

1999 SENATE NATURAL RESOURCES

SB 2432

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2432

Senate Natural Resources Committee

Conference Committee

Hearing Date February 4, 1999

Tape Number	Side A	Side B	Meter #
1	X		3900-6209
1		X	0-3160
1		X	3440-4410
Committee Clerk Signature <i>Lyla A. Zagen</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on SB2432: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SECTION TO CHAPTER 61-32 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO CONSOLIDATION OF WETLANDS; AND TO AMEND AND REENACT SECTION 61-32-03 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO DRAINAGE PERMITS.

SENATOR WANZEK explained the bill was introduced by a local constituent because of the potential production of crops. The intent is to allow an operator of cultivated or irrigated land to consolidate his wetlands on his property as long as the water does not adversely affect downstream lands owned by other landowners.

WES TOSSETT, Farmer, Bottineau Co. testified in support of SB2432. Farmers need flexibility in managing their own resources and they should have the right to combine and consolidate

wetlands. This would not adversely affect neighbors, wildlife and habitat and because there are droughts, if we can drain and consolidate some of these wetlands into a bigger area, it would be there at the bottom of that drought where we can keep that local breeding population.

BRIAN KRAMER, ND Farm Bureau, testified in support of SB2432. This bill is viewed as a management opportunity for farmers so they can manage their land for their economic benefit.

The wetlands can also be managed more productively for the wildlife habitat, and the wetlands are positive in the event of droughts. This is a better situation for the producer and the wildlife.

GARY PUPPE, ND Ass'n of Soil Conservation Districts testified in favor of SB2432. There are approximately 2 million wetland basins in ND and there should be some situations where consolidation should be permissible to provide for farming convenience.

GORDON BISCHOFF remarked that economically water needs to be removed, but drainage needs to be done with control. Standing water is the main contributor to scab, and the economic impact from this has been a disaster to farmers.

SENATOR REDLIN asked if concentrating 3 or 4 spots into 1 will there be less propagation of the scab problem.

GORDON BISCHOFF replied yes, because the yield and quality is poor around these wet areas. If you bring a number of areas together with deep water, 75% of the problem is eliminated. Poor drainage-poor crop go hand in hand together.

SENATOR TRAYNOR asked if neighbors have gone out of business because of this situation and are they diversifying their crops.

GORDON BISCHOFF replied yes, in the Hope-Finley area because of these regulations. The farmers are diversifying their crops.

SENATOR REDLIN asked if rain and humidity are responsible for scab or is sheetwater.

GORDON BISCHOFF replied sheetwater is a contributor.

SENATOR REDLIN asked when you join the sheetwater spots and create more depth, are you enhancing wildlife opportunity.

GORDON BISCHOFF replied yes.

MIKE DWYER, ND Water Users and Irrigation Caucus testified in support of SB2432. We have no problem with consolidating, but our issue is irrigators are willing to mitigate their wetlands and are trying to drain the water off. We need to get rid of all of wetlands on our pivot because in the event of rain, it ends up covering more acres which can cause damage to crops.

SENATOR TRAYNOR asked if an amendment was being suggested.

MIKE DWYER replied no.

SENATOR HEITKAMP asked if the bill passed would there be no net loss and the same amount of wetlands.

MIKE DWYER replied it is not an attempt for no net loss, and had no knowledge about the number of wetlands. We are not trying to consolidate, we are trying to drain.

ARDEN HANER, Douglas, ND representing ND Water Resource Districts, testified in support of SB2432 and this should protect landowners both upstream and downstream.

DENNIS L. JOHNSON submitted written testimony in support of SB2432. (See attached written testimony)

BILL PFEIFER, ND Chapter of the Wildlife Society testified in opposition to SB2432. (See attached testimony)

DALE FRINK, Ass't Engineer testified in opposition to SB2432. This bill allows landowners to consolidate wetlands and limits the drainage of wetlands to areas that will not affect downstream land. This determination can be difficult and should not be made by the landowner doing the draining. A determination of downstream impacts is a part of the current permit process and through this process a more independent review can be made by state and local officials. The current law requires a permit if drainage involves a wetland more than with a watershed of more than 80 acres. This modification could allow landowners to drain wetlands from a much larger watershed. The vast majority of landowner complaints regarding draining restrictions are voiced at federal laws, not state law. We believe a permit should be required so for these reasons, I recommend a DO NOT PASS.

SENATOR TRAYNOR asked what are the ramifications of the violation of the federal laws to the owner.

DALE FRINK replied the major ramifications of federal laws are swampbuster in the farm bill and the potential of losing subsidies. A permit is required on the federal level and is very difficult to get so that is one of the main reasons people don't do more draining. Fines are also a ramification.

SENATOR HEITKAMP asked if the State Engineer be opposed if an amendment were added.

DALE FRINK replied that you can consolidate wetlands but you have to obtain a permit which starts with the Water Resource District and it will receive a review from the State Engineer.

What this bill is doing is allowing you to drain an area larger than 80 acres.

PAUL CRARY, Cass Co. Wildlife Club testified in opposition to SB2432 because a permit should be required and the bill is confusing so it could cause problems between neighbors.

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Senate Natural Resources Committee

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SENATOR CHRISTMANN asked if there was a strong negative impact to the economy and individuals by the wet areas in your affiliation with water cases as an attorney.

PAUL CRARY replied it was a matter of one person draining on another downstream, or thinking it is being drained off his own land but some of it is going downstream.

MIKE DONAHUE, ND Wildlife Federation testified in opposition to SB2432 and are in concurrence with the ND Wildlife Society. We are urging a DO NOT PASS.

MIKE DWYER asked to work with Senator Wanzek to discuss irrigation farmers' concerns regarding this bill.

SENATOR TRAYNOR closed the hearing on SB2432.

COMMITTEE ACTION-February 11, 1999-(Tape 1, Side B-Meter# 3440-4410) After a brief discussion SENATOR HEITKAMP moved for a DO NOT PASS, seconded by SENATOR FISCHER. Roll call vote indicated 3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING.

SENATOR HEITKAMP volunteered to carry the bill.

Date: 2-11-99

Roll Call Vote #:

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

Senate Natural Resources Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number SB2432

Action Taken MOTION DO NOT PASS

Motion Made By Heitkamp Seconded By Fischer

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) 3 No 2

Absent 1

Floor Assignment Sen. Heitkamp

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

REPORT OF STANDING COMMITTEE (410)
February 11, 1999 1:40 p.m.

Module No: SR-28-2592
Carrier: Heitkamp
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2432: Natural Resources Committee (Sen. Traynor, Chairman) recommends DO NOT PASS (3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2432 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SB 2432

Testimony on SB 2432
Senate Natural Resources Committee

Dennis L. Johnson
North Dakota Farmer's Union

Chairman Traynor and Committee Members

I support SB 2432 for the following reasons:

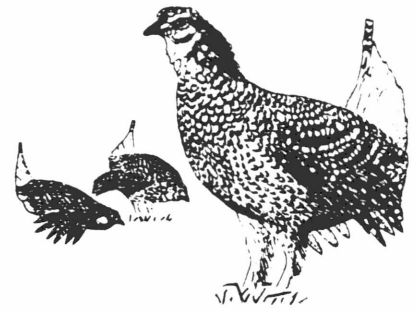
- 1) Wetlands are an economic impact to an agricultural producer.
- 2) The new language in the bill gives the farmer a management tool to maximize production on more acres.
- 3) NDFU has policy stating-landowners should be able to move water within the boundaries of their property without regulation, interference, and casements.
- 4) Wildlife habitat may be enhanced by a greater concentration of water in an area.



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF BILL PFEIFER
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO THE SENATE NATURAL RESOURCE COMMITTEE
ON SB 2432, FEBRUARY 4, 1999**

MR. CHAIRMAN AND COMMITTEE MEMBERS:

I'm Bill Pfeifer speaking on behalf of the North Dakota Chapter of The Wildlife Society. The Wildlife Society opposes SB 2432.

SB 2432 is, by design, going to add confusion to an already complex set of drainage regulations. It will leave a landowner in a quandary as to whether he should adhere to Federal drainage regulations or can he utilize this state legislation which is indifferent to Federal law.

The interpretation of this Bill is very unclear. Page 2, line 11 states that an operator "may consolidate wetlands." Does this mean that the water will remain on the operator's land after draining small wetlands, thereby creating a large wetland?

Page 2, line 12 states that the water will not flood or "adversely affect downstream lands owned by another." This would indicate the water may leave the operator's land.

Would this be a good law for the person downstream who is adversely affected? Who determines if the downstream landowner is adversely affected?

Why should the adversely affected downstream landowner have to prove that he is, in fact, adversely affected?

The pending lawsuit at Devils Lake is the logical culmination of what this Bill would allow. Thousands of acres of flooded farmland in the Devils Lake area are adversely affected by upper basin drainage. This would indicate that the downstream landowner who is adversely affected will have difficulty proving that he is, in deed, adversely affected.

This Bill is so very poorly written and confusing, that The Wildlife Society requests that SB 2432 receive a **DO NOT PASS**.

Thank you for the opportunity for The Wildlife Society to express its opposition to SB 2432.