

2009 SENATE NATURAL RESOURCES

SB 2424

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2424

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8776

Committee Clerk Signature



Minutes:

Senator Lyson opened the hearing on SB 2424, to provide funding for water project features constructed to control aquatic nuisance species. All members were present.

Senator Fischer introduced the bill (see attached testimony #1).

Dale Frink, Chief Engineer-Secretary to the North Dakota State Water Commission. Spoke in opposition to the bill (see attached testimony #2).

Senator Triplett what is your recommended percent?

Dale Frink I have recommended covering the total cost. I don't know if the Water Commission will go along with it so it is tentative.

Senator Lyson asked if the costs were for the pumps.

Dale Frink yes, we just don't do pumping and maintenance costs.

Terry Steinwand, North Dakota Game and Fish Department, spoke in opposition of the bill (see attached testimony #3).

Duaine Ash, representing the North Dakota Sportfishing Congress, spoke in opposition to the bill (see attached testimony #4).

Mike McEnroe, North Dakota Chapter of the Wildlife Society, spoke in opposition to the bill (see attached testimony #5).

Roger Kaseman, North Dakota Wildlife Federation, spoke in opposition to the bill (see attached testimony #6).

Senator Lyson closed the hearing on SB 2424.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2424

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8827

Committee Clerk Signature



Minutes:

Senator Lyson opened the discussion on SB 2424, to provide for the protection of the payment of proceeds from the sale of oil or gas.

Senator Hogue moves a Do Not Pass on SB 2377

Senator Freborg seconds the motion.

The bill received a Do Not Pass on a vote of 7 to 0.

FISCAL NOTE
Requested by Legislative Council
01/28/2009

Bill/Resolution No.: SB 2424

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Senate Bill 2424 assigns financial responsibility for any water project feature built to control aquatic nuisance species to the Game and Fish Department and the State Water Commission.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

We are unable to determine the fiscal impact because we do not know how many future projects would involve aquatic nuisance species, what the required control features would cost, or which entity would be responsible for the cost. This bill would also make either the Game and Fish Department or the State Water Commission responsible for the operations cost, if any, of these control features. The water treatment plant, estimated to cost \$100 million, for the Red River water supply project and the Northwest Area Water Supply water treatment plant at Max, estimated to cost \$17 million are project features that could become state funded with this bill.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	David Laschkewitsch	Agency:	ND State Water Commission
Phone Number:	(701) 328-2750	Date Prepared:	01/30/2009

Date: February 5-09

Roll Call Vote #: 2424

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By Sen. Hogue Seconded By Sen. Freborg

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Sen. Freborg

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

REPORT OF STANDING COMMITTEE (410)
February 5, 2009 4:16 p.m.

Module No: SR-23-1840
Carrier: Freborg
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2424: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2424 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

SB 2424

SB2424

Mr. Chairman, members of the Natural Resources Committee

For the record, my name is Tom Fischer state Senator, District 46, Fargo.

SB 2424 Provides funding to pay for the added costs to a water project that has been identified as having a risk of spreading Aquatic Nuisance species.

This legislation does not ask the Water Commission or Game & Fish to fund the any water project, but only the portion of the project that they claim controls aquatic. I should also include for the operation and maintenance of the added feature.

I serve on the state ANS committee and I feel that the cost of the ANS protection puts an undue burden on the local project sponsors.

I also feel the comments in fiscal note do not reflect reality and should be questioned by the committee.

Mr. Chairman, I would ask the committee to pass this bill. There are others who would like to testify so I thank you and will stand for questions.

#2

TESTIMONY ON SENATE BILL 2424

Senate Natural Resources Committee

**Dale L. Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
North Dakota State Water Commission**

February 5, 2009

Mr. Chairman and members of the Senate Natural Resources Committee, I am Dale Frink, North Dakota State Engineer, and Chief Engineer-Secretary to the North Dakota State Water Commission.

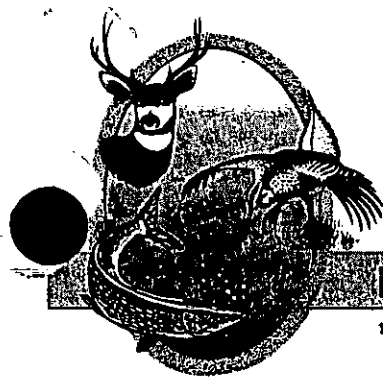
I am appearing before you today regarding Senate Bill 2424.

Senate Bill 2424 was introduced to address concerns with the Michigan spillway project. However, the bill is much broader and would cover any project with a feature related to aquatic nuisance species. The Northwest Area Water Supply project and the Red River Valley Water Supply project both have features related to the transfer of aquatic species with costs in the millions of dollars.

The issue with the Michigan spillway project relates to preventing carp from entering Devils Lake through project features. The North Dakota Game and Fish Department believes carp would be very detrimental to the excellent fishery of Devils Lake. As a result, the State Water Commission has explored alternatives with the local sponsor for reducing the risk of such transfer. The alternative which appears to be the most feasible involves installing larger pumps at an existing project (27 cubic feet per second to 50 cubic feet per second). Senate Bill 2424 would require the State Water Commission and the State Game and Fish Department to pay for the entire added construction costs and all future pumping costs. I have tentatively agreed to increase the State Water Commission's cost share percentage for construction, but I have not agreed to fund future maintenance or operations costs.

The State Water Commission often includes conditions to permits in order to protect our water resources and to protect current water users. For example, last summer, conditions were placed on water permits for oil development in McKenzie county requiring that the wells be drilled to depths of 600 to 1300 feet. This condition was added to protect farm and ranch wells that are around 400 feet deep. This clearly added costs, but it is part of the total project costs. We often require irrigators and others to develop their wells at greater depths.

Senate Bill 2424 is very open-ended and sets a dangerous precedence by charging the State Water Commission for adding conditions to permits or requiring modifications to a project. These modifications may add cost, but they are made to protect the resource we are mandated to manage. I recommend a do not pass on Senate Bill 2424.



"VARIETY IN HUNTING AND FISHING"

NORTH DAKOTA GAME AND FISH DEPARTMENT

100 NORTH BISMARCK EXPRESSWAY BISMARCK, NORTH DAKOTA 58501-5095 PHONE 701-328-6300 FAX 701-328-6352

**TESTIMONY ON SB 2424
North Dakota Game and Fish Department
February 5, 2009**

The North Dakota Game and Fish is opposed to SB 2424. If this bill were to pass it would effectively limit our ability to protect and sustain North Dakota's aquatic resources. Over the years the state has been able to produce a recreational fishery worth hundreds of millions of dollars for the state's economy annually. Much of this has been due to our ability to prevent undesirable aquatic species from entering our waters and thus maintaining production of desirable species. This bill would require those same sportsmen and women whose monies have been used to create and sustain the fisheries they own to pay the bill to protect the resource they value from projects they likely did not sponsor nor from which they will likely receive any benefit.

The aquatic nuisance species (ANS) safeguards are not limited to protecting the recreational fisheries. Across the nation billions of dollars are spent each year on municipal water intakes to remove zebra mussels that foul those intake structures. While we currently do not have zebra mussels in North Dakota, they are only a state away to the east and seemingly every day are found in another water in states to the west of us. Through ANS legislation passed in 2001 and associated activities by the Game and Fish, we hopefully can keep them out of our state. Should they make it to North Dakota, passage of this bill would make it Game and Fish and State Water Commission responsibility to pay for any water project that could potentially move these creatures to another water body via a water project. Would this bill then mean that any treatment plant for the Red River Valley Water supply would need to be funded by Game and Fish and Water Commission if ANS were involved? Would it mean the same for the Northwest Area Water supply system? If this bill were to pass, it's possible that the Department could not afford to pay the immeasurable costs of numerous projects. Reduced comments or lack of the same could greatly increase the chance of new ANS infestations in the state, costing townships, cities, counties and the state untold millions of dollars for remedial measures. Or at the very least, reduce the positive economic impact of our valuable recreational fisheries.

It's typically not acceptable for an individual who receives the benefits of a project on his land to pass on the potential negative impacts and associated costs to his neighbors. Likewise, a local project that benefits primarily the local citizens but causes negative impacts to the region or state should not be passed on to state government to fund. There are numerous examples that provide protection for the public good but are funded by the individual or entity reaping the benefit. The State Health Department regulates the food industry for the public good and the food industry pays the costs to insure human health issues are addressed. The State Historical Society doesn't

pay the cost for archaeological surveys and preservation when new projects are constructed. Rather, these are part of the sponsor's responsibility.

As North Dakota Century Code states "The state has a property interest in all protected wildlife." As such, the Game and Fish Department has the duty and obligation to inform others on the negative impacts of practices, projects, etc. that could facilitate ANS movements. As such, we act in an advisory capacity and make recommendations during a review process. However, without the Department's perspective a segment of the state's economic engine could lose a needed safeguard and the potential would increase for some water projects to negatively impact other regions and even the state's economy.

In summary, project sponsors should be reasonably responsible for the costs of their projects including steps needed to protect the greater public good, or differently stated to prevent public harm. This issue should not be any different. We urge a DO NOT pass recommendation on SB 2424.

North Dakota Sportfishing Congress Testimony

Feb 5, 2009

Senate Bill 2424

Mr. Chairman and members of the committee:

My name is Duaine Ash and I am speaking on behalf of the North Dakota Sportfishing Congress, an organization of fishing clubs from around our great state of North Dakota. Our organization represents fifteen fishing clubs and several hundred individual members.

We polled our clubs and membership and the response was a 100% against the bill. I would like to share some of the responses with you:

- (A) This is crazy, oppose and call you legislators.
- (B) I agree that the G&F should not be responsible at any level for projects it has no say in, whether it should be done or how it should be done even though ANS is their priority. However, SB 2424 only talks about the Game & Fish and State Water Commission will jointly provide funding doesn't tell me who decides what and how the projects get done. Yes, the bill needs fixing or our opposition.
- (C) If the professionals and biologists at the ND Game & Fish oppose this legislation, I believe our club would strongly support them and encourage like support from our legislators.

Untold costs. What are the limits on costs going be? Are the NDG&F and State Water Commission expected to pay the full costs of the projects or is there going be a cost share bases with local entities?

Open up pathways for ANS. Allowing projects to proceed without approval of NDG&F and State Water Commission makes no sense and without proper design would allow the ANS to spread and cost would become prohibitive.

In closing, I know that no one wants ANS to become a problem in the state. The NDG&F and State Water Commission are doing a great job of preventing it now, so let's keep it that way.

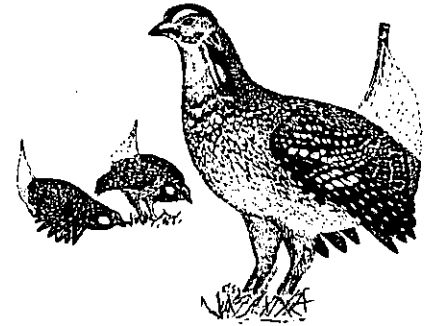
We would encourage a **Do-Not Pass on SB 2424.**



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO SENATE NATURAL RESOURCES COMMITTEE
FEBRUARY 5, 2009**

Chairman Lyson and members of the Committee:

For the record, I am Mike McEnroe speaking on behalf of the North Dakota Chapter of The Wildlife Society.

The Chapter supports the position of the North Dakota Game and Fish Department and the State Water Commission on SB 2424. We oppose holding the GFD and SWC responsible for the costs of features designed to control or prevent the spread of aquatic nuisance species. The impacted parties generally are not held responsible for damages caused by water projects. Depending on the aquatic nuisance species; carp, zebra mussels, or Eurasian water milfoil, the costs of treatment and prevention can be extremely high. The project sponsors are the entity rightly held financially responsible for the costs of aquatic nuisance species control needed in a water project.

In this specific case, we should seriously consider the advisability of a water project that threatens the integrity of the multi-million dollar fishing and tourism industry at Devils Lake.

Thank you for the opportunity to comment on HB 1322.

Roger Kaseman, Representing the North Dakota Wildlife Federation
Testimony Against SB 2424, Aquatic Nuisance Species Funding

This bill seems to mandate spending for Game and Fish and the State Water Commission without action by the legislature on specific projects.

The any expense language is overly broad. I'm sure there are local water project sponsors that can get creative in defining these expenses.

Where will the funding come from?

Which fund?

Where does the funding stop?

This bill needs work, or a good old fashioned political killing.