 contracts on WAWS. There may have been one contract where there was one bid. Each of the contracts were bid and one most of them they did get multiple bidders on the construction contract.

Chairman Skarphol: If you get one bid, how do you decide whether it's reasonable?

Michele Klosey: We look at our engineers estimate. We have an estimate before the contract is actually bid to say what they believe is reasonable with the current market. There can be mitigating factors where you would proceed with the one bid.

David Laschkewitsch: We also reserve the right to reject all bids.

Chairman Skarphol: There is a lot of controversy as to if WAWS has been properly overseen. Is there anything about that project made you uncomfortable? Do you feel that project has been handled appropriately?

Michele Klosey: When you're looking at that project, I agreed with moving forward with that construction and those bids. The pieces we feel a little more uncomfortable with is the review of the treatment plant plans and specifications. That's not the area where we have a lot of expertise. This may be the appropriate place for the water commission to ask for that assistance to do that review to provide those comments back to WAWS on some of the treatment plant work.

Chairman Skarphol: Could that review be done quickly enough that it would not inhibit their ability to pre-purchase that equipment?

Michele Klosey: It may not. We haven't seen the plans and specifications yet for that equipment purchase. It would be good for us to go through that process. It would take at least the 30 days to advertise.

Chairman Skarphol: When would that be the most timely?

David Laschkewitsch: Before you ordered the equipment.

Chairman Skarphol: Is there any reason they can't do that? What would be the cost associated with that? Is cost an issue with having it done? Has it simply been that there hasn't been a desire or a suggestion that it be done?

David Laschkewitsch: We haven't tried to implement the suggestion. We don't have the plans and specifications in front of us yet.

Chairman Skarphol: That's something that would best be done prior to the completion of their budget. We can't wait until the session is over because that delays the time line for the purpose.

Representative Dosch: You're the state water commission; we've been asked for money for this project; you haven't seen the plans, haven't been able to comment on the plans, you can't tell us if they're good or bad, yet we want this dollar amount. This is our frustration. Something is going to come up and we're going to start asking what you were doing approving these projects; it will be wasteful spending.

David Laschkewitsch: The \$80 million that's included in our budget along with all the other projects that are listed; we've tried to make it clear that this is a tentative list or plan for the future. Those monies are not absolute. The project is larger than the amount of funding that we have; so you only proceed as far as the money goes.

Representative Dosch: That's exactly my point; we're going to build it but tell us how much money you're going to give us before we build it. It seems that if these are

needed projects that they're going out and figure out what they're going to cost, they're going to be reviewed and then you'll come to us and ask for money.

David Laschkewitsch: It is conceivable what we've put out is a proposed amount of money; and they may not need all that.

Chairman Skarphol: I think that what needs to be recognized about this water treatment plant that this is a phased increase. I would suggest that this first phase that they're talking about would provide for the opportunity to be changed to achieve the next step based on what they do in this step.

Michele Klosey: The treatment plant itself is trying to look at what the current needs are and the future; and when to do that phasing. That's partially why the budget is lumped together between the projects; we haven't put in the budget or the law that that project is receiving a specific dollar amount. We know there's a priority for water service.

David Laschkewitsch: In other words, some projects are too expensive to get to.

Representative Dosch: Are you saying you do cost analysis on these projects?

David Laschkewitsch: We do have a set amount that we will go to; you take the number of signups for an area and the cost of getting to that area. If the cost of getting to those places exceeds \$30,000.00 per hookup; that's outside of what the state is willing to spend.

Chairman Skarphol: I think one project is \$40,000.00.

Michele Klosey: It is close to \$40,000.00 for the Southwest Pipeline Project. You do have areas in the state that have poor drinking water or hard to access ground water resources.

Chairman Skarphol: Closed the general discussion.

2013 SENATE JUDICIARY

HB 1067

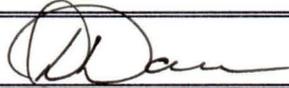
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1067
3/13/2013
Job #19826

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to the state water commission acting as a public corporation

Senator David Hogue - Chairman

Dave Laschkewitsch - Director of Administrative Services ND State Water Commission
See written testimony. (1)

Senator Sitte asks why it was set up in this manner. Mr. Laschkewitsch replied that has been that way since 1937. Senator Hogue asks him if the commission is an administrative agency under the Administrative Agency's Practice Act. Mr. Laschkewitsch responds he does not know for sure. Senator Nelson clarifies they have always acted like an agency and now it is just to make it legal. Mr. Laschkewitsch says they are simply striking the public corporation part because the auditors asked them to. Senator Hogue asks him to find out and get back to the committee on if they are part of the Administrative Agency's Practice.

Opposition - none
Neutral - none

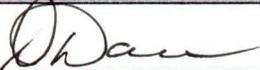
Close the hearing

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1067
3/18/2013
Job #20108

Conference Committee

Committee Clerk Signature	
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Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Hogue states that he did hear back from the State Water Commission and they do not seek exception from the ND Administrative Agencies Practices Act so there are no amendments needed for this bill.

Senator Grabinger moves a do pass
Senator Sitte seconded

Vote - 7 yes, 0 no

Motion passes

Senator Grabinger will carry

Date: 3/18/13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1067**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Grabinger Seconded By S. Sitte

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Grabinger

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

REPORT OF STANDING COMMITTEE

HB 1067: Judiciary Committee (Sen. Hogue, Chairman) recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1067 was placed on the
Fourteenth order on the calendar.

2013 TESTIMONY

HB 1067

TESTIMONY ON HOUSE BILL NO. 1067

House Judiciary Committee

Dave Laschkewitsch
Director of Administrative Services
North Dakota State Water Commission

January 14, 2013

Mr. Chairman and members of the House Judiciary Committee, my name is Dave Laschkewitsch and I am the Director of the Administrative Services Division of the State Water Commission.

In July 2011, we received a request from the State Auditor's Office to meet with them to discuss changes in financial reporting and auditing of the Commission. They informed us that the Governmental Accounting Standards Board's Statements 54 and 61 had convinced them that the Commission should be reported as a component unit of the State of North Dakota. They believe, because N.D.C.C. § 61-02-09 set up the Commission as a public corporation, the Commission is legally separate from the state and therefore should be reported as a component unit of the state. This would require the Commission to prepare its own separate annual financial statements rather than continuing to allow the Office of Management and Budget to incorporate our financial information directly into the State's Comprehensive Annual Financial Report.

Although the public corporation language does exist in the Century Code, the Commission has always acted and been treated as a state agency. After discussions with both the Office of Management and Budget and the Office of the State Auditor, the Office of State Auditor agreed to allow us to continue reporting as a state agency provided we sought legislative changes in the next session. House Bill No. 1067 removes the public corporation references.

I will gladly answer any questions.



Department of Public Instruction

600 E Boulevard Ave., Dept. 201, Bismarck, ND 58505-0440
(701) 328-2260 Fax - (701) 328-2461

<http://www.dpi.state.nd.us>

*Denise Discussion
February 8, 2013
Attachment 1*

Kirsten Baesler
State Superintendent
Robert J. Christman
Deputy Superintendent

To: Representatives Skarphol and Streyle
From: Department of Public Instruction and Information Technology Department
Subject: Possible overlap in duties

4-Feb-13

1. We were asked to look at overlap between the Management Information System (MIS) unit of the Department of Public Instruction (DPI) and the Information Technology Department (ITD). The intent of this request was to increase efficiencies and decrease duplication of effort. As we began discussions, we expanded our purview to include EduTech to truly achieve the intent of the request.
2. We performed a cursory examination of EduTech and the MIS unit. Initial examinations yielded the following areas of interest:
 - a. Improved customer care – each entity maintains a separate data system, each with a distinct purpose; the student information system (PowerSchool) and the State Automated Reporting System (STARS). These unique systems share a common customer base and have a growing link. As the systems get tied closer together, there are opportunities for improved customer care by providing consolidated help desk services to ensure issues and questions are routed and resolved efficiently and effectively.
 - b. Web development – each entity has a website with the same intended audience and each has a web developer.
 - c. Training – each entity provides training to the same audience on varying subject areas. The training for DPI data systems and EduTech data systems overlap on some topics, a trend that is likely to increase during the next few years.
3. We feel this warrants further examination and request the ability to fully explore the possibilities during the 2013-2015 biennium. We will establish a team consisting of members from EduTech, Education Technology Council, Center for Distance Education, DPI and ITD. At the conclusion, the team will provide a report of our findings and recommended changes that will create potential efficiencies for both the state and the stakeholders.
4. Please refer any questions to Steve Snow; Director MIS (328-2189) or fsnow@nd.gov.

Kirsten Baesler
Superintendent

Lisa Feldner
State CIO

General Discussion
February 8, 2013
Attachment 2

Bob
from Gov's
office
Jim

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1206

Page 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 61-02-01.3 of the North Dakota Century Code, relating to development of a comprehensive water development plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 61-02-01.3 of the North Dakota Century Code is created and enacted as follows:

61-02-01.3. Comprehensive water development plan.

The legislative assembly of North Dakota recognizes the need for a comprehensive water development plan. Biennially, the commission shall develop and maintain a comprehensive water development plan that includes an inventory of future water projects for budgeting and planning purposes. To facilitate local project sponsor participation and project prioritization as part of the planning process, the commission shall develop a policy that outlines procedures for commissioner-hosted meetings within the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins."

Renumber accordingly

Mathematics Gap Analysis

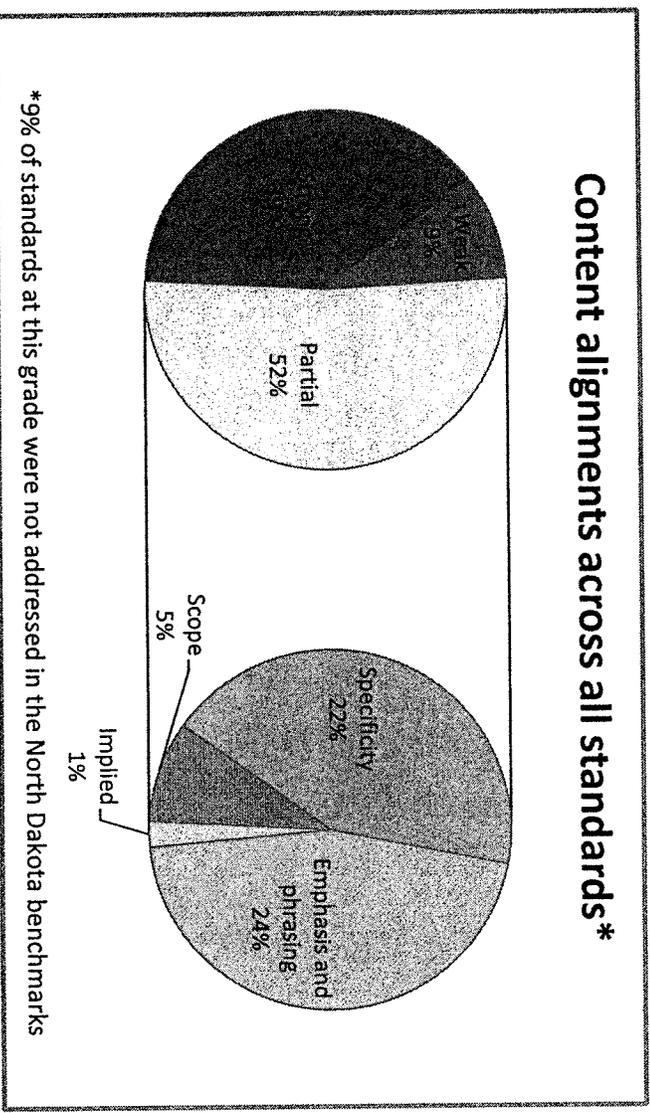
Common Core Standards	Content Alignment	More Rigor*	Comments	North Dakota Content Standards
Kindergarten				
Counting and Cardinality				
Know number names and the count sequence.				
K.CC.1	Count to 100 by ones and by tens.	Strong	CC is more difficult.	K.1.1. Count to 20
		CC	CC content is in Kindergarten. ND content is in grade 1.	1.1.1. Count and order numbers to 100
		CC	CC content is in Kindergarten. ND content is in grade 1. ND is more difficult.	1.1.4. Count by 2's to 20, and 10's to 100
K.CC.2	Count forward beginning from a given number within the known sequence (instead of having to begin at 1).	Not addressed		
K.CC.3	Write numbers from 0 to 20. Represent a number of objects with a written numeral 0-20 (with 0 representing a count of no objects).	Strong	CC is more difficult.	K.1.5. Identify and write numerals to 10
		CC	CC content is in Kindergarten. ND content is in grade 1. ND is more difficult.	1.1.2. Identify and write numerals to 100
		CC	CC content is in Kindergarten. ND content is in grade 1. ND is more difficult.	1.1.7. Connect number words and numerals to the quantities they represent (0 - 10)
		CC	CC content is in Kindergarten. ND content is in grade 2. ND is more difficult.	2.1.5. Connect number words and numerals to the quantities they represent up to 100

* Rigor: CC: Common Core standards are more rigorous; ND: North Dakota standards are more rigorous.

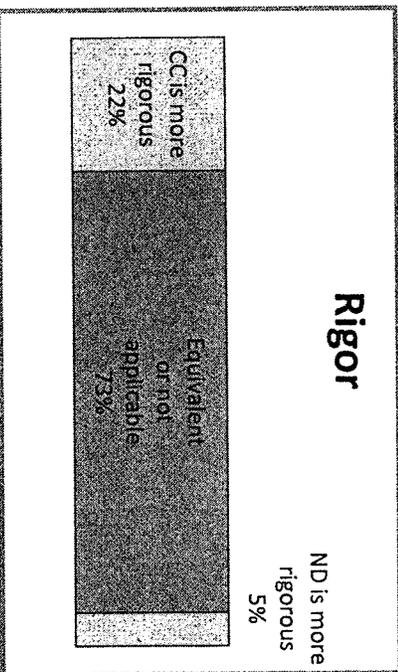
English Language Arts Gap Analysis

Kindergarten, Common Core Compared to North Dakota

How well the Common Core English language arts content is addressed in the North Dakota standards at this grade is summarized in two categories, content alignment and rigor. The findings are depicted in the graphs below. **Content alignment** characterizes the nature of the content match between the Common Core and North Dakota standards. A *Strong* match indicates North Dakota fully addresses the content of the Common Core benchmark. A *Partial* match is assigned when the North Dakota benchmark either does not offer the same level of *Specificity* as the Common Core content, does not cover the complete *Scope* of the Common Core, differs importantly in its *Emphasis and Phrasing*, or provides only an *Implied* coverage of the content. If more than one of the issues just described characterizes the coverage of Common Core content by North Dakota, the alignment is identified as *Weak*. Finally, if content in the Common Core could not be aligned to North Dakota benchmarks, it is marked as *Not Addressed*. The standards were also compared to identify relative **Rigor**. A benchmark was counted more rigorous over the other when higher demands are made of students, either because mastery of content is expected at an earlier grade, or the expectations regarding the content are significantly more challenging, or both.



A summary of how well North Dakota addressed content found in the Common Core standards. See above for a discussion about the alignment categories.



Content in the documents was compared for the relative demands placed on students. The graph displays the percentage of benchmarks that were more rigorous, by document. A significant percentage of the content was either equivalent in rigor between the two standards, or could not be rated for rigor (e.g., when content was not addressed by both documents). See discussion above for more information.



English Language Arts Gap Analysis

Common Core Standards	Content Alignment	More Rigor*	Comments	North Dakota Content Standards
Kindergarten				
Reading Standards for Literature (RL)				
Key Ideas and Details				
K.RL.1	With prompting and support, ask and answer questions about key details in a text.	Partial (emphasis and phrasing)	Content is similar, with some difference in emphasis. CC content is in Kindergarten. ND content is in grade 1. CC is less difficult because students are provided support.	1.2.13. Locate the main idea and identify supporting details of a text
K.RL.2	With prompting and support, retell familiar stories, including key details.	Partial (emphasis and phrasing)	ND Content is similar, with some difference in emphasis and phrasing. CC is less difficult because students are provided support.	K.2.18. Recall/retell information in sequence
K.RL.3	With prompting and support, identify characters, settings, and major events in a story.	Strong Weak	ND CC is less difficult because students are provided support. Content is similar, but there are significant differences in emphasis and phrasing.	K.2.2. Identify the elements of a fiction text i.e., character, setting, events, and ending K.2.17. Make and confirm/disconfirm predictions about what will happen in a story
Craft and Structure				
K.RL.4	Ask and answer questions about unknown words in a text.	Partial (specificity)	CC CC specifies questioning as a vocabulary strategy. CC content is in Kindergarten. ND content is in grade 1.	1.2.14. Read a variety of vocabulary embedded in authentic text
K.RL.5	Recognize common types of texts (e.g., storybooks, poems).	Strong		K.2.1. Recognize a variety of genres i.e., fiction, nonfiction, fairy tales,

* Rigor: CC: Common Core standards are more rigorous; ND: North Dakota standards are more rigorous.

TESTIMONY ON HOUSE BILL NO. 1067

Senate Judiciary Committee

**Dave Laschkewitsch
Director of Administrative Services
North Dakota State Water Commission**

March 13, 2013

Mr. Chairman and members of the Senate Judiciary Committee, my name is Dave Laschkewitsch and I am the Director of the Administrative Services Division of the State Water Commission.

In July 2011, we received a request from the State Auditor's Office to meet with them to discuss changes in financial reporting and auditing of the Commission. They informed us that the Governmental Accounting Standards Board's Statements 54 and 61 had convinced them that the Commission should be reported as a component unit of the State of North Dakota. They believe, because N.D.C.C. § 61-02-09 set up the Commission as a public corporation, the Commission is legally separate from the state and therefore should be reported as a component unit of the state. This would require the Commission to prepare its own separate annual financial statements rather than continuing to allow the Office of Management and Budget to incorporate our financial information directly into the State's Comprehensive Annual Financial Report.

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I will gladly answer any questions.