

1999 HOUSE NATURAL RESOURCES

HB 1139

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1139

House Natural Resources Committee

Conference Committee

Hearing Date 1/15/99

Tape Number	Side A	Side B	Meter #
1	x		0.0-4.0
Committee Clerk Signature <i>Kevin Baul</i>			

Minutes:

SUMMARY OF THE BILL: A BILL for an Act to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to appeals of water resource board decisions of non complying dams, dikes, or other devices to the state engineer.

Chairman Grosz opened the hearing on HB 1139 in the Pioneer Room. All committee members were present: Chairman Grosz, Vice-Chairman Henegar, Rep. Drovdal, Rep. Galvin, Rep. DeKrey, Rep. Nottestad, Rep. Nelson, Rep. Clark, Rep. Porter, Rep. Martinson, Rep. Hanson, Rep. Kelsh, Rep. Lundgren, Rep. Sandvig, Rep. Solberg.

David Sprynczynatyk, the State Engineer appeared in favor of HB 1139. (see attached testimony)

Chairman Grosz asked whether 30 days was a normal amount of time for an appeal of a decision, referring to page 1 line 13.

Mr. Sprynczynatyk answered that it was a commonly accepted amount of time.

Rep. Nelson asked Mr. Sprynczynatyk how water boards were handling the situation under current law.

Mr. Sprynczynatyk answered that there are long delays at the moment in dealing with issues concerning the water board.

Chairman Grosz asked whether there was a fine that could be levied at present.

Mr. Sprynczynatyk answered that there was no fine.

HB 1139 was passed in a DO PASS motion, with the motion being made by Rep. Nottestad and seconded by Rep. Martinson. HB 1139 had a total of 15 yes votes, 0 no votes, and 0 absent.

JAN 4 1999

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1139 Amendment to: _____

Requested by Legislative Council Date of Request: 12-29-98

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

- 2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	-0-	-0-	-0-	-0-	-0-	-0-
Expenditures:	-0-	-0-	-0-	-0-	-0-	-0-

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: none
- b. For the 1999-2001 biennium: none
- c. For the 2001-03 biennium: none

- 4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-

If additional space is needed, attach a supplemental sheet.

Signed David A. Sprynczynatyk

Typed Name David A. Sprynczynatyk

Date Prepared: January 4, 1999

Department Office of the State Engineer

Phone Number 328-4940

Date: 11/15/99
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO.

House House Natural Resources Committee

Subcommittee on 1139
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken 120 Pass

Motion Made By Nottestad Seconded By Martinson

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz	✓				
Vice-Chairman Dale Henegar	✓				
Representative David Drovdal	✓				
Representative Pat Galvin	✓				
Representative Duane DeKrey	✓				
Rep. Darrell D. Nottestad	✓				
Representative Jon O. Nelson	✓				
Representative Byron Clark	✓				
Representative Todd Porter	✓				
Representative Jon Martinson	✓				
Reperesentative Lyle Hanson	✓				
Representative Scot Kelsh	✓				
Representative Deb Lundgren	✓				
Representative Sally M. Sandvig	✓				
Representative Dorvan Solberg	✓				

Total (Yes) 15 No 0

Absent _____

Floor Assignment Nottestad

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

REPORT OF STANDING COMMITTEE (410)
January 18, 1999 9:12 a.m.

Module No: HR-10-0737
Carrier: Nottestad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1139: Natural Resources Committee (Rep. Grosz, Chairman) recommends **DO PASS**
(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1139 was placed on the
Eleventh order on the calendar.

1999 SENATE NATURAL RESOURCES

HB 1139

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1139

Senate Natural Resources Committee

Conference Committee

Hearing Date February 4, 1999

Tape Number	Side A	Side B	Meter #
1		x	3160-4810
1	x		0-189
Committee Clerk Signature <i>Lyla A. Hagen</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on HB1139: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SECTION TO CHAPTER 61-16.1 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO APPEALS OF WATER RESOURCE BOARD DECISIONS OF NONCOMPLYING DAMS, DIKES, OR OTHER DEVICES TO THE STATE ENGINEER.

DALE FRINK, Ass't State Engineer testified in support of HB1139. (See attached testimony)

SENATOR TRAYNOR asked if there have been a lot of appeals directly to the District Court.

DALE FRINK replied there have not been a lot. Rather than go to District Court, it is better to contact the State Engineer. The first real technical review you get is from the State Engineer.

The water resource boards don't necessarily have that technical review before building a dike, etc. so if you end up going to court without that technical review, and that is important.

SENATOR CHRISTMANN asked why the 120 days.

JEFF OLSON, ND State Water Commission/State Engineer Office, replied this law is written identical to what the state engineer has for drainage complaint appeals. There is a time limit of 120 days for the water boards to make action on the complaint. After that time, the state engineer has no time limit on their investigation in making a decision. Testimony is taken from all sources during the investigative study from landowners, water boards and anyone else who may have information.

SENATOR TRAYNOR asked if passage of the bill streamline the process and provide for settlement opportunity.

DALE FRINK replied yes. Getting to the state engineer for a decision could speed it up. Once you get into the technical review you can get into a more negotiable process.

SENATOR CHRISTMANN asked if there is a time when 120 days is not enough for a decision.

DALE FRINK replied it is enough time because the review at the water resource level isn't all that technical. If there is opposition, this time limit can change.

SENATOR CHRISTMANN asked if there have been complaints from the local water boards if a decision has not been submitted within 120 days due to unforeseen delays.

JEFF OLSON replied we have had several that have been appealed to the state engineers, but the problems have been from statutory definitions to resolve the problem. The problems have been easily remedied by appealing to the state engineer to bring those miscommunications together.

SENATOR TRAYNOR asked if the state engineer has the same 120 days in the drainage laws.

JEFF OLSON replied yes. This law is written identical to what we have for drainage appeals to the state engineer.

SENATOR TRAYNOR asked in a drainage situation, when the board hasn't acted, what does the state engineer's office do.

JEFF OLSON replied if the board hasn't made an action in 120 days, then the individual who filed the complaint can file it with the state engineer and an investigation is done. The state engineer could take control of the complaint from the water board. The state engineer tries to find a solution and remand it back to the water board for them to make the final decision. There are options the state engineer can go to such as order the landowner to do it, remand it back to the water board with the state engineer's decision, or submit it to the state's attorney for prosecution. We prefer to work with the water board as much as possible because they are on the local level.

ARDEN HANER, Water Resource Districts testified in support of HB1139, so the 2 laws concur. If people who have complaints about drainage go to the court system, it gets very expensive for both the individual and the water resource board.

SENATOR TRAYNOR closed the hearing on HB1139.

COMMITTEE ACTION-March 4, 1999-(Tape 1, Side A-Meter# 0-189) SENATOR HEITKAMP moved for a DO PASS, seconded by SENATOR CHRISTMANN. Roll call vote indicated 6 YEAS, 0 NAYS, 0 Absent and not voting. SENATOR TRAYNOR volunteered to carry the bill.

Roll Call Vote #: 1

Date: 3-4-99

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1139

Senate Natural Resources Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Heitkamp Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Traynor

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

REPORT OF STANDING COMMITTEE (410)
March 4, 1999 4:56 p.m.

Module No: SR-39-4083
Carrier: Traynor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1139: Natural Resources Committee (Sen. Traynor, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1139 was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY
HB 1139**

TESTIMONY ON HOUSE BILL 1139

House Natural Resources Committee

**David A. Sprynczynatyk, State Engineer
and Secretary to the State Water Commission**

January 15, 1999

Mr. Chairman and Members of the Committee, my name is David Sprynczynatyk. I am the North Dakota State Engineer and Secretary to the State Water Commission and appear today in support of House Bill 1139.

House Bill 1139 will provide for an appeal to the State Engineer of water resource board decisions concerning noncomplying dams, dikes, or other devices. The appeal process in the bill is identical to that provided for decisions concerning noncomplying drains in N.D.C.C. § 61-32-08. Under present law, an aggrieved party must appeal a board decision concerning noncomplying dams, dikes, or other devices to district court, which can be time-consuming and costly.

The bill also requires the water resource board to make a decision on a complaint of a noncomplying dam, dike, or other device within a reasonable time, not exceeding 120 days. If the board fails to make a determination, the person filing the complaint may file the complaint with the State Engineer.

The State Engineer shall conduct an independent investigation and make an independent determination. If the State Engineer determines the dam, dike, or other device was constructed contrary to state law, the State Engineer can order the dam, dike, or other device removed; return the matter to the water resource board with the investigation report; or forward the complaint and investigation report to the State's Attorney to prosecute the complaint in accordance with the State's Attorney statutory responsibility.

Any person aggrieved by action of the State Engineer may demand a hearing; if still not satisfied, the aggrieved person may appeal to district court. The appeal process provided for in this bill can only be exercised for dams, dikes, and other devices constructed after the effective date of this Act.

Both the State Engineer and the State Water Commission support House Bill 1139 and request your favorable consideration of the bill.

Thank you.

TESTIMONY ON HOUSE BILL 1139

Senate Natural Resources Committee

**Dale Frink, Assistant State Engineer
on behalf of**

**David A. Sprynczynatyk, State Engineer
and Secretary to the State Water Commission**

February 4, 1999

Mr. Chairman and Members of the Committee, my name is Dale Frink. I am the Assistant State Engineer and appear today on behalf of David Sprynczynatyk, the North Dakota State Engineer and Secretary to the State Water Commission, in support of House Bill 1139.

House Bill 1139 will provide for an appeal to the State Engineer of water resource board decisions concerning noncomplying dams, dikes, or other devices. The appeal process in the bill is identical to that provided for decisions concerning noncomplying drains in N.D.C.C. § 61-32-08. Under present law, an aggrieved party must appeal a board decision concerning noncomplying dams, dikes, or other devices to district court, which can be time-consuming and costly.

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Thank you.