

1999 HOUSE POLITICAL SUBDIVISIONS

HB 1310

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1310

House Political Subdivisions Committee

Conference Committee

Hearing Date 1-21-99

Tape Number	Side A	Side B	Meter #
1		x	29.3-59.0
2	x		.2-36.6
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: BILL SUMMARY: Relating to construction of highways to permit a natural flow of water. Chairman Froseth called the meeting to order with all members present.

Rep. Weisz, Dist 14 : The reason for introducing and supporting this bill on behalf of the Wells County Commission is that we had a dispute between landowners and township which had to go to court. The ruling was not clear. We wanted to clarify and address this subject to help both counties and townships and landowners. Please listen to all of the following testimonies. 28.0

Rep. Schmidt : 32.8 I signed on in support, because I'm a rural legislature in Dist. 12. Since I've signed on to this bill, I've had calls on both sides of the issue. This bill may need some amending and that is o.k. I'm not opposed to compromise. I will let the experts answer the questions.

Ted D. Seibel, Wells County States Attorney : 35.0 I'm probably the reason we are all here, because of all the problems in Wells County. I felt this needs to be addressed in other parts of the state, too. There is no standard for the interpretation of these statutes, as written now. The

wording, "the natural flow and drainage of surface waters may not obstructed", we have a problem with. The reality of the situation is in the particular set of circumstances e.g.- a road acts as a dam. You simply cannot engineer a road to take into consideration all events. You get a big down pour, and there is no way the roads can take great quantities of water in short time spans. What is our responsibility to engineer? It becomes a question of flood frequency. Do we engineer for 10 year, or 15 year, or 25 flood event. The statute is not specific about that. It becomes a balancing act between landowners rights and the economics of maintaining quality roads at a price the township can afford. We don't have any other choice then to let the courts decide and that is expensive. We don't feel that the courts are the best place to engineer our roads. We've had an on going disbut for 6-7 years, in our experience. The court is reluctant to decide what standard should be applied in certain situations. We have until April 1, to come up with a plan, and then go to court to see if that is acceptable or not. Why do we need legislation? We believe legislation would provide uniformity in application. That a standard could be set state wide. I don't know if the legislature is even the right place to decide what standard should be applied. I envisioned a bill that would empower state engineers to adopt certain guidelines, that would fit counties and townships, in conjunction with the Dept. of Transportation. Now the D.O.T. has already adopted regulations on these issues relating to federally funded roads. (handed out copies) I believe the amendments brought forth address the state engineers responsibilities only to those situations where he has been requested to address.

Rep. Ekstrom : 45.4 I'm afraid that the 10 year time may not be long enough, they may want 25 years. Have you considered that?

Ted : Yes, I have considered.

Vice Chair Maragos :48.2 Isn't this bill an example of being a healer for one person and causing a painful injury for another, no matter how we change it?

Ted :48.4 I recommend to you, it's this the case with any legislation? I believe the reality is this. Certainly there will be landowners affected by this. There will be people unhappy with this bill being passed. If the standard becomes too high, the option for the county and township is to abandon the roads. We are asking for a standard that we know we can use in our engineering process, that we assume will be similar to State Highway Dept.

David Sprynczynatyk, State Engineer :53.5 I am here in support of HB1310. This bill allows a minimum standard to be set for road crossings at county and township levels. It also provides a means for the state engineer to address what the flow of water will be in order to meet the standard. I have a set of amendments to address a few of our concerns. These amendments clarify the standards in the bill. The D.O.T. has adopted some standards that are here and are the minimum. Sometimes, a larger opening is needed up stream. These standards have evolved over the years and are accepted by the federal government. The amendment I brought to you would substitute for the reference to 10 year flood event; language that would reference the extreme crossing standard prepared by the D.O.T. We clarified that the involvement of the state engineer will happen only when he is requested. We did not think the intent of the bill was to make the state engineer inspect all thousands of crossings. We support the bill with amendments.

Chairman Froseth :58.7 Please describe what second feet means on pg.2, line 9.

Dave : It's a rate of flow.

tape 2:Delmore :0.2 If we already have the standards in place, do we need this bill, if the D.O.T. has already adopted the standards?

Dave : The D.O.T. has, but it's not required and there is no enforcement. This bill states there is a minimum standard.

Rep. N. Johnson : .7 If we pass this with the amendments, what dollars are we talking about concerning the towns and counties?

Dave : At state level, there is no fiscal impact. At county and local levels, it may have an impact. I don't know how much to guess as far as cost.

Rep. Disrud : 2.1 Identify for me a "highway".

Dave : The reference here is to public, so this includes interstate system and township roads. Private road to a house in not under this bill's authority.

Rep. Glassheim : 3.0 How many crossings are there?

Dave : 67,000 miles in the system. I guess we average one crossing per mile.

Rep. Glassheim : Would the existing crossings be grandfathered in? Would these be reason for law suits against existing roads that don't meet the standard?

Dave : Our interpretation of this is that it only applies for future construction or reconstruction of roads.

Rep. Ekstrom : 4.7 This statement may clear up things. FEMA has inventoried a lot of crossings at the township and county level after the last flood, so there is federal money coming in to that.

Bryan Hoimes, N.D. Township Offices Assoc. : 6.0 testified as a neutral party. We had problems with the original language concerning the 10 year flood event. The language in amendments seems to be O.K. A big question is the liability issue. They talk about "if" the culverts and drains and bridges meet this minimum standard. What happens if they don't meet the standard in townships? The liability is too arbitrary.

Rep. Ekstrom : 9.7 One of the concerns you should have is that we are at a high saturation of water. So, the 10 year or 25 year event could present more of a problem with high saturation.

Rep. Koppelman :10.1 Do you, Mr.Hoimes, feel there needs to be clarifying language and do you want to bring some forward?

Bryan : No, I'm comfortable with amendments.

John R. Mill, Burleigh County Highway Dept.: When I first saw the bill, I opposed it. I guess I didn't like "mandate" language. The current bill doesn't address drainage issue. The current law is vague, but you need to use "reasonable man theory". Seven inches in N.D. by far exceeds any type of flood frequency. Some events are just going to overcome their systems. I'm now kind of neutral. Liability is a good issue, too. It's a tricky bill to draw.

Chairman Froseth : 13.9 We can't legislate nature.

John : To clarify something, FEMA doesn't build bigger culverts.

Ted Seibel came back to speak: The present statute asks for maximum quantity of water. To bring this to dollars and cents; one step of change doubles the money it takes.

Lloyd Huber :16.1 I'm here in opposition to this bill. I have a farm in Morton and Oliver County. (See attached testimony) I am passing around pictures of water on my property. This is the 6th time we have been flooded. The state engineer refused to put in culverts. No one had a flood, but us, in the spring of 1996. I feel they are responsible when things happen over and over. The road is higher than my farmstead. I don't believe there is any government body that should have the power to keep on destroying property. Down sizing culverts and bridges costs money; not save money. Kill the bill.

Page 6

House Political Subdivisions Committee

Bill/Resolution Number hb1310

Hearing Date 1-21-99

James Fandrich : I am a Wells County landowner and I oppose this bill. I have brought 9-10 letters with me in opposition, also. (See attached testimony and letters) I want to read you this letter from Joe Cichy. a lawyer in Bismarck, who couldn't be here today. (See attached testimony) I also have my own letter I wish to read. (See attached testimony) 24.3

Chairman Froseth : We appreciate all of the testimony and I think the committee understands your concerns. Hearing no further testimony, this hearing is closed. 33.8

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1310-a

House Political Subdivisions Committee

Conference Committee

Hearing Date 1-28-99

Tape Number	Side A	Side B	Meter #
2	x		14.3-58.6
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: Committee took up bill 1310. Mr. Fandrich brought forth new amendments and explained them. Question and answer period continued.(14.3-37.6) Rep. Disrud presented her written testimony, even though the hearing was closed. (See attached testimony)

Rep. Koppelman : 37.6 What I see this bill as, is we are dealing with a liability bill. When a flood occurs and they seek damage, they go to courts. Should there be some limit to liability that political subdivisions can suffer as a result of that process? It's not an immunity bill. Should we limit liability , and if so, how much?

Rep. Eckre : I feel if this was a big problem all over the state, this room would be packed with people.

Rep. Severson : This is a concern in my district. Problem they see, is there is no standard. The intent of this bill is to provide a standard. To bring the standard up to address all the water problems. 41.1-41.8

Joe Cichy, Bismarck attorney : addressed the committee since he was unable to come to the initial hearing.(52.0-56.2)

Tape 2, side B - Joe Cichy continued in question/answer session.(0.0-1.5)

Rep. Koppelman : 1.9 I think we should go with the amendments brought by the state engineer, which refer to the stream crossings developed by the D.O.T. We shouldn't try to play engineer.

Rep. Koppelman moved to accept amendments of state engineer and Rep. Severson second them.

Voice vote was held with all YES. Rep. Severson made a motion to DO PASS as amended.

Rep. Delmore seconded the motion.

ROLL CALL VOTE: 13 YES and 1 NO and 1 ABSENT. Rep. Severson will carry the bill.

Do Pass
As Amended
with these

Pass

From
Don
Sp4

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1310

Page 1, line 11, remove "of a ten year flood event"

Page 1, line 13, overstrike "scientific highway construction and engineering" and insert immediately thereafter "the stream crossing standards prepared by the department" and remove the overstrike over "avoid"

Page 1, line 14, remove "minimize"

Page 1, line 15, remove the overstrike over "In" and remove "The state engineer shall determine the ten-year flood event to which"

Page 1, remove line 16

Page 1, line 17, remove "provided by law, in"

Page 1, line 18, replace "of a ten-year flood event" with "required to meet the stream crossing standards prepared by the department"

Page 1, line 23, replace "in excess of a ten-year flood" with "if the highway crossings have been constructed in accordance with the stream crossing standards prepared by the department"

Page 1, line 23, remove "event"

Page 2, line 6, after the second "county" insert "or the board of township supervisors"

Page 2, line 7, after "commission" insert "engineer" and remove the overstrike over "upon petition"

Page 2, line 8, remove the overstrike over "of the majority of landowners of the area affected," and replace "engineer" with "or at the request of the board of county commissioners, township supervisors, or a water resource board"

Page 2, line 9, remove "ten-year flood event level" and overstrike ", in terms of second feet,"

Page 2, line 10, overstrike "which", overstrike "watercourse or draw", after "be" insert "design discharge which the crossing", and after "carry" insert "to meet the stream crossing standards prepared by the department"

Page 2, line 11, overstrike "or" and insert immediately thereafter ":"

Page 2, line 12, after the first comma insert "or the board of township supervisors."

Page 2, line 14, replace "a ten-year flood event" with "the water"

Page 2, line 15, replace "and" with " ," and after "county" insert " , and township"

Page 2, line 16, replace "in excess of a ten-year flood event" with "if the highway crossings have been constructed in accordance with the stream crossing standards prepared by the department"

Page 2, line 28, overstrike "in the"

Page 2, overstrike line 29

Page 2, line 30, overstrike "shall cooperate"

Page 3, line 1, replace "need only" with "must"

Page 3, line 2, replace "to accommodate a ten-year flood event as determined by the state engineer" with "in accordance with stream crossing standards prepared by the department "

Page 3, line 4, replace "in excess of a ten-year flood event" with "if the highway crossings have been constructed in accordance with the stream crossing standards prepared by the department "

Renumber accordingly _

—

January 28, 1999

VR
1/29/99
1072

HOUSE AMENDMENTS TO HOUSE BILL NO. 1310

Page 1, line 11, remove "of a ten-year flood event"

Page 1, line 13, overstrike "scientific highway construction and engineering" and insert immediately thereafter "the stream crossing standards prepared by the department" and remove the overstrike over "~~avoid~~"

Page 1, line 14, remove "minimize"

Page 1, line 15, remove the overstrike over "~~It~~" and remove "The state engineer shall determine the ten-year flood event to which"

Page 1, remove line 16

Page 1, line 17, remove "provided by law, in"

Page 1, line 18, replace "of a ten-year flood event" with "required to meet the stream crossing standards prepared by the department"

Page 1, line 22, replace "in excess of a ten-year flood" with "if the highway crossings have been constructed in accordance with the stream crossing standards prepared by the department."

Page 1, remove line 23

HOUSE AMENDMENTS NO. 1310

FEB. 1, 1999 PS

Page 2, line 6, after the second "county" insert "or the board of township supervisors"

Page 2, line 7, after "~~commission~~" insert "engineer" and remove the overstrike over "~~upon petition~~"

Page 2, line 8, remove the overstrike over "~~of the majority of landowners of the area affected~~" and replace "engineer" with "or at the request of the board of county commissioners, township supervisors, or a water resource board,"

Page 2, line 9, remove "ten-year flood event level" and overstrike ", in terms of second feet,"

Page 2, line 10, overstrike "which", remove "the", overstrike "watercourse or draw", after "~~be~~" insert "design discharge that the crossing", and after "carry" insert "to meet the stream crossing standards prepared by the department"

Page 2, line 11, overstrike "or" and insert immediately thereafter an underscored comma

Page 2, line 12, after the first comma insert "or the board of township supervisors,"

Page 2, line 14, after "~~of~~" insert "the", remove the overstrike over "~~water~~", and remove "a ten-year flood event"

Page 2, line 15, replace "and" with an underscored comma and after "county" insert ", and township"

Page 2, line 16, replace "in excess of a ten-year flood event" with "if the highway crossings have been constructed in accordance with the stream crossing standards prepared by the department"

Page 2, overstrike line 29

Page 2, line 30, overstrike "shall cooperate in" and remove the first "the"

HOUSE AMENDMENTS NO. 1310 FEB. 1, 1999 PS

Page 3, line 1, replace "need only" with "shall"

Page 3, line 2, replace "to accommodate a ten-year flood event as determined by the state engineer" with "in accordance with stream crossing standards prepared by the department"

Page 3, line 4, replace "in excess of a ten-year flood event" with "if the highway crossings have been constructed in accordance with the stream crossing standards prepared by the department"

Renumber accordingly

Please type or use black pen to complete

Date 1-28-99

Roll call vote # on amend.

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1310

House POLITICAL SUBDIVISIONS Committee _____

- Subcommittee on amend.
 - Conference Committee
- } Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken ~~Amend.~~ Amend. 90572.0101

Motion Made By Rep Koppelman Seconded By Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth	Amend	Amend	Rep. Wikenheiser		
Vice Chair Maragos					
Rep. Delmore					
Rep. Disrud					
Rep. Eckre					
Rep. Ekstrom					
Rep. Glasheim					
Rep. Gunter					
Rep. Johnson					
Rep. Koppelman					
Rep. Niemeier					
Rep. Rose					
Rep. Severson					
Rep. Thoreson					

Total _____
(Yes) (No)

Absent _____

Floor Assignment _____

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

Your vote all yes

DO NOT USE HIGHLIGHTER ON ANY FORMS

Please type or use black pen to complete

Date 1-28-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1310

House POLITICAL SUBDIVISIONS Committee

Subcommittee on _____

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number 90572,0101 .0200 title

Action Taken Do Pass as amend

Motion Made By Rep. Severson Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth	/		Rep. Wikenheiser	/	
Vice Chair Maragos	/				
Rep. Delmore	/				
Rep. Disrud	/				
Rep. Eckre		/			
Rep. Ekstrom	/				
Rep. Glassheim	/				
Rep. Gunter	/				
Rep. Johnson, N.					
Rep. Koppelman	/				
Rep. Niemeier	/				
Rep. Rose	/				
Rep. Severson	/				
Rep. Thoreson, B.	/				

Total 13 1
(Yes) (No)

Absent 1

Floor Assignment Rep. Severson

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE

HB 1310: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1310 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "of a ten-year flood event"

Page 1, line 13, overstrike "scientific highway construction and engineering" and insert immediately thereafter "the stream crossing standards prepared by the department" and remove the overstrike over "~~avoid~~"

Page 1, line 14, remove "minimize"

Page 1, line 15, remove the overstrike over "~~It~~" and remove "The state engineer shall determine the ten-year flood event to which"

Page 1, remove line 16

Page 1, line 17, remove "provided by law, in"

Page 1, line 18, replace "of a ten-year flood event" with "required to meet the stream crossing standards prepared by the department"

Page 1, line 22, replace "in excess of a ten-year flood" with "if the highway crossings have been constructed in accordance with the stream crossing standards prepared by the department."

Page 1, remove line 23

Page 2, line 6, after the second "county" insert "or the board of township supervisors"

Page 2, line 7, after "~~commission~~" insert "engineer" and remove the overstrike over "~~, upon petition~~"

Page 2, line 8, remove the overstrike over "~~of the majority of landowners of the area affected~~" and replace "engineer" with "or at the request of the board of county commissioners, township supervisors, or a water resource board."

Page 2, line 9, remove "ten-year flood event level" and overstrike ", in terms of second feet,"

Page 2, line 10, overstrike "which", remove "the", overstrike "watercourse or draw", after "~~be~~" insert "design discharge that the crossing", and after "carry" insert "to meet the stream crossing standards prepared by the department"

Page 2, line 11, overstrike "or" and insert immediately thereafter an underscored comma

Page 2, line 12, after the first comma insert "or the board of township supervisors."

Page 2, line 14, after "~~of~~" insert "the", remove the overstrike over "~~water~~", and remove "a ten-year flood event"

Page 2, line 15, replace "and" with an underscored comma and after "county" insert ", and township"

Page 2, line 16, replace "in excess of a ten-year flood event" with "if the highway crossings have been constructed in accordance with the stream crossing standards prepared by the department"

Page 2, overstrike line 29

Page 2, line 30, overstrike "shall cooperate in" and remove the first "the"

Page 3, line 1, replace "need only" with "shall"

Page 3, line 2, replace "to accommodate a ten-year flood event as determined by the state engineer" with "in accordance with stream crossing standards prepared by the department"

Page 3, line 4, replace "in excess of a ten-year flood event" with "if the highway crossings have been constructed in accordance with the stream crossing standards prepared by the department"

Renumber accordingly

1999 SENATE POLITICAL SUBDIVISIONS

HB 1310

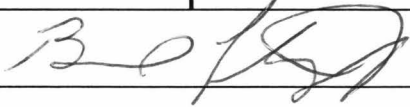
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HOUSE BILL 1310

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 26, 1999

Tape Number	Side A	Side B	Meter #
1		x	4574 to end
2	x		0 to 2575
Committee Clerk Signature 			

Minutes:

SENATOR LEE: open hearing on HOUSE BILL 1310

SENATOR FISCHER: present HOUSE BILL 1310, support this bill and to allow the flowage of water, and drainage planning

SENATOR WATNE: water board

SENATOR LYSON: city planning demands of water flowage in counties

SENATOR FISCHER: planning department did not consult the water district so the review of this was very spastic and not uniform on the water board

SENATOR WATNE: comparison of bills and the background of the ten year flood

SENATOR FISCHER: higher water amounts and where you determine the ten year water levels at.

REPRESENTATIVE WEISZ: further introduction of HOUSE BILL 1310, what kinds of standards does the counties and townships have to use when constructing roads with culverts and bridges. Using stream crossing standards for this issue. Uniformity throughout the state is the reason for this bill. Amendments to this bill, page1 line 20, liability concerns in the language, damage by water related to a culvert or water crossing and related amendments

SENATOR KELSH: proper crossing for downstream culverts and bridges

REPRESENTATIVE WEISZ: legal action to meet the requirements of downstream water crossings, standards for disputes that are throughout the state

SENATOR LEE: DAVID SPRYNCZNATYK on ten year flood levels

DAVID SPRYNCZNATYK support of HOUSE BILL 1310. Important to have stream crossing standards that are uniform, need to set standards, offered amendments on the house side that covered three areas, 1. ten year standard that are adopted by the Department of Transportation. 2. original bill dealing with state engineer looking at the crossings to see if they are uniform. 3. original bill and land owners request for the change and whom can make these changes, standards set my this bill and what is met by this bill

SENATOR WATNE: department always refers to the department of transportation?

DAVID SPRYNCZNATYK Correct

SENATOR WATNE: standards already set 15 and 25 years

DAVID SPRYNCZNATYK these are the standards that are set into place today and higher roads associated with county and township roads

SENATOR FLAKOLL: liability issue: who is liable if the roads get washed out and not replaced in a timely fashion

Page 3

Senate Political Subdivisions Committee

Bill/Resolution Number Hb1310

Hearing Date February 26, 1999

DAVID SPRYNCZNATYK can't answer that because I am not a lawyer and protecting health and safety of public

SENATOR LEE: be prompt about giving testimony (group discussion to the rest of the people)

TERRY TRAYNOR: supports this bill, HOUSE BILL 1310, liability issues with the counties

BOB WEIGELT: support for HOUSE BILL 1310, must have some uniformity

NORMAN REMBOLT: support for HOUSE BILL 1310

SENATOR LEE: Anyone else in favor or opposed to HOUSE BILL 1310

JOE CICHY: see testimony

SENATOR WATNE: how is the process going to be established with the Department of Transportation

JOE CICHY: could be, must the standard must be established by the legislature and then the DOT can establish processes from that

SENATOR LEE: is there a definition on the standard of on top of the road vs. on top of the culvert

DAVID SPRYNCZNATYK: the standard does not specify the water level and what the level should be verses where the water level should rise on the road and then what size of culvert should be put in to allow the water to be drained. Upstream water conditions and the impact that they have on the culvert as well.

JOE CICHY: concern with using a smaller culvert when upstream water is impacted on the size of the culvert and the impact that drainage has on the land for farmers

SENATOR LEE: area living in 5 years ago

JOE CICHY: previously questions and how they are effected by the flow of water and having a study done on this issue along with the flow of water

SENATOR LEE: any further questions

JAMES FLANCHREY: see testimony and the flooding of land due to culvert sizes and the standards set

SENATOR LEE: water held by township roads and they held water to prevent the water from devastating Fargo. Flow of water by culverts and water management on the culvert issue and who gets damaged from water backup

JAMES FLANCHREY: if a road washes out, mile one, 15 year flow event and mile two is a 7 year event

SENATOR LEE: need for uniformity and property taxes will go up if this happens

JAMES FLANCHREY: why have the land if it's devastated/ by flood and the property taxes are really high

SENATOR LEE: can't change everything with the time and money constraints that we have available today, address this issue today and see what we can do in the future

JAMES FLANCHREY: plans presented to another person and that the law should be studied state wide and the standard procedures for enforcing this issue and who is responsible for the damage, the county, the citizens or who. Lack of responsibility for the land owner and the flooding of the land, protection of house with a dike that is 30 feet high

SENATOR LEE: problems with the dike on the Minnisota side. Any further questions

MOTION: close hearing on HOUSE BILL 1310

MOTION: **no action taken on HOUSE BILL 1310**

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Senate Political Subdivisions Committee
Bill/Resolution Number Hb1310
Hearing Date February 26, 1999

DISCUSSION ON BILLS TO BE HEARD FOR NEXT WEEK

MARCH 11, 1999

discussion on HOUSE BILL 1310

MOTION: do pass as amended

SENATOR LEE: will be the carrier on the bill

March 5, 1999

JES
3/9/99

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1310

SENATE AMENDMENTS TO ENGR. HB 1310

POL. SUB.

3/9/99

Page 1, line 21, after "water" insert "detained by the highway at the crossing" and replace "crossings have" with "crossing has"

SENATE AMENDMENTS TO ENGR. HB. 1310

POL. SUBS.

3/9/99

Page 2, line 17, after "water" insert "detained by the highway at the crossing" and replace "crossings have" with "crossing has"

SENATE AMENDMENTS TO ENGR. HB. 1310

POL. SUBS.

3/9/99

Page 3, line 6, after "water" insert "detained by the highway at the crossing" and replace "crossings have" with "crossing has"

Renumber accordingly

*OK
Amend!*

Date: 3-5-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1310

Senate Political Subdivisions Committee Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Watne Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Lee (Chairman)	/				
Senator Lyson (Vice-Chaiman)	/				
Senator Flakoll	/				
Senator Watne	/				
Senator Kelsh	/				
Senator Nelson					

Total (Yes) 5 No 0

Absent Nelson

Floor Assignment Lee

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

Date: 3-11-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1310

Senate Political Subdivisions Committee Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Flakoll Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Senator Lee (Chairman)	/				
Senator Lyson (Vice-Chairman)	/				
Senator Flakoll	/				
Senator Watne	/				
Senator Kelsh	/				
Senator Nelson	/				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Lee

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

REPORT OF STANDING COMMITTEE

HB 1310, as engrossed: Political Subdivisions Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1310 was placed on the Sixth order on the calendar.

Page 1, line 21, after "water" insert "detained by the highway at the crossing" and replace "crossings have" with "crossing has"

Page 2, line 17, after "water" insert "detained by the highway at the crossing" and replace "crossings have" with "crossing has"

Page 3, line 6, after "water" insert "detained by the highway at the crossing" and replace "crossings have" with "crossing has"

Renumber accordingly

1999 HOUSE POLITICAL SUBDIVISIONS

HB 1310

CONFERENCE COMMITTEE

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1310-conf.

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-25-99

Tape Number	Side A	Side B	Meter #
1	x		0.3--5.9
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: Rep. Severson chaired the conference committee on HB 1310 with other members

present: Rep. Disrud, Rep. Ekstrom, Sen. Lyson, Sen. Lee, and Sen. J. Kelsh.

Rep. Severson : Called the meeting to order. I handed out an amendment I had drafted. This bill was killed on the floor because Rep. Dalrymple had some concerns. He thought the state engineer was left out the bill. He wanted language in the bill that made sure the state engineer was involved in the local water board. That's what this amendment does.

Sen. Lee : It's a fine idea. I move that we accept the amendment and that we additionally amend HB 1310. Rep. Ekstrom seconded the motion.

Rep. Severson : We have a motion to accede to the House amendments and further amend 1310.

ROLL CALL VOTE: 6 YES and 0 NO. PASSED. Rep. Severson will carry.

2.6--5.3 The liability issue concerning this bill was discussed. Page 1, line 19 of the bill.

Sen. Lee : There was a lot of discussion during the house and the senate hearings. Members of the departments were there. There was never any concern about townships being irresponsible. I would feel more comfortable leaving that portion in the bill.

Rep. Ekstrom : I spoke with Bryan Hoime yesterday, and if townships were eliminated, he felt it would be impossible to get anyone to serve on township boards.

Sen. Kelsh : We have set the standards to follow.

Sen. Lyson : 4.2 If they follow the rules they are O.K. If they don't, they will be in violation and are liable.

Sen. Lee : 5.3 It is important that the water have a great deal to say what is going on. I have more confidence in them than FEMA. This keeps the planning that's being done by the water boards in place. Coordinates with the state and is positive.

Rep. Severson : Meeting is closed.

Prepared by the Office of the
State Engineer

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1310

Page 1, line 14, after "department" insert "and the state engineer"

Page 1, line 17, after "department" insert "and the state engineer"

Page 1, line 23, after "department" insert "and the state engineer"

Page 2, line 13, after "department" insert "and the state engineer"

Page 2, line 20, after "department" insert "and the state engineer"

Page 3, line 7, after "department" insert "and the state engineer"

Page 3, line 11, after "department" insert "and the state engineer"

Renumber accordingly

VR
3/26/99

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 13103-29-99 P.S.

That the Senate recede from its amendments as printed on page 835 of the House Journal and page 686 of the Senate Journal and that Engrossed House Bill No. 1310 be amended as follows:

Page 1, line 14, after "department" insert "and the state engineer"

Page 1, line 17, after "department" insert "and the state engineer"

Page 1, line 21, after "water" insert "detained by the highway at the crossing" and replace "crossings have" with "crossing has"

Page 1, line 22, after "department" insert "and the state engineer"

CONFERENCE COMMITTEE AMENDMENTS TO ENGR. HB 1310 3-29-99 P.S.

Page 2, line 11, after "department" insert "and the state engineer"

Page 2, line 17, after "water" insert "detained by the highway at the crossing" and replace "crossings have" with "crossing has"

Page 2, line 18, after "department" insert "and the state engineer"

CONFERENCE COMMITTEE AMENDMENTS TO ENGR. HB 1310 3-29-99 P.S.

Page 3, line 4, after "department" insert "and the state engineer"

Page 3, line 6, after "water" insert "detained by the highway at the crossing" and replace "crossings have" with "crossing has"

Page 3, line 7, after "department" insert "and the state engineer"

Re-number accordingly

(Bill Number) HB 1310 (, as (re)engrossed):

Your Conference Committee

For the Senate:

		<u>Date</u>
Sen. LYSON	✓	yes
Sen. Lee	✓	yes
Sen. Kelsh	✓	yes

For the House:

		<u>Date</u>
Rep. Severson	✓	yes
Rep. Disrud	✓	yes
Rep. EKstrom	✓	yes

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
the (Senate/House) amendments on (SJ/HJ) page(s) 835 - _____

and place _____ on the Seventh order.

, adopt (further) amendments as follows, and place
1310 on the Seventh order:

having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) 1310 was placed on the Seventh order of business on the
calendar.

DATE: 3/26/99
CARRIER: Rep Severson
LC NO. 90572 . 0204 of amendment
LC NO. _____ of engrossment
Emergency clause added or deleted _____
Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

HB 1310, as engrossed: Your conference committee (Sens. Lyson, Lee, Kelsh and Reps. Severson, Disrud, Ekstrom) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 835, adopt further amendments as follows, and place HB 1310 on the Seventh order:

That the Senate recede from its amendments as printed on page 835 of the House Journal and page 686 of the Senate Journal and that Engrossed House Bill No. 1310 be amended as follows:

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Page 3, line 7, after "department" insert "and the state engineer"

Re-number accordingly

Engrossed HB 1310 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

HB 1310

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

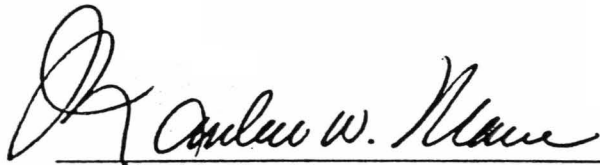
FEDERAL AID ELIGIBLE ROUTES
COUNTY MAJOR COLLECTOR ROUTES
ON AND OFF-SYSTEM ROUTES

STREAM CROSSING STANDARDS

Prepared by
North Dakota Department of Transportation
Bismarck, North Dakota

In cooperation with the
U.S. Department of Transportation
Federal Highway Administration

Submitted:



Marshall W. Moore
Director
North Dakota Department of Transportation

9-14-98
Date

Approved:



W. Thomas Kelley
Division Administrator
Federal Highway Administration

9-16-98
Date

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

**FEDERAL AID ELIGIBLE ROUTES
COUNTY MAJOR COLLECTOR ROUTES
ON AND OFF-SYSTEM ROUTES**

STREAM CROSSING STANDARDS

PREFACE

The North Dakota Department of Transportation (NDDOT) recognizes that the needs for rehabilitating or replacing stream crossing structures in the State of North Dakota far exceed the available funds that are provided by the Federal Highway Administration (FHWA) or that are locally available. It is, therefore, determined to be in the public interest to permit some design criteria which are below current American Association of State Highway and Transportation Officials (AASHTO) standards.

New stream crossing structures financed with Federal-aid may be designed to the minimum or desirable standards identified in the subsequent tables of this document.

DESIGN EXCEPTIONS

By virtue of this document a programmatic design exception is adopted for all design elements in these standards that are below current AASHTO standards. These elements are identified with an asterisk.

STANDARDS FOR STREAM CROSSING STRUCTURES

The structures that will be constructed on the Federal-aid eligible County Major Collector (CMC) system or higher will be identified under "ON-SYSTEM" in the subsequent tables of this document. All structures that will be constructed on other local roads (Minor Collector or lower) will be identified under "OFF-SYSTEM".

HYDRAULIC DESIGN

Hydraulic design and documentation will be in accordance with NDDOT's Hydraulic Manual. An economic assessment of hydraulic design will be performed on all projects. Scour evaluation consistent with FHWA guidelines will be included in the hydraulic analysis.

Flood plain evaluation will be done in accordance with 23 CFR 650 Subpart A.

FLOOD FREQUENCY DESIGN

SYSTEM	
<u>ON</u> CMC's	<u>OFF</u> System
25-year minimum 15-year minimum with adequate overflow section or meet backwater requirements for adopted flood zone	15-year minimum 10-year minimum with adequate overflow section or meet backwater requirements for adopted flood zone

BRIDGE DESIGN

<u>FEATURE</u>	<u>SYSTEM</u>				
	<u>ON</u>	<u>OFF</u>			
<u>ADT</u>	<u>ALL</u>	<50		50-100	>100
		Minimum ¹	Desired		
Bridge Rail	PL-2 or equal	*12" barrier curb	PL-1 or equal	PL-1 or equal	PL-2 or equal PL-1 case by case
Approach Rail	Current crash-tested ²	*None	MELT or current crash-tested ³	MELT or current crash-tested ⁴	Current crash-tested ⁵
Structure Width (minimum)	28' or approach roadway width if > 28'	*18' or approach traveled way width + 4'	28' or approach roadway width if > 28'	28' or approach roadway width if > 28'	28' or approach roadway width if > 28'
Design Loading (minimum)	HS-25	HS-20	HS-25	HS-25	HS-25
Bridge End Delineator	4-Type 3 (Optional)	*4-Type 2 24" height	4-Type 3 (optional)	4-Type 3 (optional)	4-Type 3 (optional)

¹Applies only to structures < 70' in length

²Length of guardrail to be determined in accordance with NDDOT's length of need standard drawing based on design speed

³Length of guardrail may be determined based on the minimum necessary length for the end treatment to perform acceptably and for proper transition to the bridge rail

⁴Same as footnote 3

⁵Same as footnote 2

LARGE CULVERT DESIGN

<u>FEATURE</u>	<u>SYSTEM</u>			
	<u>ON</u>	<u>OFF</u>		
<u>ADT</u>	All	<50		≥50
		Minimum	Desired	
Length (minimum)	*Traveled way width + 10' each side (28' with guardrail is optional)	*18' or traveled way width + 4'	Traveled way width + 10' each side (28' with guardrail is optional)	Traveled way width + 10' each side (28' with guardrail is optional)
Delineator	4-Type 3 (optional)	*4-Type 2 24" high	4-Type 3 (optional)	4-Type 3 (optional)

*LOW WATER CROSSING

Because of funding restrictions, it has been determined to be in the public interest to provide low water crossing structures on land service-type roadways. These structures would be limited to roadways having less than 50 ADT and only in rare cases would be considered for roadways that carry school bus, milk truck, and mail-type traffic. Low water crossing structures that provide access into a farmstead should also have a reasonably close alternate route that would provide access for emergency-type vehicles in case the structure is inundated.

Design Criteria

<u>OFF-SYSTEM ONLY</u>	
<u>FEATURE</u>	<u>VALUE</u>
Traffic Control	Advance warning and advisory speed signing, depth indicator and delineators
Width (minimum)	18' or traveled way width + 4'
Approach grade (maximum)	15% (20 mph design)
Vented crossing	Optional (nominal size for low flows)

DEFINITIONS

ADT	= Current Average Daily Traffic
NCHRP	= National Cooperative Highway Research Program Report No. 350
PL-1	= AASHTO Performance Level-1 (NCHRP Report No. 350 crash-tested rail at Test Level 2 is considered functionally equivalent to this performance level)
PL-2	= AASHTO Performance Level-2 (NCHRP Report No. 350 crash-tested rail at Test Level 4 is considered functionally equivalent to this performance level)
*	= Standards are <u>below</u> AASHTO Standards
Roadway width	= The sum of the traveled way width plus the graded shoulder width
Traveled way width	= The portion of the roadway for movement of vehicles exclusive of graded shoulder width

1530 cfs 6' deep. 100 cfs on 6ft culvert

H.B. 1310

Sept. Huber

PREPARED BY

DATE

These jobs will be done in the future

Sizing of Bridges & Culverts to a 100 yr. event will only flood more land, crops of grain, Hayland ~~Forest~~ Farmsteads including wells, Grain in storage, Hay in storage and even the Farm dwelling therefore the natural course of rivers, creeks & water ways should not be undersized but be at least sized to a 100 yr. event. underside culvert create washout & grade falls.

The ~~public~~ property owner should always be paid for ^{all} damages he suffered from undersized culverts or Bridges

No Government Body should ever be giving the power to destroy or cause damage to some one else's property, nor to endanger their life & livelihood. All Government Bodies should be held liable. These are public roads built with public money. Down sizing of culverts & Bridges does not save money, it costs money & lives. How many people have lost their life because the road was washed out. Therefore I recommend that H.B. 1310 ~~does not get a 2nd reading~~ (be rejected)

Very sincerely
Huber

January 21, 1999

Testimony before Political Subdivisions Committee

Prairie Room

Representative Glen Froseth, Chairman

House Bill 1310

My name is Joe Cichy, and I appear here in opposition to House Bill 1310 as drafted.

N.D.C.C. § 24-03-06 has been in effect since 1943. It has existed for over sixty years without creating a problem because counties and townships would construct their roads consistent with the mandates of the statute. The only case that I am aware of where there was a serious problem relative to this statute and its requirements was in Wells County. Since 1977, only one case in the Supreme Court addressed the statute and that was last fall when a landowner and the township wanted to place a culvert but a water resource district would not allow it.

The statute has served the state well, and to change it because two townships and one county have a problem makes little sense.

The case in Wells County was not appealed to the Supreme Court. The district court judge found the Wells County Commission, Forward Township and Rusland Township Boards of Supervisors to have acted arbitrarily, capriciously and unreasonably in failing to formulate, adopt and implement a plan to adequately handle the flow of water on the main stem of the James River in Forward and Rusland Township. The court said that each entity failed in its duty. The court said these boards acted in a haphazard manner with little or no reason and with some decisions being made on the personal likes or dislikes of individual citizen personalities. Basically the boards did nothing to solve the problem. They created the problem in the mid 90's by raising the roads and reducing the capacity of the outlets along a five mile stretch of the James River. This caused significant flooding of farmland for extended periods of time, over three weeks in some cases.

It was these boards' blatant disregard of the upstream landowners rights that created the problem. One township's philosophy is to use its roads as dams, as water control structures in its township.

I am not aware that this is a statewide problem. It appears to be a local problem. There are many problems with the bill. By adopting this bill and allowing the governmental entities to obstruct the flow of water on a river, creates serious problems. First, it may result in a taking of private land for the storage of water. Also, if the obstruction is capable of obstructing over 12½ acre feet of water, it requires a permit from the State Engineer.

It is impossible to reconcile this statute with the one that prohibits the obstruction of a water course, if a water course is so obstructed that constitutes a Class B misdemeanor. The bill will require a watershed analysis on every road culvert. Also, there is no definition of a ten year event. The carrying capacity of a culvert is affected by many factors including the height of the road. A definition of a ten year event or whatever event is chosen is needed so it can be properly determined. If the culverts are undersized not only will flooding occur upstream, but more roads will be flooded out or damaged.

This bill is a knee jerk reaction to an isolated situation and creates more problems than it solves. The simplest solution to roads and water was enacted over 50 years ago; allow the water to flow as it would if the road were not there. The existing law has served the state's needs for decades. Therefore, I ask the committee to vote no on this piece of ill-advised legislation.

HB
1310

1-21-99

MR. CHAIRMAN & OTHER COMMITTEE MEMBERS :

I AM JIM FANDRICH OF MANFRED, ND. I OPPOSE BECASUE :

SECTION 1

- LINE 11 - 10 YEAR EVENT IS NOT ACCEPTABLE. EVEN A 25 YEAR EVENT WOULD BE QUESTIONABLE. WOULD THE METHOD OF CALULATING FLOW BE "HISTORICAL" OR "PRESENT DAY" METHOD ? IT WOULD NEED TO BE UPDATED AT LEAST EVERY TEN YEARS. WHO WOULD FORMULATE THE FLOW CHART ? WHO WOULD DETERMINE THE SIZE OF THE CULBERT OR BRIDGE WHEN THE CHART IS COMPLETE ?
- LINE 14 - WHAT IS MEANT BY "MINIMIZE" ? WHO DETERMINES WHAT MINIMUM FLOODING IS ? 12 1/2 ACRE FEET TODAY REQUIRES A PERMIT. WHAT SAYS THE COUNTY OR TOWNSHIP COULD FLOOD 5000 ACRES BEFORE A PERMIT IS REQUIRED ? HOW LONG A TIME WOULD THIS FLOODING BE PERMITTED ? WHO WOULD ISSUE THE PERMIT - THE LANDOWNER ?
- LINE 15 - WOULD THE STATE ENGINEER SET ALL SIZING OF CULBERTS & BRIDGES ?
- LINE 16 - "EXCEPT AS OTHERWISE PROVIDED BY LAW". WHAT DOES THAT MEAN ?
- LINE 21 & 22 - THIS SECTION LIMITS THE LIABILITY BUT AT THE SAME TIME LIMITS THE INDIVIDUAL PROPERTY RIGHTS. IS THIS LIMITED LIABILITY ONLY FOR THE COUNTY, TOWNSHIP & SO ON OR WOULD IT ALSO APPLY TO PRIVATE LANDOWNERS ?

SECTION 2

PAGE 2

- LINE 7 - IN REGARDS TO THE PETITION OF LANDOWNERS. ARTICLE #1, SEC #5 OF THE NORTH DAKOTA CONSTITUTION ALLOWS US THAT RIGHT. IT IS ALSO ALLOWED UNDER THE FIRST AMENDMENT TO THE US CONSTITUTION. BY REMOVING THIS RIGHT PLUS LIMITING THE LIABILITY MAKES BILL # 1310 UNCONSTITUTIONAL !
- LINE 12 - THE WORD "SHALL" NORMALLY MEANS A COMMAND. WOULD WE AS LANDOWNERS NEED TO GO THROUGH COURT TO FORCE COMPLIANCE WITH THE LAW OR WOULD THE STATE ENFORCE IT ?
- LINE 16 - 10 YEAR EVENT IS NOT ACCEPTABLE. EVEN WITH A 25 YEAR EVENT - CONSIDER FOR INSTANCE IF AN UPSTREAM CROSSING IS SET @ 40 OR 50 YEAR EVENT. THE DOWNSTREAM @ 5 OR 10 YEAR EVENT. HOW DO YOU PLAN TO EQUALIZE IN THE MIDDLE CROSSING AT A 25 YEAR EVENT ? WOULD YOU REQUIRE THE UP AND DOWNSTREAM CROSSINGS TO BE CHANGED TO THE NEW STANDARD ?

*w/o pet. we
got nowhere,
if you don't like
it, sue us
now, in court to
hands.*

SECTION 3

LINE 25 & 26 - WHAT IS MEANT BY GIVING NOTICE TO "ALL"
TOWNSHIPS AFFECTED ? DOES THAT MEAN ALL THE WAY
TO THE GULF ? WHAT IF ONE TOWNSHIP RESISTS OR
REFUSES ?

PAGE 3

LINE 1-4 IF THE STATE ENGINEER SETS THE FLOW AND
THE COUNTY OR TOWNSHIP DO NOT CONSTRUCT CROSSINGS
FOR THAT FLOW, WILL THE STATE COLLECT DAMAGE FOR
THE LANDOWNERS ? WHO WILL ENFORCE THIS OR ANY
OTHER PART OF THE LAW ?

IN REGARDS TO ALL THE OTHER LAWS DEALING WITH WATER
ISSUES. I BELIEVE SOME OF THEM WOULD BE IN CONFLICT WITH
BILL # 1310.

PLEASE ALLOW THIS BILL TO DIE TODAY ! THANK YOU

James D. Ferlick

TO THE COMMITTEE CONSIDERING HOUSE BILL #1310

We are against this bill and any other similar bill introduced by our Wells County Commissioners. This bill takes away the rights of a minority to obtain justice in the Courts. Where can the minority go to find justice? They do not have enough votes to change the leadership of either a township or a county. In our township (Rusland) three of us citizens own the majority of the James River bottom pastures. For 60 years we've been hopelessly out-voted in our township. The Supervisors could do what they wanted with us, because we are in a minority.

In Wells County, we could not out-vote the upland people of the county to elect a commissioner who would help us. The County Commissioners and the Water Board laughed at us and reminded us that we have no votes.

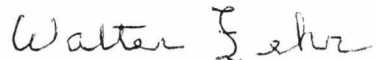
Our only recourse was the courts. We used the petition option, which would be eliminated by HB #1310.

When we won our case in court, some of the money which we had spent for lawyers and engineers was returned to us, by the state insurance fund, which was rightfully so, because we won. The state insurance fund paid for all of the commissioners' expenses in this case.

HB #1310 is a direct effort by our County Commissioners to undo the Judge's rulings by political means. Changing the words from "maximum flow" to "a ten-year flood event" will take away our victory in court.

A plan that has the townships and Counties using one size of bridges, and the state or other body using another size, will create a lake between the types of roads. Is that what the Supervisors and Commissioners want?

Yours truly,



Walter Fehr

1648 34th Ave NE

Harvey, ND 58341

1-21-99

MR. CHAIRMAN & MEMBERS OF THE COMMITTEE :

MY NAME IS BONNIE FANDRICH & I AM FROM MANFRED, ND

I OPPOSE BILL # 1310.

IGNORANCE IS NO EXCUSE FOR BREAKING THE LAW! THE COUNTY COMMISSIONERS, WATER BOARD, AND TOWNSHIP SUPERVISORS IN OUR COUNTY KNEW THE LAW BUT BROKE THEM ANYHOW. NOW THEY ARE ASKING TO HAVE THE LAWS AMMENDED. WE GAVE THEM LETTERS FROM THE ATTORNEY GENERAL'S OFFICE AND FROM THE STATE WATER COMMISSION OFFICE EXPLAINING THE REQUIREMENTS - BUT WE HAD TO ADDRESS THE ISSUE BEFORE A JUDGE TO ENFORCE THE LAW. THEY SHOULD BE A BETTER EXAMPLE OF LAW ABIDING PUBLIC SERVANTS. IT HAS COST US AS TAXPAYERS BECAUSE OF THEIR MISMANAGEMENT. THERE WILL BE MORE EXPENSE IN CONTINUED ROAD REPAIR AND WE WILL HAVE TO PUT UP WITH MORE DAMAGE DUE TO FLOODING - ESPECIALLY IF A LIMITED FLOW IS ALLOWED.

SIX OF OUR RIVER CROSSINGS IN WELLS COUNTY ARE CONSTRUCTED SHOWING DISREGARD OF THE LAWS INVOLVED WITH BILL #1310. I HAVE FEMA REPORTS SUCH AS DSR'S WHICH REVEAL JIM KUNTZ AS OUR DISTRICTS COUNTY COMMISSIONER PLUS THE COUNTY ROAD FOREMAN BEING INVOLVED WITH THE INSPECTION & PLANS TO RESTORE SOME OF THESE DAMAGED CROSSINGS. THE CROSSING 3 MILES UPSTREAM WAS REPAIRED TO A 20 YEAR EVENT BUT CROSSING ADJACENT TO OUR LAND IS WORSE THAN IT WAS BEFORE. WITH ADDITIONAL ILLEGAL DRAINAGE & MORE ILLEGAL CULBERTS INSTALLED TO DIVERT MORE WATER OUR WAY - WE WILL CONTINUE TO HAVE MORE FLOODING. ACCORDING TO THE STATE WATER COMMISSION REPORT, WE HAVE OVER 250 SQUARE MILES OF DRAINAGE WHICH MUST COME THROUGH THIS ONE RIVER CROSSING. THERE ARE SEVERAL TRIBUTARIES ALSO. OUR MAIN CHANNEL HAS TWO 36" CULBERTS. THERE IS A LOW WATER CROSSING BUT IT IS NOT A TRUE TEXAS CROSSING - IN FACT IT IS MORE OF A DAM. IN THE LEGAL DEPOSITION OF THE TOWNSHIP SUPERVISOR, DOWNSTREAM FROM US, HE TESTIFIED THAT THEIR POLICY IS TO USE ROADS TO CONTROL WATER ! WOLD ENGINEERING TRIED TO PROMOTE THE IDEA OF BUILDING ROADS HIGHER TO GIVE MORE HEAD PRESSURE SO SMALLER CULBERTS COULD BE USED. HE COULDN'T EXPLAIN IN COURT WHAT 12 1/2 ACRE FEET OF WATER WAS OR HOW MUCH WE WOULD BE FLOODED WITH THE VARIOUS OPTIONS FOR CHANGE. WE HAVE ELEVATION MAP PLUS PHOTOS & VIDEOS THAT SHOW AMOUNT OF FLOODING WITH PRESENT CROSSING. SO WITH BILL #1310 HOW MUCH FLOODING WILL WE LANDOWNERS BE EXPECTED TO PUT UP WITH? WE MUST PAY TAXES ON LAND WHICH WE CAN NOT USE. I OPPOSE HAVING OUR RIGHTS REDUCED. PLEASE DO NOT ALLOW THIS BILL TO PASS. THANK YOU.

Bonnie Fandrich

Re:

House Bill # 1310

After reading thru
this bill I don't think this
bill should pass under
any circumstances. The
landowners rights will be
taken away.

Yours Truly
Philip Collier
1770 30 Ave N. E.
Hervey, N. V. 58341

Jan. 19, 1999

To: Fifty-sixth
Legislative Assembly of N.D.
on
House Bill # 1310

I do not want House Bill #1310 to pass. Not only would this bill take rights away from the landowners but it would make it even more difficult to have our problems and concerns addressed, which is next to impossible now.

Sincerely,
Kenneth Schindler

HARVEY, N. DAK.

James & Ellen Kreiter
3498 12th St. N.E.
Manfred, ND 58341
701-547-3428

1-20-99

Regarding: Bill 1310

We, James and Ellen Kreiter, are opposed to proposed House Bill 1310 for the following reasons.

1. Violates our constitutional rights as citizens and property owners.

Any bill that would nullify previous court ordered mandates to counties for fixing and repairing roadways, waterways, and other properties would not be supported by us. In addition, any law that would not allow or limit attorney fees for judgements, would not have our support.

Sincerely,

James & Ellen Kreiter

Jan. 19, 1999

To: Fifty-sixth
Legislative Assembly of ND,
ON
House Bill #1310

I would like to see
a no vote for this bill.
There is a very hidden
agenda by the Wells County
Commissioners who drafted
this bill. As land owners
we will lose even more
rights. We have many acres
already ruined by years of
repeated flooding and standing
water.

Thanks,

Anita Schindler

HARVEY, N. DAK

Jan 19, 1999

To: Fifty Sixth
Legislative Assembly of N.D.

on

House Bill # 1310

As we started to get more + more water as larger culverts were put ~~in~~ upstream + smaller culverts and built up roads ^{downtown} caused us to have more + more problems, we started meeting with our Co. Commissioners among others for many years.

Finally in 1996, Jim King ^{of the Comm.} stood up in a meeting and said "we are not going to do anything to see us." This is where we dropped out, other than with moral support to our neighbors, who moved on with a law suit, since they were BACKED AGAINST A WALL.

After thousands of dollars, piles of papers and many precious months - the Landowners won thanks to the N.D. law in place. The Commissioners were told they

must make corrections that should have been done over the many previous years anyway.

The Commissioners have hailed up & down the streets that they have no intention of doing what the judge ordered. - Instead, they, the Wells Co. Commissioners, have introduced a bill - House Bill # 1310 - which would give landowners even less rights than they have now. -

I am not a lawyer, but I don't think this bill should make it out of committee and the Commissioners should be held in contempt of Court.

Sincerely,

Anita Schindler

HARVEY N. DAK.

Re:
House Bill # 1310

After reading thru
this bill I don't think this
bill should pass under
any circumstances. The
landowners rights will be
taken away.

Yours Truly
Archie Collier
1770 30 Ave N. E.
Harvey, N. D. 58341

TESTIMONY FOR HB 1310

Prepared by Rachael Disrud

Thursday, January 28, 1999

Mister Chairman and the members of the Political Sub Committee.
In discussing this bill with my consultant, who specializes in the area of soil and water engineering, the following information should be useful in our deliberations.

House Bill 1310

Main Point----"if the proposal is to set a 'return period' flood flow as a design standard for a structure such as a culvert, then it is important to specify if an increase in depth of flow is allowed up stream from the structure. This is simply because the flow through a pipe depends on how much pressure there is in the inlet.

For you information, "Return Period" is a way of specifying Rate of Flow.

*10 year = Probability of an event happening is 10% ^{w/in 10 yrs.} This means that on the average, an event of that magnitude happens once in 10 years.

relates to level of flooding.

Quote = As an engineer, "The key is: There is not enough information stated in this bill to design a culvert. The flow through a culvert you depend on the depth of water allowed to impound upstream of the culvert.

James Flanchery

TO ALL N.D. LAWMAKERS OF THE 1999 LEGISLATIVE SESSION:

House bill 1310 was introduced & promoted BECAUSE of an isolated law suit in Wells county. The 60 year old law has been OK. Now our leaders want standards & less liability. (DOT standards have been in effect)

We want to tell you the "rest of the story"! There are records to prove our statements. There are six crossings on the main channel of the James River which are obstructions & cause flooding several weeks @ year.

The attorney general's office provided laws & opinions about water issues as they relate to crossings on roads. Copies were given to the States Attorney so ignorance of the law is no excuse.

Local water board is appointed by the county so can't force obedience to the laws except upon individual landowners. They agreed roads act as dikes & recommended that changes be made according to law. They admit that the majority of Wells county is drained with few being legal or controlled with gates. Years ago a canal was built along about a 1/4 mile of the township road to allow overflow for the river. It needs the silt & sand removed but no entity will take responsibility to clean it.

As a result of petition, the state water commission gave a flow chart of 375 square miles in the drainage area & showed the amount of flow (CFS) needed at each river crossing being questioned.

Our engineer proved the present crossings have NOT been built for sufficient flow. Maps were made to show the amount of backup waters. He outlined a plan to correct the problems.

The county's engineers admit changes need to be made, but they believe in building roads higher to create more "head pressure" to allow smaller culverts to be used - but they don't consider the effect on upstream flooding! They couldn't explain what "12 1/2 acre feet" is! (that is the amount of land being flooded & requiring a permit)

Downstream townships & counties admit they use roads to control water. One of their supervisors lives close to the river, therefore is fighting to keep the roads acting as dikes.

Upstream townships & counties keep adding more & larger culverts due to excessive drainage.

Our township allows drainage & say that we who own land along the river, must accept flooding. More & larger culverts are added upland & to the tributaries thus giving a greater problem to the James River crossings. They have also changed the direction of flow - giving us more flooding.

Wells county is in charge of building & maintaining all of our roads but claim there is no money to do it properly. Bridges have been replaced with culverts or low water crossings which act as dikes - especially when the level of the crossing is raised to cause more obstructions. FEMA records show that funds were approved for most sites.

For instance in our township, the upstream crossing of the main channel of the river (by the land of township supervisor) was repaired to a 20 year flow with trenching to allow water to run faster! By another supervisor's land, the 2 three foot culberts were replaced with 2 six foot culberts in a tributary to the river.

Our lawyer succeeded in court because the Judge ruled that "the county & townships acted arbitrarily, capriciously & unreasonable in failing to formulate, adopt & implement a plan to adequately handle the flow of water". The judge also said "the respondents have breached their duty to formally adopt plans & reasonably implement such plans."

The lawyers for the county said our problem was an act of God but the judge said God didn't put in the culberts!

The court ordered compliance to the law but failed to say how & when. He did not want it to be a "political decision" but must be a lawful policy. The court order is for "permitting a maximum quantity of water to flow freely & unimpeded in the James River" - as the laws determine.

There needs to be enforcement of the laws & penalty for those leaders who refuse to do their job! We as landowners along the river are in the minority & can't outvote the present leaders. We should not have to be sued nor should we have to spend alot of money to fight in court to force our elected officers do their job in upholding the laws of N.D.

The amendment to BILL 1310 may be a help to the leaders but is is not an answer for the landowners. As taxpayers, our constitutional rights are being limited since we have land which CAN'T be used as we want. If the Bill 1310 passes, IT WOULD BE MOST IMPORTANT THAT ALL CROSSINGS WITHIN EACH AREA DRAIN FIELD BE CHANGED TO THE NEW STANDARD; IF NOT, WE WILL HAVE LEGALIZED FLOODING WITH MORE COST FOR REPAIRS!

As sitting ducks, we are waiting to see how you will vote!
Please help N.D. by voting NO on Bill 1310.

THANK YOU.

February 26, 1999

Testimony before Political Subdivisions Committee

Red River Room

Senator Judy Lee, Chairman

House Bill 1310

My name is Joe Cichy, and I appear here in opposition to House Bill 1310.

N.D.C.C. § 24-03-06 has been in effect since 1943. It has existed for over sixty years without creating a problem because counties and townships would construct their roads consistent with the mandates of the statute. The only case that I am aware of where there was a serious problem relative to this statute and its requirements was in Wells County. Since 1977, only one case in the Supreme Court has addressed the statute and that was last fall when a landowner and the township wanted to place a culvert but a water resource district would not allow it.

The statute has served the state well, and to change it because two townships and one county have a problem makes little sense.

The case in Wells County was not appealed to the Supreme Court. The district court judge found the Wells County Commission, Forward Township and Rusland Township Boards of Supervisors to have acted arbitrarily, capriciously and unreasonably in failing to formulate, adopt and implement a plan to adequately handle the flow of water on the main stem of the James River in Forward and Rusland Townships. The court said that each entity failed in its duty. The court said these boards acted in a haphazard manner with little or no reason and with some decisions being made on the personal likes or dislikes of individual citizen personalities. Basically the boards did nothing to solve the problem. They created the problem in the mid 90's by raising the roads and reducing the capacity of the outlets along a five mile stretch of the James River. This caused significant flooding of farm and pasture land for extended periods of time, in

some cases over five weeks.

It was these boards' blatant disregard of the upstream landowners rights that created the problem. One township's testified its philosophy was to use its roads as dams, and water control structures.

I am not aware that this statute is a statewide problem. Its implementation appears to be a local problem. There are still some problems with the engrossed bill. By adopting this bill and allowing the governmental entities to obstruct the flow of water on a river serious problems are created. First, it may result in a taking of private land for the storage of water. If the road, acting as an obstruction, is capable of obstructing over 12½ acre feet of water, it requires a permit from the State Engineer. Also, it is impossible to reconcile the language in this bill with the statute that prohibits the obstruction of a watercourse. If a watercourse is obstructed those actions constitute a Class B misdemeanor. Where the bill is seriously flawed is that there is no procedure for identifying a flow event. The carrying capacity of a culvert is affected by many factors including the height of the road. There must be an established process to calculate a flow event. The flow event must be calculated from the top of the culvert or opening and not from the top of the road. To do otherwise will create disastrous results.

This bill is a knee jerk reaction to an isolated situation and creates more problems than it solves. If the committee believes something should be done to address these flooding problems the prudent approach would be to conduct an interim study addressing flooding problems (including the effects of surface water drainage on the situation) and develop a comprehensive statutory plan for the control and drainage of surface water. Otherwise, the simplest solution to roads and water was enacted over 50 years ago; allow the water to flow as it would if the road were not there. The existing law has served the state's needs for decades. Therefore, I ask the committee to vote no on this piece of legislation.