

2017 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1339

2017 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HB 1339
2/2/2017
27857

- Subcommittee
 Conference Committee

Committee Clerk Signature

Donna Whetstone

Explanation or reason for introduction of bill/resolution:

Relating to notice, appeals, and refunds of special assessments

Minutes:

Attachments 1-6.

Chairman Kasper: opened the hearing on HB 1339.

Rep. Kathy Skroch, District 26: Introduced the HB 1339. (See Attachments #1-2). 00:32-5:41

Vice Chair Louser: Will we hear the specific stories of the people that lead to this.

Rep. Skroch: Yes, they should be able to explain why this is necessary. It is not that an intrusive change we are going from a one week notice to a three week notice, it just gives people more time to prepare.

Rep. P. Anderson: In a water assessment project what number of people are we talking about?

Rep. Skroch: That would depend on the size of the project, many can be in the millions of dollars assessed and they can be assessed over many years. One example of a gentleman affected by a drainage project was assessed \$20,000 per year, that is costly. That can be out for any number of years. They are pretty significant burdens to be carried. They will benefit and impact some more than others. There is varied circumstances and it is good to have the opportunity to appeal.

Rep. C. Johnson: In your testimony you are going to require a notice of assessment be published and you don't specify where that notice will be published or how.

Rep. Skroch: That is spelled out in Century Code, when you say that published, it is typically understood as the paper chosen by the county as the official newspaper and it wouldn't be required in a daily paper. A weekly notice for 3 consecutive weeks.

Chairman Kasper: I think that is outlined on Lines 10-11, Page 1, where the notice will appear.

Rep. Skroch: Yes.

Chairman Kasper: Any other questions committee? Seeing none. Any other testimony in support of HB 1339?

Kathy Marquette, Rutland, North Dakota: appeared in support. (See Attachment 3).
10:28-18:40

Rep. B. Koppelman: In the scenario that happened was there larger tract landowners pushing for this drainage system to improve their property or is it where a large majority were pushing for this or was this the water district decided needed to be done regardless of what the landowners wanted?

Kathy Marquette: In my opinion, it was a handful of people that wanted to move water not the majority of the landowners.

Rep. B. Koppelman: As I recall that area is heavy slough country. So I have to wonder if this drain is designed to improve any land that might have better waterfowl area than farming area. Was this designed to improve the value of some property at the expense of some others from your perspective?

Kathy Marquette: Yes.

Rep. C. Johnson: You had property that was affected just by the assessment was any of your property actually affected by the drain itself?

Kathy Marquette: 14 parcels of land were affected and the drain is not on our land. That is why we are questioning the actual assessment cost versus the benefit.

Chairman Kasper: Describe what this has actually done? Why did they cut the drain, what was the purpose, who benefited, who hurt and what has been the end result here?

Kathy Marquette: This drain was advocated by a handful of people, water is an essential thing to life, we understand that but no one wants excess water. There are always going to be people who want to farm more land and if they can drain that water off of their land to make it more productive they will do. Not all people. It has hurt us financially and with neighborly communications. So few want to do this for the benefit. It has strained relationships with neighbors. There is people that will benefit but I don't agree with the amount of the assessments and how they were calculated in relation to the benefit some people are receiving.

Chairman Kasper: How many benefited from the drain and how many have no benefit?

Kathy Marquette: I would say approximately 5-7 landowners will benefit and about 20-25 and this water will also go into South Dakota as well in the James River.

Paul Mathews, Cogswell, ND: appeared in support. (See Attachment #4). (26:37-29:36)

Vice Chair Louser: Do you have any history as to why we have the not less than 25% in code now?

Paul Mathews: No, I don't.

Leon Mallberg, Dickinson: Managing Partner for the family farm in Cogswell, appeared in support of HB 1339. I got a postcard in the mail with a request for me to attend a meeting in Cogswell with respect to Drain 11. I had no idea what that was. None of my family knew about this so I went to the meeting and I was to sign forms and everything was done and I was supposed to have received an email about it. Communications on this situation is inadequate and in my opinion might be subversive. They are expecting me to pay assessments and I had to call the Water Board to find out about the increased assessments but I never got a response back from the Water Board. I hand wrote a note when I sent in my taxes to find out who the Water Board chairman was and I want to be able to contact him. I got an email saying you have to contact the secretary and she is only here on Thursdays. Drain 11, in my opinion seem to be the impetus of one relatively large farmer. I look what is going on and I am going to get 0 benefit. 30:28-34:43.

Chairman Kasper: Any questions? Any further support of HB 1339? Any opposition of HB 1339?

John Paczkowski: Assistant State Engineer, Office of the State Engineer, State Water Commission: appeared in opposition to a portion of HB 1339. Specifically, in Section 2 page 2, lines 5-6 of the bill. (See Attachment #5). 35:54-38:18

Rep. B. Koppelman: Using a project value of \$3.5 million if one or two landowners owned enough land that just equaled under 25%, in that scenario is \$.98 million that he could feasibly be affected by and not be able to appeal it to your office. Doesn't that seem pretty extreme?

John Paczkowski: Our office typically tries to be a neutral third party on any issue. As it is spelled out in code, yes, 25% assessment vote is required before you can appeal to the State Engineers office. There is other code that requires 50% or a majority of those landowners to appeal. There is an assessment vote that goes through to get these projects to this point.

Rep. Karls: Do you have to get some kind of easements?

John Paczkowski: These are projects designed by water resource districts requested by the landowners. Yes, easements do need to be obtained.

Rep. Vetter: You want lines 5 and 6 struck, but is there happy medium there, obviously they are not happy the way it is now and it doesn't seem to be too fair?

John Paczkowski: There is another piece of code in which assessment districts can be set up and that requires the majority and another that requires 50% of the landowners to file and appeal. This one requires 25%. I can't speak to what the opponents would want.

Rep. Vetter: Even if it reaches a certain dollar amount? Can you tie this to a dollar amount?

John Paczkowski: There is a mechanism in place, people approach the Water Resource District, requesting a project. We don't always get 100% of the landowners in favor. Does the dollar amount come in to play? Yes. It is vetted through a process that is spelled out in code to get us to this point.

Vice Chair Louser: Votes do not equal landowners?

John Paczkowski: I believe that to be the case, it is % of the assessment.

Rep. Laning: The present language has 25% of possible value, is that an aggregate of landowners or does one landowner have to have 25%?

John Paczkowski: Aggregate.

Sean Fredericks, Attorney for Red River Joint Water Resource District: In opposition to HB 1339. It is comprised of 14 Water Resource Districts on the North Dakota side. We construct a lot of projects and we go through a lot of assessment votes. Drain 11 is not an assessment project and it is an existing drain that has been in existence for over 100 years. What the board is proposing to do is reconstruct it. The slopes have eroded. There wasn't an assessment vote on that project. We have no problem for additional time for notice so if it goes to 3 weeks and 3 notices we have no problem at all. We want everything to be transparent. The assessment process includes two hearing. The Project hearing before people vote and if a project passes there is an assessment hearing to discuss what the assessments would be. In terms of the appeal process, landowners have three appeal procedures already, the existing statute, lines 15-24 provide landowners the opportunity to appeal in existing law. They can appeal to the Water Resource District, the second appeal is in district court and the third appeal is the 25% appeal. Explained an example of the Dickey County and appeal. (50:16) I think it should stay at the 25% appeal because then one landowner can't just come in and say I want to appeal this because it is costly and landowners already have those other two appeal processes. The assessment process is the most democratic process in the state. Example explained of Jackson Township improvement project. (53:54) Developed the project over 4 years, conducted many meetings, then went to assessment process and sent ballots to all 286 landowners and conducted the project hearing and they voted and it passed. At the assessment hearing anyone can still put in their grievances and they did. The board took all the information and assessed it and spent several months. Had more meetings and at the end the board was finally satisfied and modified it. Some people did appeal. We let them know they had appeal rights. It was done in a very transparent way. Water projects are not without controversy. I just want to point out that it is a fair process. In terms of the appeal process any person can appeal to the Water District Resource office. I just don't think this is the right way to do this. If one landowner doesn't like it and can stop a process and 80% do like it. I don't think it would be fair to the other landowners who voted to tax themselves for it. 58:50

Rep. Vetter: When you mentioned Drain 11 and it is already existing so this process you are talking about is only on new things?

Sean Fredericks: The appeal procedure is available for new assessments projects.

Rep. Vetter: How significant do projects have to be on an existing before it is considered new and can have an assessment vote?

Sean Fredericks: When I talk about Drain 11, we are talking about Legal Assessment drain, the legal assessment I just described happened 100 years ago and the landowners that benefit from the drain are already in the maintenance district. When you create a new project for an assessment vote you create 2 assessment districts basically, you have the construction assessment and maintenance district. Usually they don't assess for the maintenance until the construction is done. Once we paid off the bonds for project and it is operating and now you have to do maintenance. There is a cap on the maintenance district. All you can assess right now is \$4 per acre and that is at 100% and there is a 6 year cap. The Water Board cannot just keep assessing people the maximum for 50 years.

Rep. Vetter: You can't appeal at all on maintenance project?

Sean Fredericks: The maintenance levy is already in place and if you disagree with what a board is doing with the maintenance dollars you can appeal that to district court anytime.

Rep. P. Anderson: If we have a water problem and we want you to do something. Then it is about \$5million. We can say we really like the idea but is going to cost too much money so then it off.

Sean Fredericks: The way we do it we go out to the public before we even take it to a vote. We say here is the project here is what we came up with and here is our cost estimate. This is what we think it will cost each landowner. Does that sound palatable? That is what we do before we take it to the vote.

Rep. P. Anderson: Even the first vote?

Sean Fredericks: Certainly. Then you take it to the Assessment vote, and not everyone shows up and aren't aware and they get their ballots and they vote it down. Then the only way to build a project is to go back and go through a brand new vote.

Rep. B. Koppelman: In the example you used you said there was 286 people assessed in the process and it started out with 20 landowners saying they would like this project. I can envision this as some of the landowners had major needs then there are others who don't have such a need. Is that fair to have a system like this and is that 25% appropriate based on that?

Sean Fredericks: The way you are describing the 20 landowners are the only ones that will benefit. Usually the way a project develops the landowners come in and say we are having issues, in the spring we can't get the water off, so we are leaving these acres. Typically it is not just one, landowners. So you come up with a draft project and you go through a benefit

analysis that you have to go through. If a landowner is going to benefit greatly then they will be assessed the 100% benefit and that will be their vote. They may benefit more than the person behind them, that person may get a 20% benefit and they will pay less. This is the idea and that is why a % level assessment is fair. The water shed, everyone benefits from a drain because their water gets there, if the person inundated and is now getting their water off faster than the person who is a quarter mile away their water will get there faster now too. So there is benefit to the entire water shed. That is why there is the percent level for assessments.

Vice Chair Louser: Is there a number less than 25% greater than zero that you would be agreeable to in the interest of making this bill work?

Sean Fredericks: I would have to think that through. When I think of a project with 1000 landowners and it is based on the level of assessment, I can't come up with that off hand.

Rep. P. Anderson: How long has 25% been in statute?

Sean Fredericks: I would say since 1981, I don't have the legislation in front of me.

Vice Chair Louser: Do you have any input of when the Water Board office is open and maybe having it open at only limited times is one of the issues?

Sean Fredericks: When I think of the rural Water Boards, it is hard to get them to serve on water boards, most are farmers and are busy. On top of that the Secretary/Treasurers have very limited funds. We have a hard time finding them and most of them don't have offices and they operate out of the courthouse. If you want to suggest an appropriation for Water Resource Districts to open offices, they might welcome the idea. The contact information is available on the website.

Rep. Rohr: Many times these businesses have policies in place of when they should return communication, do you suppose they had that and it was not followed?

Sean Fredericks: The Sargent County Board are usually very prompt. Sherry was gone over winter and it may be she was gone at that time. She usually contacts the board and lets them know.

Mike Dwyer, North Water Resource Districts Association: Represents all water districts in North Dakota appeared in opposition. We have no opposition to the additional publication and times of publishing that but we do have opposition to notification by certified mail and to removing the 25% appeal. Gave some background on water districts. Water districts operate with up to 4 mills, most county commissioners don't approve those total 4 mills, they operate on budgets around \$11,000-\$13,000, so it is minimum. That is why we oppose the certified mail. The process for assessment is so extensive by the time a project is being constructed the land owners know about it because of this extensive process. Once the landowner wants the Water District to check out a process the Water District must assess it to see if the project should go forward. For Assessment projects with Water Resource Districts it has to be a positive vote. That is different than other assessment projects throughout the state, cities, counties, park districts. Those are protest votes. In a protest vote 50% have to protest to

stop that project. Water is controversial so that is one of the reasons you decided Water Resource districts needed to exist in every county because they sometimes need to arbitrate between upstream and downstream folks. We have to have a positive vote so more than 50% have to approve the project before it can go forward. I am just giving you a background of Water Districts and we would like to see you leave the appeal. 1:19:36

Vice Chair Louser: In the event that the counties are getting the full 4 mills then potentially if we require the certified mail we may be raising taxes in those counties to pay for that.

Mike Dwyer, North Dakota Water Resource District: A couple Water Districts are going to testify and they can explain that cost.

Robert Fleming, Water Resource District Pembina County: In opposition to HB 1339 for a couple of reasons. One is requiring certified mail because it cost \$4.54 a piece, so it is more money. The problem with certified mail is will we be required to wait until everyone would send back their cards before proceeding. It would get difficult to schedule a hearing not knowing how many people would have to return their cards. When you do a reassessment the requirement in the new bill is that we send the reassessment notice to all assessed landowners in that drain and not just the ones that are new, that we are adding. That is \$3.84 a letter and I am not sure what the purpose would be to send the reassessment letters to people who are already assessed into the drain. We are not reassessing them. We get 3.5 mills out of the 4 allowed in Pembina county and it has been that way for a while. We have over 45 legal drains in our county. Our smallest one drain 18.5 quarters of land and our largest drains 425 quarters. When we start adding the costs they have to be borne by the landowner. When you add additional requirements, there is very little benefit but then we can say there is \$1000 less dirt we can move now. Farmers are coming in and asking us to assess them at \$10 an acre because they need more dirt moved and maintenance. We have flooding and washouts. Anyone can make an appeal to the State Water Commissioner. In Pembina county we have had one appeal since 2011. Two landowners brought in an appeal in November 5, 2015. The State Engineers office gave them an answer last week. That is 15 months to do one appeal on one landowner and on one drain. So my concern is who will be able to pay for the extra appeals and assessments? How many more FTE's will it require to handle all these appeals? If you allow one landowner to hold up these projects for 15 months that will affect all other landowners. 1:28:54

Monica Zentgraf, Secretary Treasurer, Richland County Water Resource District: appeared in opposition to HB 1339. (See Attachment # 6). 1:29:03-1:33:45

Chairman Kasper: Any questions committee? Seeing none. Any other testimony in opposition to HB 1339? Anyone in the neutral position?

Rep. Skroch: I want to clarify when we put Registered mail that was an option and Certified mail was the other, so it doesn't have to be certified mail it can be registered mail.

Chairman Kasper: Closed the hearing

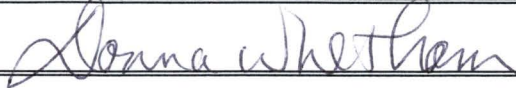
2017 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1339
2/9/2017
28121

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to notice, appeals, and refunds of special assessments

Minutes:

Attachment 1

Chairman Kasper: opened the meeting on HB 1339.

Rep. B. Koppelman: presented and explained the amendment to HB 1339 that came from the bill sponsor Rep. Skroch. (See Attachment #1). 00:20-3:11. Sean Fredricks, who was an attorney in opposition to this bill, he represents a large number of Water Boards across the state. He stated he had no problem with the notices, we did hear from an Auditor that didn't like the certified mail so we changed that to stamp it on the envelope that it is an assessment notice. The biggest problem was going from the 25% threshold where you could appeal it to the State Engineer to zero. Looking at all the projects they had done he felt 15% would be a fair number. So we changed that in the amendment and the bill sponsor agrees since these are her amendments.

Chairman Kasper: I think you might have overlooked the word certified on Page 1, Line 13 of the bill or does that coincide with your intent of how the notice is mailed.

Rep. B. Koppelman: That is part of her previous amendment and if we can do it all in one amendment I can do that. For the record I would make a motion to adopt amendments number 17.0752.03003 with the addition of the removal of the word certified on Page 1 line 13.

Rep. Johnson: seconded.

Rep. Laning: Are we looking at including all of 3001 as well it has certified mail on line 13 as well.

Chairman Kasper: No the only thing we are taking from 3001 is the first part page 1 line 13 remove "certified" and we are adding that to Rep. Koppelman's amendment. Any other discussion committee?

Rep. Rohr: Were the State engineer in agreement with what Sean, the attorney was talking about that day in this amendment?

Rep. B. Koppelman: He doesn't speak on behalf of the State engineer, but what he was able to tell us was the number of additional people who could appeal because of this change in the law was a relatively small number. I have not spoken to the State engineer.

Rep. P. Anderson: I would feel more comfortable talking to state engineer in going down to the 15%. Did we approve the proposed amendments 3001?

Chairman Kasper: No, what we just did we took the first part of that amendment and added it to the amendment that Rep. Koppelman brought.

Rep. P. Anderson: Is there a way to go over that again?

Chairman Kasper: No, at this time there isn't, we can't reopen the hearing, remember goes over to the Senate and if the engineers have an objection they can raise that on that side.

Rep. P. Anderson: We could talk to the attorney.

Chairman Kasper: Rep. Koppelman did talk to Mr. Fredricks, the attorney but he didn't talk to the State engineer's attorney.

Rep. B. Koppelman: It was the feeling of Mr. Fredricks and on behalf of the Water Districts but also his concern for the State Attorney that he indicated in his testimony by putting the word 15 in instead of 25% that it would alleviate the main concern which was a flooding of appeals coming to the State Engineer. Yes, there would be more but it would be few.

Rep. C. Johnson: The original bill took it all down to 0, so anyone with a minute assessment could appeal this brings the threshold all the way to 15%, so I think that would eliminate all the nuisance assessments and it would be a reasonable number to deal with for the State Engineer.

Chairman Kasper: Any other comments on the amendment. Voice vote taken on adopting amendment 17.0752.03003 with the addition of the removing certified on page 1 line 13. All ayes. Motion carried. The amendment is on the bill. What is your wishes committee?

Rep. B. Koppelman: I move a Do Pass as amended on HB 1339.

Rep. Johnston: seconded.

Chairman Kasper: Any other discussion? Seeing none. I will ask the clerk to take the roll.

Roll call vote taken: Yes 11. No 2. Absent 1. Motion carried.

Representative C. Johnson: Will carry the bill.

Chairman Kasper: Hearing adjourned

2/9/17 JF

17.0752.03004
Title.04000

Prepared by the Legislative Council staff for
House Government and Veterans Affairs
Committee

February 9, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1339

Page 1, line 13, remove "certified"

Page 2, line 5, remove the overstrike over "~~;-having not less than~~"

Page 2, line 5, after "~~twenty-five~~" insert "fifteen"

Page 2, line 5, remove the overstrike over "~~percent of the possible~~"

Page 2, line 6, remove the overstrike over "~~votes, as determined by section 61-16.1-20,~~"

Page 3, line 4, remove "of the hearing by certified"

Page 3, line 4, overstrike "mail" and insert immediately thereafter "of the hearing in an envelope
clearly marked "ASSESSMENT NOTICE""

Page 3, line 6, after "district" insert "at the landowner's address as shown by the tax rolls of the
counties in which the affected property is located"

Renumber accordingly

Date: 2-9-17
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB1339**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 17.0752.03004

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. B. Koppelman Seconded By Rep. C. Johnson

Representatives	Yes	No	Representatives	Yes	No
Jim Kasper-Chairman			Pamela Anderson		
Scott Louser-Vice Chairman			Mary Schneider		
Jason Dockter					
Craig A. Johnson					
Daniel Johnston					
Karen Karls					
Ben Koppelman					
Vernon Laning					
Christopher D. Olson					
Karen M. Rohr					
Vicky Steiner					
Steve Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion Carried

Date: 2-9-17
 Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1339**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. B. Koppelman Seconded By Rep. Johnston

Representatives	Yes	No	Representatives	Yes	No
Jim Kasper-Chairman	X		Pamela Anderson		X
Scott Louser-Vice Chairman	A		Mary Schneider		X
Jason Dockter	X				
Craig A. Johnson	X				
Daniel Johnston	X				
Karen Karls	X				
Ben Koppelman	X				
Vernon Laning	X				
Christopher D. Olson	X				
Karen M. Rohr	X				
Vicky Steiner	X				
Steve Vetter	X				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep. C. Johnson

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

REPORT OF STANDING COMMITTEE

HB 1339: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1339 was placed on the Sixth order on the calendar.

Page 1, line 13, remove "certified"

Page 2, line 5, remove the overstrike over "~~,-having not less than~~"

Page 2, line 5, after "~~twenty-five~~" insert "fifteen"

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Renumber accordingly

2017 SENATE POLITICAL SUBDIVISIONS

HB 1339

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1339
3/17/2017
Job # 29380

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to notice, appeals, and refunds of special assessments

Minutes:

Written testimony #1 Rep. Kathy Skroch
Written testimony #2 Monica Zentgraf
Written testimony #3 Larry Gellner
Written testimony #4 Paul Mathews

Chairman Burckhard opened the hearing on HB 1339. All senators are present.

Rep. Kathy Skroch, District 26, introduced and testified on the bill. In support of the HB 1339 bill. ((:18- 11:38) She proposed an amendment 17.0752.03004 in here testimony. She read a testimony from Paul Mathews from District 26 in an email. He urged a do pass for HB 1339. (6:29-11:28)

Sen. D. Larson: I assume everybody read the email. My question though is he seems to be mostly concerned about the notice and the time and really being able to be aware of where everything is in the process. My concern with the bill is on pg. 2 on line 5, changing 25% of the possible vote to only 15% along with what you were saying even in your testimony, doesn't that sound like one large land owner could hold up a project that would benefit everybody else in that area by only having 15%?

Rep. Kathy Skroch: I am not sure if a large land owner would hold up a project. In this case this is saying that if there is a group that feels they've been treated unfairly and that assessment, originally we had to approve 25% of that group that would object to an assessment but that was based on that weighted vote and so your reducing that down to 15 gets a slightly improved opportunity for those people who feel that they have been fined an unjust assessment.

Sen. D. Larson: In referring to your testimony under number 2 on your page 2, for example you said, 6 parcels of land assessed 100% would receive 6 votes, yet another only 25% would receive only 1 vote. So, when you have larger pieces of land, you get more votes, so that's how one person could hold up a project that could benefit the whole area if they just didn't like it for whatever reason. Whereas 25% I think gives you a little better sense that it is

more of a community decision. That is my real concern with this bill is that change right in that part.

Rep. Kathy Skroch: In all the testimony that we've heard, that affect never occurred because in (example cited (14:41- 17:29)

Sen. J. Lee: I've spent a lot of my life dealing with special assessment districts including water districts. If you increase your weighted value to 100% in order to have the additional vote, you also have the additional special assessment. So people aren't going to say okay I want 100% recognized as benefits, and not have some responsibility then as well. So it is a pretty big deal to do that. What is the project that created so much angst in your area?

Rep. Kathy Skroch: There have been multiples. The one that has created so much angst in my district is the Jackson Drain project and now Drain 11 project.

Sen. J. Lee: Why would there be controversy about this. How is there a negative impact?

Rep. Kathy Skroch: If someone would say they would accept 100% assessment they would also be responsible for paying that assessment. So what is currently happening is that are people who felt that they could benefit enough to justify that 100% and their willing to pay the 100% assessment. So they were able to push the project forward and they kept track I am told of assessments and agreements until they knew they had enough to win project. It was taken to a vote.

Sen. J. Lee: There are lots of controversial water projects including 20- year old project that we've been working on for some time about flooding in my area. But they are weighted votes, I mean that is just the way they are done in water districts, and I think that is appropriate. If I own a section of land and I am going to be paying 4 times as much in special assessments as somebody who owns a quarter and 100 times as much as somebody who's got a 100-foot lot, I think it is appropriate that I have more votes than the person with the 100-foot lot or the quarter of land. Because I have a financial investment with this. But I am trying to figure out why is there only objection based on the payment as you don't want to make the payment, or is there damage that they people are saying is going to occur because of the project and that's why they resist the project.

Rep. Kathy Skoch: In this situation, part of the problem was that many people did not receive notice in adequate time to respond appropriately.

Sen. J. Lee: Don't they look at their mail? When I look at amendment that says that the envelope is clearly marked assessment notice. I don't know if I get a letter from a political subdivision, or government entity I open it. I don't want assume that it is junk mail. I am just a little puzzled about the fact that we have to have the traditional notice on the envelope about. The other thing has to do with more than the county newspaper. Newspapers are not the way people get notice very much anymore. A whole lot of people don't read the newspapers, so adding more additional newspapers and an additional week I don't know if that affects it. People are getting mail and you can turn down certified mail. That's easier than just not accepting it. So I see that part coming out. But I don't know why the people who would be living there wouldn't open the mail that came from the water district that's telling

Rep. Kathy Skroch: I don't think we can error to far on this budget expanding that a little bit. I do believe that probably the most impacted are senior population that is still receiving their own mail and may not realize the consequence of this and take some time to have family get involved. There are also cases where the mail was sent to the wrong address and people didn't get it and heavy equipment shows up on their yard. There was plenty of testimony provided to justify these changes. People still do read newspapers otherwise why would we get them up on chamber. Getting back to this percentile again. Some of these people who were assessed could not respond in time to get an engineer's opinion. I feel very strongly that they are not receiving the benefit that was assigned to them. I have a gentleman in my district who was assessed for a project that was supposed to drain into a particular drain and his water goes the opposite direction, it goes to SD. He doesn't benefit from the drain at all. There are those cases where upon looking more carefully, you realize the assessment was not made accurately.

Sen. Dotzenrod: I am from your district and I know the project, and there has been some real problems with people who feel they was a set of distribution of the vote on determining whether the project should go ahead and they got that majority to go ahead, then after the project was constructed there was a re-assessment made to determine the benefits and low and behold when that re-assessment was made a lot of the people that pushed the project their assessments went down, a lot that were opposed, there assessment went up. There was some real negative feelings after this project got done. But I am looking on pg. 2 and this is existing law, nothing with any amendments or changes, current law starting on line 17, " Any landowner who claims there is no benefit may appeal to the State Engineer with 10 days on the question of whether there is any benefit". So it does appear current law provides anyone individual this opportunity to do this, and I am wondering do you think that maybe with that 10 days that may be some of the individuals didn't know that they had this right, that they weren't aware of it? That's why they didn't because it looks like the 15% or 25% might be good or bad, but we currently allow just one person to make this claim and require the State Engineer to have to respond to that. You can't get smaller than one, I guess I am wondering maybe people just aren't aware and they don't know they have this right. Is that part of it?

Rep. Skroch: I believe that is part of it. If you look at drainage law, there is an incredible amount of Century Code related to drainage law. Not everyone is aware that why it takes them awhile to find the proper people to assist them with that and in this case it does say in this section, 17 or 18, that this is for an individual who feels they haven't received any benefit at all.

Sen. Dotzenrod: It appears that current law provides a tremendous amount of power to one individual. But I don't know how we can give them anymore authority or power than we have right now. But it appears that they don't know that. The people involved aren't getting that information or it should be included in the mailing. Somehow if you have a current right provided to you in law, and that isn't being used when people want to use it, I don't know how we fix that? Do we need to notify them as part of that first letter or what?

Rep. Skroch: I think you just kind of made my point as to why it is not unusual to have the change in 5 and 6 because that would indicate that there needs to be an opportunity especially if there is a larger group of people who feel that something is not going well in this

project and we want to have the engineer take a second look. It doesn't necessarily hold up the whole project, that process can continue on. One of the arguments that was used why that would be a problem is because in their opinion, the State Engineer was too slow in providing that opinion.

Sen. D. Larson: It seems to me that the first part on here really the 25% to 15% can change the whole project. That will examine the location and buying the whole project whereas the one person down here can challenge whether they should be assessed because there not benefiting so that is an individual assessment whereas the top part could really hold up the whole project. So I think that is really the crux of the whole thing to me is that 15 to 25%.

Rep. Skroch: in view of the fact that you can have a many who are affected yet because of the weighted vote, they may need this opportunity to address their concerns of not being properly assessed. There is a 10- day window, one person versus 15 people will make no more difference because it is the same number of days, same assessment provided by the State Engineer, if there is an objection to that project.

(30:46-38:31) Mike Dwyer, I represent ND Water Resource Districts. (No written testimony) We appeared before you in qualified support. On the House side, we were vigorously opposed to this bill because of the provision that would allow one land owner to appeal and challenge the entire project, the design, the assessment, and it would delay the project for a year or more because the State Engineer would have to hire or do an engineering analysis of the project and of the assessment, and this is something that the local water resource district has probably spent 2, 3,4 years doing and so that's not something that is going to take place in a short amount of time because the State Engineer is required by law to do that complete reanalysis of the project. We certainly support the extra notice and the extra publication in the paper and the extra mailing and if it would improve the opportunity for an individual to appeal whether there is any benefit at all, the single land owner and you would want to extend to 20 days we certainly could support that. Rep. Skroch is correct in that we agreed to the 15%, that doesn't mean we like the 15%. We certainly prefer to have be 25%, but it was at that point it was a choice between one landowner, and so 15% for us was way better than one. So that's the reason we supported that. I want to emphasize that water resource districts this session seem to be the focus of a lot controversy and it could be because of the wet-cycle that we're in and a number of flooding in 2009 and 2011, we had record flooding in Fargo, Lisbon, Valley City, Linton, Beulah, Hazen. So there are ongoing projects in all those communities to try to solve those flooding problems. But we have a bill that would take away the quick-take authority of Water Resource Districts. We have a bill that will prohibit the Water Commission from cost-sharing on drainage projects, the Red River Valley, the Eastern 1/3 of the state is dependent on drainage. If it weren't for drainage the farmland that provides a major economic engine for the entire valley would not exist because you know that land is maybe goes 1 foot per mile. There is probably 300 assessment drains up and down the valley. The process for establishing assessment drain is very rigorous. First of all their might be a petition by some landowners and the Water Board is required to investigate it and they determine that there is some merit to the project. They will hire an engineer, and do an analysis and determine whether they should go further. Then they are required to have a hearing on the project, and then you have a vote with the assessments. It is a weighted vote and for Water Resource Districts, however, it is more rigorous than in cities or in counties or other special assessments because our

further. Then they are required to have a hearing on the project, and then you have a vote with the assessments. It is a weighted vote and for Water Resource Districts, however, it is more rigorous than in cities or in counties or other special assessments because our projects are required to have a majority of the total votes in favor of the project. Whereas, normal assessment process is a protest vote. In a Water Resource District 50% people have to go to the poll, have to go to the County Seat and vote in favor of the project in order for it to proceed. If you do get a 50%, favorable vote of the assessments then you're required to have another hearing for the people in the assessment area to go over the assessments again, and see if there should be any change. It should be pointed out, in any group of landowners has the right to appeal to District court if they want to challenge a project and the District Court will determine whether the Water Board was arbitrary or capricious in all of these proceedings. That can be one landowner, or 2, or 5. There is no limit on an appeal to District Court. Then there is the appeal that you talked about a single landowner can appeal to the State Engineer if they don't feel there are any benefits. Under the bill before you, 15% can appeal to the State Engineer the entire project. Then he has to go through that same analysis because you can't just in a few says say, it looks good, he's got to review all the documents, he has to hire an independent peer review firm (consulting firm) to determine whether because they don't have the staff internally to do that, to determine whether the project was properly done, and if it was designed properly, whether assessments were proper. So, we think that as Sen. Dotzenrod said, there is a thorough process in place for establishing a project and then appealing if there are no benefits, appealing the entire project, appealing to District Court if you are completely opposed to what the Water Board has done. In a case where it's been completely improper, District Court might re-band it back to the local political subdivisions. We certainly support any improvement in notice and opportunity but if we had our druthers we would stay at 25%.

(39:53-41:08) Monica Zentgraf: Secretary Treasurer for the Richland County Water Resource District. Written testimony #2. In Support of HB1339.

Sen. Anderson: Have you calculated what the difference would be in the cost? Here were are talking about mailing 3 different times, and we've had other bills here where counties and townships and so forth has us to reduce that to 2 which has become more of a standard. Additionally, the publications in the papers and so forth, have you assessed how much that is going to cost each project?

Ms. Monica Zentgraf: On the side of like the reassessments, I believe there is one reassessment notice that goes out, and there is hearing that is held. For some of the projects it wouldn't be that expensive. Some would get very costly. Example cited (42.05-42:40) That's where we were coming from.

Sen. Anderson: We're not talking about that here. We've removed the certified, so now you're just talking about a stamp, but you have to do it 3 times.

Ms. Monica Zentgraf: Well if you use a 50cent stamp, at 5000 mailings, or 1000 at 50cents, you'd have \$500 for one mailing, you would have an additional \$500 on a 1,000. Some of them are smaller assessment districts than that. They are not all that large. Up and down the valley even with the Richland County Water Resource District, we've got approximately 42 drains. We have one that has maybe 100 people in the assessment district. On the other

hand, you could have 350 or 500 people on another district. There is a real variance there. As far as your publications, it depends. A lot of our publications are maybe \$100, so you would be looking at maybe another \$300, for an additional mailing.

Neutral Testimony

(44:35-45-46:09) Aaron Carranza, Office of the State Engineer in the Regulatory Division. Our office does the comprehensive appeals as well as appeals with no benefit. Just to clarify, we do, the work in house. Expounded on what his office does. No written testimony. Part of our testimony in the original version of the bill, one thing we did point out, is that under ND Century Code 61:21 there is an alternative process for assessments to be created by Water Resource Districts. In that section of code, the test for comprehensive appeal is 50% as opposed to 25% in 61:16.1.

Sen. J. Lee: You said there was a 50% threshold for what?

Mr. Aaron Carranza: The 50% threshold for comprehensive appeal is in ND Century Code Ch. 61:21 which is an assessment process before assessment drains. My understanding is that ND Century Code 61:16.1 has assessment powers but there are more broad beyond drainage or could be construed as such.

Written testimony #3 submitted by Larry Gellner, but did not testify
Written testimony #4 submitted by Paul Mathews, but did not testify

Chairman Burckhard closed the hearing on HB 1339.

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1339
3/17/2017
Job # 29386

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to notice, appeals and refunds of special assessments

Minutes:

Chairman Burckhard called the committee together for discussion on HB 1339.

Sen. D. Larson: I would like to propose and amendment on pg. 2 line 5, change the 15 back to 25.

Sen. Anderson: Change on pg.1, line 14, after notice add the words " of the hearing in an envelope clearly marked "assessment notice"

Sen. D. Larson: Oh, on her amendment (referring to Rep. Skroch) amendment **17.0752.03004**.

Chairman Burckhard: I found it hard to follow her amendment, because it didn't pertain to the latest.

Sen. D. Larson: Yes, I follow it now, yes. I am fine with both of those amendments.

Chairman Burckhard: State the second one.

Sen. D. Larson: I make the motion to change on pg 2. line 5 changing the 15 to 25. It would just make it a little more consistent is on pg.1 line 14, after the word notice, add the words, if the hearing in an envelope clearly marked "assessment notice".

Sen. J. Lee: 2nd

Chairman Burckhard: It has been moved and 2nd to amend, HB 1339 with the two items previously ignored by Sen. Larson.

Roll call vote: 6-0-0

Chairman Burckhard: Do we want to move the amendment?

Sen. J. Lee: Would you like to discuss moving the 10 days to 20 days, because Mr. Dwyer said he would be willing to do that? Would that make a little more comfort? That would be on pg. 2, in the line 20, ' instead of 10 days, it would be 20 day after the hearing'. I am open to discussion and I think that would maybe work.

Sen. Kannianen: It says on line 8 and line 20, for the two different types of the bill, is that what you're asking?

Sen. D. Larson: Yes, there are two different types. One is really going to appeal the entire project and the other one is just appealing their own assessment. I guess I would just assume not add to that part or change that part of the bill yet.

Chairman Burckhard: So leave line 8 as 10 days. Is that what you're saying?

Sen. D. Larson: Leave all of those 10 days just the way they are at this point. We've already added more notice and in fact 30 days after the notice and stuff. I don't have strong feelings either way, but I am fine with just leaving it the way it is, rather than amending it.

Chairman Burckhard: So, we have an amendment that passed? Do we have a motion?

Sen. D. Larson: I move do pass as amended.

2nd Sen. J. Lee

Roll call vote: 6-0-0 absent

Carrier: Sen. D. Larson

17.0752.04001
Title.05000

Adopted by the Senate Political Subdivisions
Committee

March 17, 2017

CU
3/17/17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1339

Page 1, line 14, after "notice" insert "of the hearing in an envelope clearly marked
"ASSESSMENT NOTICE""

Page 2, line 5, remove the overstrike over "~~twenty-five~~"

Page 2, line 5, remove "fifteen"

Renumber accordingly

Date: 3.17.17
Roll Call Vote #: /

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1339

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0752.04001

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By Sen. Diane Larson Seconded By Sen. Judy Lee

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard	✓		Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson	✓				
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3.17.17
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. H. B. 1339

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 17.0752.04001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Diane Larson Seconded By Sen. J. Lee

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard	✓		Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson	✓				
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Diane Larson

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

REPORT OF STANDING COMMITTEE

HB 1339, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1339 was placed on the Sixth order on the calendar.

Page 1, line 14, after "notice" insert "of the hearing in an envelope clearly marked
"ASSESSMENT NOTICE""

Page 2, line 5, remove the overstrike over "~~twenty-five~~"

Page 2, line 5, remove "fifteen"

Renumber accordingly

2017 CONFERENCE COMMITTEE

HB 1339

2017 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1339
4/4/2017
29920

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to notice, appeals, and refunds of special assessments

Minutes:

Chairman B. Koppelman opened the conference committee on HB 1339. I would like the Senate to explain the changes that you made to the bill and what led you to make those changes.

Senator Larson: She explained that some of the changes made were at the request of the bill sponsor. The big area of concern between the two chambers is changing the 25% back into the bill instead of the 15% of the possible votes for the appeal. As part of that process, there is a vote of the people in that area to say whether they want to have themselves taxed or not and that they will agree to be taxed and have that assessment placed on them because they need something like water delivered, flood protection, etc. She shared a personal experience of a situation like this. After that process is over and people come back in and say they don't like what the majority decided and want to appeal it and some have to go back to the beginning when there was already a vote of the majority. It was 25% of those people that could get an appeal. To me moving that down to 15% could hold up the majority of the citizens that already voted to tax themselves. That felt like too big of a burden on the project. It would be like if the school district put together a bond issue and everybody said yes, we are going to vote to build a new school. We will agree to have this bond put on this. Now 15% can go back and say my kids are all graduated, so I don't want to pay for more school. Then they go back in and they are going to appeal this. They are going to postpone the building of the school and all of those projects. This isn't the majority of the people speaking. The majority already spoke.

Chairman Koppelman: Did you have any negative or neutral testimony that led you to that decision?

Senator Larson: We had testimony from Monica Zentgraf, Richland County Water Resource District. She said we prefer the 25% threshold but did accept the 15% compromise. Mike Dwyer also testified that 25% would move projects along, because when

you appeal, there are more costs involved. I was the one who made the motion to move it back to 25%.

Senator H. Anderson: Keep in mind, the votes for this type of project is based on the number of units of land that you have in there. It is not individuals. Sometimes that 15% gets to be a pretty small number of people.

Chairman B. Koppelman: Not only did we hear that it was based on units but also on benefit. If I own an acre and you own an acre, we may not have equal voting rights, but we also may not have equal liability on the assessment. I think it is based on your potential assessment liability. In the inverse I believe it can be quite a large number of individuals to hit 15% or 25% as well depending on which way it happens to be weighted.

Senator Lee: That probably would be true if we were talking about only residential kinds of properties. If we are looking at any property that is going to have significant acreage, those people can throw a big monkey wrench into it because it is not a one person, one vote. We all know it is based on benefit, but somebody can be a significant property owner and can really tip the scales. As a result, we did feel that the 15% was too small.

Rep. Rohr: I reviewed our testimony and the state engineer had no problem going from 25% to 15%.

Senator Larson: Part of the reason for that pressure, however, was the fear of it going down to 1%. Mr. Dwyer said they could live with 15% but the 25% makes so much more sense.

Rep. C. Johnson: As a constitutional republic, we try to respect the rights of minority landowners or individuals. We can't have a situation where a simple majority or 60% majority forces people to do something that would take advantage of those people. Allowing a 15% minority to appeal would make sense to me.

Senator Lee: The state engineer testified in a neutral position. The 15% are also going to benefit from this project as well. It was 20 years ago this week that we had the huge blizzard that caused the terrible flooding in Grand Forks and Fargo, so it is uppermost in our minds because we are still looking at what we are trying to do to control the Red River. There have been all kinds of opportunities for public input, and a small number of property owners who happen to own a large amount of property could put the kibosh on the whole thing and delay it as it has been said.

Chairman B. Koppelman: Our main opposition was from Sean Fredericks. He had proposed the 15%. I called him and asked him several questions. Where was his heartburn was here? He stated a lot of the same reasons you mentioned. How often are people going to hit 25%? He said it was pretty tough to hit 25%. What percentage do you think it would be workable to where you are not having frivolous appeals to the state engineer all the time? That is where he came up with the number 15%. He also stated they didn't have a problem with the notice things and we probably don't either.

Aaron Carranza, State Engineer's Office, appeared.

Senator Larson: If there is an appeal, how long does it take for the appeal? How long does it put that construction season off?

Aaron Carranza: It depends on the complexity of the project. It can take an access of a year, so it could delay an entire construction season or beyond.

Senator Larson: How much that type of an appeal would cost?

Aaron Carranza: It is part of the duties of the State Engineer's Office. It is just rolled into the average work day of the agency.

Senator Larson: It wouldn't be billed back to the project?

Aaron Carranza: No.

Senator Larson: If this had been 15% instead of 25%, how many projects would have gone through an appeal that you could think of in the past two years?

Aaron Carranza: I can only think of one example where the 25% to 15% would have made a difference in the six years I have been with the agency. There is a separate section of code where one resource district could only do assessment drains which is 50%. The language in 1339 applies to assessment projects which is broad including the levy protections. My supervisor, Mr. Paczkowski, stated in his testimony that there are two different standards that can be hit depending on which code the board chooses to create a project under.

Senator Larson: It seems kind of odd that one would take half of the people to appeal and another only 15%. Why the big variance?

Aaron Carranza: I don't know. I am not an attorney.

Senator Lee: I am looking at the sections of code you mentioned. What is the difference between the 50% requirement and the 25%? Is there any difference in the projects?

Aaron Carranza: 61-21 speaks specifically to assessment drain projects. 61-16.1 in general references assessment projects.

Chairman B. Koppelman: Mr. Fredericks was indicating that this proposed 15% was more in play for small projects. He also mentioned some of the same things that Mr. Paczkowski had mentioned to me which was that a lot of the small projects are drains, and they use the other section of code. He was indicating that the 15% on larger projects like Fox Island or the Red River diversion is nearly as impossible to hit as the 25%. Is that your understanding as well that the small drainage projects may go toward the 61-21 section because of the process versus 61-16?

Aaron Carranza: We receive so few of the appeals because the threshold is so hard to hit. We have seen both examples. It all depends.

Chairman B. Koppelman: For me, a most interesting takeaway from what Aaron had to say was that even if we had a 15% threshold, he can only think of one project that would have qualified and wouldn't have at 25%. I think that suggests that 15% is still pretty rare.

Senator Larson: Perhaps he hasn't heard of others because of the level of the threshold, so we don't know how many didn't come to him because of the level of the threshold.

Senator Lee: I am not prepared to cave. I would like to do a little bit more homework.

Rep. C. Johnson: I felt the 15% was a reasonable number, and we should try to go for that number.

Rep. Rohr: I agree.

Senator Larson: I would throw out the possibility of a 20%.

Chairman B. Koppelman: Let us come up with the level of concern there really is and the projects we think it would mostly likely affect when we are considering what seems to be a reasonable threshold.

Senator H. Anderson: A lot of this came up because people didn't pay enough attention to the mail they received. There are ample opportunities for input into these projects as they are developing. We have to keep that in mind if there are ample opportunities for input in the process as they move forward.

Senator Larson: Any time a construction project is postponed, there are going to be additional costs. I am concerned about the real delivery of good things to people that are hoping that is what they are voting to tax themselves for, because too few people are saying I don't like it.

Chairman B. Koppelman: I had some concerns with it being zero. You may have some land that make up half or more of the votes in the district that absolutely need something to make the land useable and say they are paying \$10 and somebody else proposed to pay \$1, if you spread the borders and spread the borders and get enough people to pay \$1, it lowers the cost of the person paying \$10, but he might be the one that has the main need for the project. I believe, depending upon the intent of the water district, there are ways to manipulate it. I think that is why it can't be too high of a threshold to where you just have a handful of landowners that carry 75% or 76% of the benefit and the expense, but they need it, and taking the other 25% along for the ride to help dampen their cost to the 75%.

Rep. C. Johnson: There might be situations where there are heirs, and they should have ample opportunity to make an appeal if they weren't tending to other situations where they weren't aware of the assessments at first.

Senator Larson: I can't speak to every project, but I know the project that I was involved with took three years, and there were appeal processes along the way. There were many different notices that came to the house and in the newspaper, etc. Although I agree with

you about protecting the minority, I would also argue that each person in that majority is also the minority and deserve to have their flood protection provided as well.

Senator Lee: I live in the Sheyenne division protect area. The properties that were in the 100-year flood plain for the Sheyenne River pay four times what the properties that were out of the 100-year flood plain pay. They still have an assessment on the properties that were already out of the 100-year plain, because if the rest of the place flooded, their streets and water and sewer lines are affected. Each project is unique. It was 20 years to get Sheyenne Diversion. Every year makes a difference as far as cost is concerned. I am not arguing about the notice part, but I do think they have no greater opportunity than others do when there has been an ongoing process. We can't get into the weeds too much with that whole mail thing.

The meeting was adjourned.

2017 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1339
4/6/2017
29962

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to notice, appeals, and refunds of special assessments

Minutes:

Chairman B. Koppelman opened the conference committee meeting on HB 1339.

Senator Larson: I would like to move that the senate recede from its amendments and HB 1339 be amended as follows: On Page 2, Line 5, we change 25% to 20%. The reason for this is I know that Rep. Skroch has worked very hard on this bill. She has some constituents that she is very concerned about. I understand the emotion that comes into water projects, etc. In my mind I felt it was alright to have her be able to take this back to her constituents and say that there were some fears that were accomplished. Even though I believe 25% is a better number, I felt that I would be willing to move it to 20% just to come to some negotiated agreement between the two chambers.

Senator H. Anderson seconded the motion.

Senator Lee: I still say that it should be 25%. The individual who had sent us the letter from Richland County indicated they preferred the 25%. I also visited with Sean Fredericks, and they preferred 25%. I visited with Mr. Dwyer, and they preferred 25%. 15% was better than zero, but it was not the same. I also think that this is an issue that is very local.

Rep. C. Johnson: It does seem like we are dealing with two different issues. We have the drainage from agriculture and legislation also affects flood control projects. For this particular issue, I think we will keep the discussion to our percentages that we would try to negotiate here.

Rep. Rohr: I am going to agree with Senator Larson. I think Rep. Skroch has done a lot of work, and Senator Lee is right in that it seems to be revolving just around one or two people. Everywhere it said that the 15% would help eliminate the _ lawsuits as well. If we could get to 20%, I am okay with that.

Chairman B. Koppelman: I have talked to both sides, some of the same people that Senator Lee and others talked to. On one side it is safe to say that they like 25% better than 20, 15, or 0. On the other side they like 10 or 15. I think 20 is a place where we can all be. This seems like a fair proposal, and I am going to support it.

Senator Larson: Since it is an unknown factor, over next biennium by dropping it down to 20, if we find a lot more appeals that disrupt water projects for the majority of the people, then we would probably come back in and move it back to 25%. I think that it would be, like you said, take a step and not swing the pendulum.

Senator Lee: There are already three opportunities in statue. We are just adding one more layer. She read the three opportunities. (:07:38-:07:57)

Chairman B. Koppelman: If you are appealing to the state engineer on the basis of an assignment that wasn't fair, it may be the cost of the project being detrimental to the land.

Senator Lee: There were public meetings and public comments accepted. We are talking about people who did not pay attention to notices. I recognize the right that we all have to appeal processes, but we have to follow the process then. That is a concern to me as well. There is a process that is in place. It should be followed. It is being followed, and that is why I feel the way I do.

A roll call vote was taken. 5 Yeas, 1 Nay, 0 Absent.

Chairman B. Koppelman: The bill sponsor had noticed an oversight in drafting when we made amendments on our side that you would then further amend with some of the language. Senator Larson showed him that language.

Senator H. Anderson: Senator Larson said that we recede from the amendment and further amend. I think it was her intention to include that language in the motion.

Chairman B. Koppelman: Page 1, Line 13 states the board should mail a copy of the notice. The original intent of Rep. Skroch was that would be certified mail. That created some heartburn with those who had to send it because of the cost. Those individuals suggested it state certified copy. When the amendments were drafted, it was supposed to say certified copy and that got left out. I want to know what the committee's thoughts on that?

Senator H. Anderson: I don't know what difference a certified copy on the envelope makes over just a letter that says what is going to happen.

Rep. Skroch appeared. I believe certified copy became confused with certified mail. A certified copy was put in that legislation so that people receiving that assessment notice would know that it was official.

Chairman B. Koppelman: You had requested with your initial testimony to change to "by certified mail." Later you came back with the conclusion that certified copy was the way it should be, but that never appeared in the amendment again.

Senator Larson: What she is looking at is not only mark the envelope clearly with capital letters, but also the water district has to go in and certify each copy put into it. I am going to resist that part.

Rep. Skroch: I would concede to that.

Mike Dwyer, ND Water Resource Districts, appeared.

Chairman B. Koppelman: How is the certified copy created versus just a normal copy?

Mike Dwyer: I would be confused as to what that would mean. Certified implies certified mail, and we did oppose that just because of the cost.

Chairman B. Koppelman: If we say that you should mail notice, are water districts going to send an official copy?

Mike Dwyer: I am assuming we always use that.

Senator H. Anderson: My understanding of a certified copy of something means there is a stamp on each letter with a seal that says this is a certified copy. When you go and get your birth certificate, they have a different process for a copy than they do for a certified copy.

Mike Dwyer: That would be like the certified copy of birth certificates. It would have to be an original seal.

Senator Lee: In addition to the cost, certified mail can be refused. I don't see any benefit to that.

Mike Dwyer: We support you keeping the bill alive and are in agreement with the 20%.

Senator H. Anderson: I move that we amend Page 1, Line 14 to include insert "of the hearing in an envelope clearly marked ASSESSMENT NOTICE."

Senator Larson seconded the motion. Just for clarification, that was my intention. My only intention was to have changed the percentage.

A roll call vote was taken. 6 Yeas, 0 Nays, 0 Absent.

The conference committee was concluded and the meeting was adjourned.

4/6/17 DPT

17.0752.04002
Title.06000

Adopted by the Conference Committee

April 6, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1339

That the Senate recede from its amendments as printed on page 1068 of the House Journal and page 814 of the Senate Journal and that Engrossed House Bill No. 1339 be amended as follows:

Page 1, line 14, after "notice" insert "of the hearing in an envelope clearly marked
"ASSESSMENT NOTICE""

Page 2, line 5, replace "fifteen" with "twenty"

Renumber accordingly

Date: 4-6-17
 Roll Call Vote #: 1

**2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 1339 as (re) engrossed

House Government and Veterans Affairs Committee

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

Motion Made by: Senator Larson Seconded by: Senator H. Anderson

Representatives				Senators					
	HY	YO	Yes	No		HY	YO	Yes	No
<u>B. Koppelman, Chair</u>	X	X	X		<u>D. Larson</u>	X	X	X	
<u>C. Johnson</u>	X	X	X		<u>H. Anderson, Jr.</u>	X	X	X	
<u>K. Rohr</u>	X	X	X		<u>J. Lee</u>	X	X		X
Total Rep. Vote			<u>3</u>		Total Senate Vote			<u>2</u>	<u>1</u>

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment
Change the 25% to 20%

Date: 4-6-17
 Roll Call Vote #: 2

**2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 1339 as (re) engrossed

House Government and Veterans Affairs Committee

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

Motion Made by: Senator H. Anderson Seconded by: Senator Larson

Representatives				Senators			
	<u>4/6</u>	Yes	No		<u>4/6</u>	Yes	No
<u>B. Koppelman, Chair</u>		<u>X</u>		<u>D. Larson</u>		<u>X</u>	
<u>C. Johnson</u>		<u>X</u>		<u>H. Anderson, Jr.</u>		<u>X</u>	
<u>R. Krohr</u>		<u>X</u>		<u>J. Lee</u>		<u>X</u>	
Total Rep. Vote		<u>3</u>		Total Senate Vote		<u>3</u>	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number 17.0752 . 04002 of amendment

LC Number 17.0752. . 06000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

*Also insert "of the hearing in an envelope
 Clearly marked "Assessment Notice"*

Insert LC: 17.0752.04002
House Carrier: B. Koppelman
Senate Carrier: Larson

REPORT OF CONFERENCE COMMITTEE

HB 1339, as engrossed: Your conference committee (Sens. D. Larson, Anderson, J. Lee and Reps. B. Koppelman, C. Johnson, Rohr) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1068, adopt amendments as follows, and place HB 1339 on the Seventh order:

That the Senate recede from its amendments as printed on page 1068 of the House Journal and page 814 of the Senate Journal and that Engrossed House Bill No. 1339 be amended as follows:

Page 1, line 14, after "notice" insert "of the hearing in an envelope clearly marked "ASSESSMENT NOTICE""

Page 2, line 5, replace "fifteen" with "twenty"

Renumber accordingly

Engrossed HB 1339 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HB 1339

Attachment 1
1339
2-2-17

HB-1339 SPONSOR-REPRESENTATIVE KATHY SKROCH

Chairman Kasper, Vice Chairman Louser and members of the Committee on Government and Veterans Affairs Committee.

I am Representative Kathy Skroch. I am here today to introduce House Bill 1339. I was asked by constituents to introduce this bill on their behalf.

This bill proposes greater notification to be given to land owners and persons affected by an assessment and allows an affected land owner to appeal to the state engineer for review.

The proposed changes will increase the number, type and method of notifications provided in water assessment projects.

New language in this bill requires notice of a hearing for an assessment and re-assessment to be sent by certified mail ensuring delivery.

New language requires notices of an assessment hearing to be published once per week for three consecutive weeks and provides for a space of 30 days between mailing of notifications and the date of a hear. These changes ensure land owners and the public are well informed and are given sufficient time to prepare for these hearings.

On Page 2, Section 2 language is removed to allow for any land owner or political subdivision subject to an assessment to appeal by petition to the state engineer for review. This change is good for two reasons.

1. There is a narrow 10 day window of opportunity for a landowner to file a petition after the assessment hearing. This may be the only chance to appeal if they believe the assessment had not been fairly or equitably made.

2. Assessment projects are often voted on by weighted votes. This means vote values are assigned to various parcels of land based on percentage of affect to the parcel. One land owner may for example have 6 parcels of land assessed at 100% benefit and receives 6 votes. Yet, another land owner may have 1 parcel of land assessed at 25% benefit and receives 25% of a vote. Those values are open for dispute. This change allows opportunity for appeal.

The changes offered in this bill provide more opportunity of notice for all persons affected by an assessment including those living out of state or due to personal circumstances need more time to respond to, prepare for, or need assistance with responding to, action taken during an assessment project.

I ask the committee to support this bill with the suggested amendments offered. A copy of has been provided.

Thank you for allowing my introduction of this bill.

Representative Kathy Skroch, District 26

See attached amendments

Corrections needed: page 1 Line 13- the original bill draft requested the words: (provide by certified) after (The board shall) rather than certified copy. I received the final draft too late to make changes.

While circulating the bill draft it was suggested that on page 3, line 6, for the purpose of similar wording and further improvement of the bill the words: (at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located) should follow (in the assessed district). County tax rolls are the most reliable source of addresses for mailing out these important notices.

These suggestions are left to the discretion of this committee.

17.0752.03001
Title.

Prepared by the Legislative Council staff for
Representative Skroch

January 23, 2017

Attachment 2
1339
2-2-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1339

Page 1, line 13, remove "certified"

Page 1, line 14, after "notice" insert "by certified mail"

Page 3, line 6, after "district" insert "at the landowner's address as shown by the tax roll of the county in which the affected property is located"

Renumber accordingly

Testimony in Support of House Bill 1339

Attachment 3

1339

2-2-17

Provided by Kathy Marquette
9071 138th Avenue SE
Rutland, ND 58067-9428
marquette@drtel.net
701.724.3191

To amend and reenact sections 61-16.1-22, 61-16.1-23, and 61-16.1-26 of the North Dakota Century Code, relating to notice, appeals, and refunds of special assessments.

Chairman Kasper and Members of the Government and Veterans Affairs Committee:

My name is Kathy Marquette and I come to you today from Rutland, North Dakota. My purpose in being here is to voice my support of HB 1339 for three targeted groups of people in relation to our personal experience with water drains in southeast North Dakota in the counties of Sargent and Dickey. Those three groups of people are parents—Gerald and Judy Ringdahl—and their property located within Verner Township in Sargent County, affected by Jackson Improvement Drain, our neighbors in Sargent County who are affected by this drain assessment and for **all** farmers and property owners in the future who may have their land and property rights affected by a water drain.

I. Background on Jackson Improvement Drain

- a. Landowners notified by Dickey-Sargent Joint Water Resource Board October 6, 2014
- b. 8-mile of channel improvement that will consist of the extension of the Oakes Pilot Drain and incorporation of two lateral drain segments southeast of Oakes.
- c. Intent: to remove high water from closed basin areas and anticipated controlled retention within the water shed that doesn't exist right now.
- d. 8 miles of channel improvements; 10 foot bottom and a 3:1 or 4:1 side slope. A pump lift station will provide outlet flow from closed basins which include several bodies of water—Lake Taayer, Pickell Lake and Kraft Slough. Our family farm is located on top of a hill surround by these three bodies of water. The channel will discharge into the James River a quarter of land located in Bear Creek Township, Dickey County.
- e. Cost of project: \$5.2 million with cost-share funding from ND State Water Commission; now down to \$3.75 million
- f. Ballots to be returned no later than 5 p.m. Friday, December 5 to Dickey County Courthouse in Ellendale, ND (incorrect zip code on return envelope—sent to Marion, ND in LaMoure County instead)
- g. Due to the size of the assessment district and the total cost of the project, landowners became alarmed. Assessments payable over 20 years; a huge commitment. How were we to find out more about this project? Landowners felt “blind-sided” by this project.

II. Support for Proposed Changes to HB 1339

- a. 61-16.1-22 Assessment list to be published—Notice of Hearing-Alteration of Assessment-Confirmation of assessment list-Filing
 - a. Assessment list to be published once each week for 3 consecutive weeks instead of 2
 - i. Case in point: NDCC Title 30.1 Uniform Probate Code Notice-Parties-Representation and Other Matters
 1. If the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing.
 - b. Board shall mail a “certified” copy of the notice to each affected landowners at the landowner’s address as shown by the tax rolls of the county or counties in which the affected property is located
 - c. The date set for the hearing may not be less than 30 days instead of 20 days after the mailing of the notice
 - d. Striking “having not less than 25% of the possible votes, as determined by Section 61-16.2-20, who believe that the assessment had not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition within 10 days aft the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. This may cause some additional work for the state engineer, but with projects of this magnitude, property owners should have a right to question assessments on their property.
 - e. For reassessments, the hearing can’t be held until publication is given once each week for three consecutive weeks, beginning at least 30 days before the hearing—again, this is done to provide additional time for landowners to review and analyze the assessments charged against their land for the project.
 - f. Reassessment notices should be sent out via certified mail—again to ensure that the property owners within the assessment district receive the proper notice.

III. Conclusion

- a. Rationale: to protect landowners’ property rights in regards to notice about multi-million dollar drain projects and to re-establish trust with area water resource boards
- b. Transparency is key
- c. Open Communication is key
- d. If projects of this magnitude affect so many landowners, then they should be afforded adequate time to review the project itself, projected benefits, and assessed cost in relation to benefits.

Attachment 4

1339

2-2-17

Honorable Chairman Jim Kasper and Members of the Government & Veterans Affairs Committee:

RE: House Bill #1339

My name is Paul Mathews from rural Cogswell, located in southeast ND.

I am in favor of this proposed Bill.

To begin, I am a strong believer in property rights. I believe this bill begins to restore respect for property rights that most of our state's citizens in unanimous fashion support as part their core values.

Two of this Bill's sponsors represent my District #26. This past November, a group of my neighbors pleaded with our representatives that we had recently been, in our opinion, victims of water board process failings. These processes appeared to us as lacking landowner protections for a very significant expensive project levied on landowners. The failure of protections, for me, stem from:

1. Current law's inadequate required notices being provided to landowners of a pending project proposal's assessments (or reassessments) and
2. The law's brief window before codified hearing date for landowners to prepare for that hearing where these assessments, in theory, could be challenged.
3. And should a landowner (or a group of) sense assessments at the hearing's conclusion are unfair, the ability to follow the existing Century Code's language to appeal is near impossible to utilize.

Our disenchanted neighbors were caught so "off guard" to realize what landowner rights was left at our disposal. Commonly most landowners are not familiar with "water laws" and before competent consultants were found, our rights to appeal had extinguished under current law.

This bill offers just a bit more breathing room for landowners to consume what had just transpired at each stage. The assessment lists being trapped inside a part-time water board office alone became a challenge to know what neighbors are actually involved and may share common reservations.

This bill is only asking for more reasonable time for landowners to exercise their rights. Such a small expansion to these windows, in my opinion, is quite minor to a project's timeline being developed.

In my mind, public policy should afford enough property rights to insure a public project is fully vetted.

In conclusion, I thank you for your public service as legislators and I encourage you to ask me questions relating to my communities' recent experience and so that you can draw an understanding how current law leaves property rights at risk.

Paul Mathews

9066 119th Ave SE, Cogswell, ND 58017

701-724-6470 farmerpost@hotmail.com

Attachment 5

1339

2-2-17

TESTIMONY ON HOUSE BILL NO. 1339

Government and Veterans Affairs Committee

**John Paczkowski, Assistant State Engineer
Office of the State Engineer/State Water Commission**

February 2, 2017

Chairman Kasper and members of the House Government and Veterans Affairs Committee, my name is John Paczkowski. I am the Assistant State Engineer for the Office of the State Engineer/State Water Commission. I am here testifying on behalf of State Engineer Garland Erbele to present our testimony regarding House Bill 1339. The State Engineer has concerns with the proposed changes to North Dakota Century Code (N.D.C.C.) § 61-16.1-23 and how the changes proposed will affect the State Engineer's role with that statute. The State Engineer has no opinion on the remaining proposed amendments.

Specifically, the State Engineer is opposed to the proposed changes located in Section 2, Page 2, lines 5-6. This proposed language would allow a single landowner or political subdivision, not in favor of the project, to appeal a water resource district's assessment, project location, or design to the State Engineer. Currently, a petition with at least 25% of possible assessment votes is required before an appeal to the State Engineer is valid.

Removing the current petition requirement will likely open the door for excessive appeals to the State Engineer regarding water resource district assessments and projects. For reference, while the average is roughly 12 assessment drain projects per year, in 2016 there were 22 assessment drain projects that could have been appealed to the Office of the State Engineer. Historically, these types of appeals have required arduous and exhaustive review by the State Engineer due to their complexity and voluminous information. Since it is extremely unlikely any project will have 100 percent support, this will result in the Office of the State Engineer duplicating many of the efforts of the water resource district's consultant at the expense of other projects awaiting State Engineer review and approval.

For informative purposes, water resource districts may establish an assessment drain under N.D.C.C. chapters 61-21 or 61-16.1. N.D.C.C. § 61-21-22 currently requires a petition with a majority of possible assessment votes to initiate a State Engineer appeal, whereas N.D.C.C. § 61-16.1-23 (as previously discussed) requires 25%. The State Engineer does not have a preference on which percentage is used, but does recommend that the requirement be the same for both appeal processes. This discrepancy was the catalyst for current litigation involving the State Engineer.

Again, the State Engineer is only opposed to the amendment to N.D.C.C. § 61-16.1-23 and has no opinion on the remaining portions of House Bill 1339.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.

Attachment 6
1339
2-2-17

**RICHLAND COUNTY
WATER RESOURCE DISTRICT**

MANAGERS:

Gary Friskop, Chr. (Wahpeton)
Arv Burvee, Vice Chr. (Fairmount)
James Haugen (McLeod)
Don Moffet (Barney)
Robert Rostad (Colfax)

SECRETARY /TREASURER:

Monica Zentgraf
(701)642-7773 (Phone)
(701)642-6332 (Fax)
mzentgraf@co.richland.nd.us (E-mail)

CIVIL TECHNICIAN:

Justin Johnson
(701)642-7835 (Phone)
(701)361-9780 (Cell)
justinj@co.richland.nd.us (E-mail)

DATE: February 2, 2017

FROM: Monica Zentgraf *MZ*

RE: **HB 1339**

Certified Mail Requirement- If this bill passes, there are legal drain assessment districts around the State in which 5,000 – 10,000 certified mailings would need to be sent. 10,000 certified letters in standard size envelopes would result in mailing costs of \$70,000. This is a conservative figure, as most mailings include multiple pages, increasing the cost. Even at 5,000 letters- the cost would conservatively be \$35,000.

Put this into perspective: 5,000 (certified mailings) for \$35,000 versus \$2,450 [for standard first class postage rates of \$0.49/envelope]; and 10,000 [certified mailings] for \$70,000 or \$4,900 [standard first class].

In addition, add the cost of preparing 10,000 certified mailings. Preparing certified mailings is labor intensive and would take days to prepare. Many WRDs do not even have full-time staff.

The people within the particular assessment district will bear the cost. This is not responsible use of taxpayer money! People may claim they did not receive notice; in most cases it is likely that they thought it was junk mail and it went in the garbage. It would cost \$25 to simply buy a stamp, to be placed on the envelope which might say "Important Notice" or "Assessment Notice"; something that would prompt the people to open the envelope and not throw it in the garbage!

I am also opposed to the other language in this bill as outlined by Mr. Fredricks and I urge a "Do not Pass". Thank you for your consideration.

Attachment 1
1339
2-9-17

17.0752.03003
Title.

Prepared by the Legislative Council staff for
Representative Skroch
February 8, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1339

Page 2, line 5, remove the overstrike over "~~having not less than~~"

Page 2, line 5, after "~~twenty-five~~" insert "fifteen"

Page 2, line 5, remove the overstrike over "~~percent of the possible~~"

Page 2, line 6, remove the overstrike over "~~votes, as determined by section 61-16.1-20,~~"

Page 3, line 4, remove "of the hearing by certified"

Page 3, line 4, overstrike "mail" and insert immediately thereafter "of the hearing in an envelope clearly marked "ASSESSMENT NOTICE""

Page 3, line 6, after "district" insert "at the landowner's address as shown by the tax rolls of the counties in which the affected property is located"

Renumber accordingly

H.B. 1339
3.17.17
Written
Testimony #1
P. 1/2

HB-1339 SPONSOR-REPRESENTATIVE KATHY SKROCH

Testimony for the Senate Political Subdivisions Committee

Chairman Randall Burckhard, Vice Chairman Anderson and members of the Committee on Political Subdivisions,

I am Representative Kathy Skroch from District 26. I am here today to introduce House Bill 1339. I was asked by constituents to introduce this bill on their behalf.

This bill proposes greater notification to be given to land owners and persons affected by an assessment and allows an affected land owner to appeal to the state engineer for review.

The proposed changes will increase the number, type and method of notifications provided in water assessment projects.

New language in this bill originally required notice of a hearing for an assessment and re-assessment to be sent by certified mail delivery.

"certified" was amended out of line 13 on page 1. In place of a certified mailing an amendment was offered which would have added after "notice" on line 14-these words

"in an envelope clearly marked "ASSESSMENT NOTICE" .

This wording would have then replicated the amendment added to lines 4 and 5 on page 3 of the bill. I am not sure why that was missed but it would certainly make sense to add this change to the bill.

New language requires notices of an assessment hearing to be published once per week for three consecutive weeks and provides for a space of 30 days between mailing of notifications and the date of a hear. These changes ensure land owners and the public are well informed and are given sufficient time to prepare for these hearings.

On Page 2, Section 2 language was removed to allow for any land owner or political subdivision subject to an assessment to appeal by petition to the

state engineer for review. A compromise change was made to restore "fifteen percent" on line 5 to avoid frivolous appeals from holding up projects. This is a good and reasonable change for two reasons.

1. There is a narrow 10 days window of opportunity for a landowner(s) to file a petition after the assessment hearing. This may be the only chance to appeal if they believe the assessment had not been fairly or equitably made.
2. Assessment projects are often voted on by weighted votes. This means vote values are assigned to various parcels of land based on percentage of affect to the parcel. One land owner may for example have 6 parcels of land assessed at 100% benefit and receives 6 votes. Yet, another land owner may have 1 parcel of land assessed at 25% benefit and receives 25% of a vote. Those values are open for dispute. This change allows opportunity for appeal.

The changes offered in this bill provide more opportunity of notice for all persons affected by an assessment including those living out of state or due to personal circumstances need more time to respond to, prepare for, or need assistance with responding to, action taken during an assessment project.

I ask the committee to support this bill with the suggested amendments offered. A copy of has been provided.

Thank you for allowing my introduction of this bill.

Representative Kathy Skroch, District 26

February 9, 2017

H.B. 1339
3.17.17
#1 1-3

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1339

Page 1, line 13, remove "certified"

Page 2, line 5, remove the overstrike over "~~having not less than~~"

Page 2, line 5, after "~~twenty-five~~" insert "fifteen"

Page 2, line 5, remove the overstrike over "~~percent of the possible~~"

Page 2, line 6, remove the overstrike over "~~votes, as determined by section 61-16-1-20,~~"

Page 3, line 4, remove "of the hearing by certified"

Page 3, line 4, overstrike "mail" and insert immediately thereafter "of the hearing in an envelope clearly marked 'ASSESSMENT NOTICE'"

Page 3, line 6, after "district" insert "at the landowner's address as shown by the tax rolls of the counties in which the affected property is located"

Re-number accordingly

*Suggested amendment to replicate language
on page 3 line 4*

*Page 1 line 14 after the word "notice" add
the words "of the hearing in an envelope
clearly marked 'ASSESSMENT NOTICE'"*

U.B. 1339
3.17.17
#2

**RICHLAND COUNTY
WATER RESOURCE DISTRICT**

MANAGERS:

Gary Friskop, Chr. (Wahpeton)
Arv Burvee, Vice Chr. (Fairmount)
James Haugen (McLeod)
Don Moffet (Barney)
Robert Rostad (Colfax)

SECRETARY /TREASURER:

Monica Zentgraf
(701)642-7773 (Phone)
(701)642-6332 (Fax)
mzentgraf@co.richland.nd.us (E-mail)

CIVIL TECHNICIAN:

Justin Johnson
(701)642-7835 (Phone)
(701)361-9780 (Cell)
justinj@co.richland.nd.us (E-mail)

DATE: March 17, 2017
FROM: Monica Zentgraf
RE: **HB 1339**

The Richland County Water Resource District supports HB 1339 in its' current form and I ask your Committee to give this bill a "Do Pass". I believe the changes relative to the timelines for giving notice as well as marking the envelopes are all positive changes.

While we prefer the 25% threshold regarding the appeal to the State Engineer, we feel the compromise of 15% was acceptable and we appreciate the sponsor's willingness to compromise.

H.B. 1339
3.17.17
#3



Cavalier County Water Resource Board

901 Third Street, Suite 8

Langdon, ND 58249

Tel. (701-256-2220)

smschneider@nd.gov

Larry Gellner – Chairman

Kenny Nelson – Vice Chairman

Van Howatt

Chuck Damschen

Bob Blake

March 16, 2017

Senate Members

RE: HB 1339

Dear Honorable Senators,

The Cavalier County Water Resource Board is urging a DO NOT PASS vote on HB 1339. This bill gives the power to delay or even diminish a project to one person. The current law states 25% of the benefiting landowners need to file an appeal, but it also states that anyone can make an appeal to the State Engineer on a project. Individuals already have the right to make an appeal. The wording in this bill takes away the voice of the majority.

The Cavalier County Water Resource Board urges a NO VOTE on HB 1339.

Thank you for your time,

Larry Gellner

Chairman

Cavalier County Water Resource District

H.B. 1339
3.17.17
4 p.1-3

Burckhard, Randall A.

From: Paul Mathews <farmerpost@hotmail.com>
Sent: Thursday, March 16, 2017 8:07 PM
To: Burckhard, Randall A.; Anderson, Jr., Howard C.; Dotzenrod, Jim A.; Kannianen, Jordan L.; Larson, Diane K.; Lee, Judy E.; Skroch, Kathy; Ertelt, Sebastian
Subject: HB 1339 Hearing Friday 9:00am 3.17.17

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Honorable Chairman Randall Burckhard and members of the Senate Political Subdivisions Committee:

RE: House Bill #1339

My name is Paul Mathews from rural Cogswell, located in southeast ND.

I am in favor of this proposed Bill.

To begin, I am a strong believer in property rights. I believe this bill begins to restore respect for property rights that most of our state's citizens in unanimous fashion support as part their core values.

Two of this Bill's sponsors represent my District #26. This past November, a group of my neighbors pleaded with our representatives that we had recently been, in our opinion, victims of water board process failings. These processes appeared to us as lacking landowner protections for a very significant expensive project levied on landowners. The failure of protections, for me, stem from:

1. Current law's inadequate required notices being provided to landowners of a pending project proposal's assessments (or reassessments) and

2. The law's brief window before codified hearing date for landowners to prepare for that hearing where these assessments, in theory, could be challenged.
3. And should a landowner (or a group of) sense assessments at the hearing's conclusion are unfair, the ability to follow the existing Century Code's language to appeal is near impossible to utilize.

Our disenchanted neighbors were caught so "off guard" to realize what landowner rights was left at our disposal. Commonly most landowners are not familiar with "water laws" and before competent consultants were found, our rights to appeal had extinguished under current law.

This bill offers just a bit more breathing room for landowners to consume what had just transpired at each stage. The assessment lists being trapped inside a part-time water board office alone became a challenge to know what neighbors are actually involved and may share common reservations.

This bill is only asking for more reasonable time for landowners to exercise their rights. Such a small expansion to these windows, in my opinion, is quite minor to a project's timeline being developed.

In my mind, public policy should afford enough property rights to insure a public project is fully vetted.

During House Committee hearings, landowners testifying were seemingly chastised for being delinquent to a process afforded them. Plans were shielded until less than 60 days from a vote that cemented a victim's destiny to a preconceived and manipulated weighted vote result. This kind of massaged procedure is ripe for abuse and some landowners became crushed financially because of the current procedures the current law provides. This kind of atmosphere doesn't match our ND society expectations of fairness. This bill begins to address it. As some defend this current situation and have called it "the most advanced and fairest demonstration in a modern democracy." Apparently they not willing to look behind the effects of our circumstance and work towards an improvement of it . That kind of attitude is disappointing and never should anyone of us believe we cannot do better.

Years ago, Abraham Lincoln left us with *“These men ask for just the same thing, fairness, and fairness only. This, so far as my power, they, and all others, shall have.”* I hope you can support this bill as it is about fairness too.

In conclusion, I thank you for your public service as legislators and I encourage you to direct questions to me by email or phone relating to my communities’ recent experience and so that you can draw an understanding how current law leaves property rights at risk.

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