

2009 SENATE NATURAL RESOURCES

SB 2428

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2428

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 13, 2009

Recorder Job Number: 9463

Committee Clerk Signature



Minutes:

Senator Lyson opened the hearing on SB 2428, relating to appeals in federally constructed flood control or soil conservation service projects.

Senator Olafson, district 10, introduces the bill. This bill is an attempt to address a problem

currently in law. If two water resource districts are unable to come to an agreement on a project that may benefit water resource districts in more than one county the only option they have if they reached a total impasse and are unable to reach an agreement is to go to court.

The purpose of this bill is to try and provide an alternative to that. It is to try and provide an arbitration process to resolve the disagreement without having to go through the expense and time and aggravation of launching into court action to solve the disagreement. If you look at page 2 of the bill that is where the language begins. It does not change any existing language or processes that take place in the negotiations on these types of projects. It adds an additional option that is currently in code. I will walk you through what the bill does starting on page 2. The water resource district and non participating water resource district have to agree to the process of submitting the disagreement to the State Engineer. This process is already in the code in another section relating to wetlands so we used the same language here. If the State Engineer determines that the project benefits lands in a non participating water district

and the project is in the public's interest the State engineer can make an assessment of costs and certify the assessment to the County Auditor or the benefited lines are located. This does not in any way take away the right of either water district to appeal the decision of the State Engineer. Any project that is currently under negotiation or development is not affected by this bill. It only affects the projects that will be developed or negotiated after the effective date of the act.

Senator Schneider have you spoken with the state engineer about this?

Senator Olafson no I have not. This process is already in code so it is not something totally new.

Senator Hogue would you want the state engineer's determination to be accorded any weight by the district court in terms of reviewing what he finds?

Senator Olafson I would envision that the court would not take in to consideration the state engineer's opinion when the render their decision.

Senator Hogue one of the things you see in administrative law is to give the findings of the agencies some weight. The judge has to defer to them unless it's clearly mistaken. I would like to see something in the bill that states the district judge has to provide some deformation to his decision and not just second guess what the engineer has done.

Senator Olafson in my opinion, I think the court should take a fresh look at the situation and not be influenced by this type of action because it is not a court action.

Gary Thompson, water manager, spoke in favor of the bill. I have heard about situations out there and do agree we need to bring these people closer together. I think this is one way to accomplish that.

Senator Triplett if people buy into the process at all then they are deferring to the decision made by the state engineer, which is an arbitration process. The words you used were to bring

people together. The language in the bill asks the state engineer to state who is right and who is wrong.

Gary Thompson I guess arbitration is what their after here. My choice of words may not have been correct.

Bill Hardy, Cavalier Water Resource Board, spoke in favor of the bill (see attached testimony #1).

Mike Dwyer the way the bill is drafted it states that it would be an appeal from the state engineer. The court would therefore have to determine that the state engineer's ruling was arbitrary. It isn't a fresh look; the court would be giving away to the agency.

Senator Hogue I saw that. It doesn't really require the engineer to make any type of findings from which the district court would appeal.

Mike Dwyer I think the whole issue in this statute is in assessments so the engineer has to make a determination if there is a benefit and then he can issue an order that these assessments be levied against the benefiting lands.

Dale Frink, State Engineer with the State Water Commission, spoke in a neutral position to the bill. If this is passed we will do our best to abide by the bill. It is very unusual and a different responsibility for the state engineer. We do get into some regulatory issues, but we have never done anything close to an assessment. It is a binding situation. When it is appealed to district court it is my understanding that we would become the defendant. The Attorney General has some issues with that. It is very hard to get a 2/3 vote unless you can show them what the direct benefits to them are.

Senator Triplett would you be more comfortable if we revised this to make it a more normal administrative law process where the decision would be made by an administrative law judge and you would be brought in to give a recommendation?

Dale Frink I should get our attorney up to talk about that. I understand that we would make the decision whether or not there was a benefit.

Todd Sattler, assistant Attorney General, I think it needs to be clearer. I don't think the engineer would be out of it and the attorney law judge would make the decision. An attorney law judge would not be equipped to be deciding the benefit.

Senator Triplett asked what concerns the Attorney General's Office had.

Todd Sattler I believe they thought that the water districts should be the two parties in court and not the state engineer.

Senator Triplett do you have some suggestions on how this bill should be drafted?

Todd Sattler I suppose it may be appropriate for the state engineer to make some kind of decision about benefit. Perhaps there could be some kind of determination on benefit that would then go back to the districts and they could use that in their attempts to work out a solution.

Senator Triplett asked Dale if he liked the bill. What would you like to see done with the bill?

Dale Frink I am neutral on it. If we get into this it is going to take some time. I am not sure that it would happen very often. First of all you need to have two districts agree that I should look at it. I hope it doesn't come up every day. If it does come up it will require a lot of time. If it becomes a common type of thing I would have to ask for more staff.

Senator Lyson is 90 days enough time?

Dale Frink I think so.

Senator Triplett do you get the assistance from the Attorney General's Office?

Dale Frink replied yes.

Senator Lyson closed the hearing on SB 2428.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2428

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 13, 2009

Recorder Job Number: 9471

Committee Clerk Signature



Minutes:

Senator Lyson opens the discussion on SB 2428.

Senator Triplett I have some issues with this in the sense that it was clear to me that the people who testified to it didn't have a consistent understanding. We heard everything from someone describing it as a mediation and someone describing it as nonbinding arbitration and another as arbitration. I don't know what exactly they are trying to prove and what level they are trying to get a solution at. This does seem like an honest effort to help counties and water districts resolve problems that are out there so I don't have a problem with it going forward if it were fixed up a little.

Senator Hogue I think the concept of the bill is a good idea. To have someone make an independent review before we go off to the court system. In my opinion the state engineer is in a better stand point to make a decision than a district judge. District Judges just don't have the expertise that the state engineer has. If we are going to do this we should make it clear that the state engineer shall make findings a fact and conclusions of law before his decision is appealed to the district court. To me, it doesn't say that in the language. I would propose to add an amendment.

Senator Schneider Would this be treated like an administrative decision?

Senator Hogue yes.

Senator Hogue I move to amend SB 2428.

Senator Triplett seconds the motion.

A voice vote was taken and the motion passes.

Senator Schneider moves a Do Pass as amended.

Senator Triplett seconds the motion.

The bill received a Do Pass as amended on a vote of 7 to 0.

FISCAL NOTE
Requested by Legislative Council
03/06/2009

Amendment to: SB 2428

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			\$11,500		\$11,500	
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 2428 adds language allowing a sponsoring water resource district to appeal the decision of nonparticipating water resource districts to the State Engineer and details the process the State Engineer must follow.

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 do not anticipate that we would receive many of these appeals and have prepared the fiscal note assuming only one appeal per biennium.

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.*

Our estimate is based on agency costs that have been incurred on water permit appeals which have a similar appeal process. The majority of the costs are agency salary costs; a typical appeal uses about 140 hours of agency time. The other large cost is attorney time; again a typical appeal uses about 60 hours of attorney time. These costs total approximately \$11,500 per appeal.

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:	328-2750	Date Prepared:	03/10/2009

Date: Feb 13, 2009

Roll Call Vote #: #1 2428

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number 90473.0202

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By Sen. Hogue Seconded By Sen. Triplett

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 _____

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

Voice vote on ~~amendment~~ only.

Date: Feb 13, 2009

Roll Call Vote #: #2 2428

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. Schneider Seconded By Sen. Triplett

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. Hogue

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

REPORT OF STANDING COMMITTEE

SB 2428: Natural Resources Committee (Sen. Lyson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2428 was placed on the Sixth order on the calendar.

Page 2, line 18, after the underscored period insert "The state engineer shall make written findings of fact and conclusions of law."

Renumber accordingly

2009 HOUSE NATURAL RESOURCES

SB 2428

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2428

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-6-09

Recorder Job Number: 10382

Committee Clerk Signature



Minutes:

Chairman Porter – Open the hearing on SB 2428.

Senator Curtis Olafson – District 10 – See **Attachments # 1**. SB 2428 will provide for a process of arbitration when there are disagreements between water resource districts that they are unable to resolve. Currently if water resource districts are unable to resolve a disagreement over what lands might be benefited for a proposed project their only option is to launch into court action. This process contained in the bill will provide with an alternative to that – an optional process where a state engineer would step in and help arbitrate the disagreement. One of the reasons I think this is a good idea is – judges and or juries are not experts on water issues and what lands might be benefited. The state engineer should be the person with the professional training, the expertise, and the experience to make a reasonable determination as to what lands might be benefited in the case of a disagreement. As far as the legal issues of a disagreement, the state engineer would consult with an attorney from the attorney general's office to get input as to what the law might say specific to the disagreement at hand. The process you see added on page 2 is not a reinvention of the wheel, this is a process that is already elsewhere in the code, I believe it came from the section on wetlands. This type of process is not brand new. The most important part of the bill begins on page 2

line 6 where it spells out that the 2 water resource districts must agree to enter into this process. That's a very important part of my intent with introducing the bill. Both water resource districts need to agree to send this process to the state engineer for his or her review. The reason I say that's important is because if you've got a disagreement between water resource districts there's already a contentious relationship that exists. In the interest of providing good relationships for future projects it is important for both water resource districts to agree to enter into this process rather than have one being able to force it on the other. That's an important part of my intent, that both water resource districts have to agree to enter this process. If they do not then the process stops. This is an optional process for the water resource districts to resolve the disagreement and get a good alternative instead of going to court to get it resolved. If I were a water resource district member and was in this type of disagreement, I would think this would be a great alternative rather than spending the time and money and hassle of going into court. This would be at zero cost to them. I would like now to go into the amendments prepared. See **Attachment # 2**. I would like to submit those amendments for your consideration. It is important to note on line 26 a person agreed by action of the state engineer under this section may appeal the decision of the state engineer to the district court. The other important part of this bill is on page 3 section 2, application of act. Any project that's out there right now and is being negotiated or developed, this will not apply to them. This will only apply to anything that commences in the future. I've also distributed letters of support. See **Attachment # 1**. Questions

Vice Chairman Damschen – Would the state engineer's decision be binding unless one of the boards goes to court?

Sen. Olafson – That is correct.

Rep. DeKrey – We need a Fiscal Note on this.

Chairman Porter – In the Senate was there ever a Fiscal Note asked for?

Sen. Olafson – No – The state engineer testified he was unsure how many cases may end up before him for review. I don't think there's going to be a lot of them. I could be wrong. If there are a lot of them it would prove the need for this bill. It would be far less cost for the citizens to put a fiscal note on this than go to court.

Chairman Porter – We're pushing the state engineer into the arbitration business. In all essence shouldn't the nonparticipating county that refuses to enter a project that was in the end shown they should have been in the project and they refused, shouldn't they be responsible for paying all the costs for the arbitration should they lose?

Sen. Olafson - I hadn't considered that as an option for the bill. I don't know that there is going to be a lot of cost here unless we get a lot of cases. Your point is valid, I can't disagree with that. Perhaps the non participating board should be assessed the cost to the state engineers office.

Rep. Drovdal – Does the state engineer have rules and guidelines to make a reasonable decision in this case, or are they going to make up the administrative rules or set rules or guidelines?

Sen. Olafson – I don't know the answer to that. That may be a question better left to the state engineer.

Vice Chairman Damschen – We would probably need to have a provision that if the state engineer ruled in favor of the non participating the other county pay the expenses.

Sen. Olafson – If you're going to do that, it would seem to be fair to me. It could create some reluctance on the part of the two boards to use this process rather than going into court. If you do that, what would be the advantage to this rather than going to court.

Chairman Porter – If we were going to do that with the fees, to whoever loses pays the fees, then it would only make sense that only one of the water districts would be required to ask for the appeals in the first place rather than both.

Sen. Olafson – I'm very strongly of the opinion that would create problems in future negotiations. That is clearly not my intent. In fact if that would be put into the bill I would have to oppose it. I feel very strongly that both parties need to agree to enter the process.

Chairman Porter – The other option is to go to court.

Sen. Olafson – Yes it is.

Chairman Porter – If they both can't agree to do this process then the only other option is for one county to sue the other.

Sen. Olafson – That is correct. I'm trying to avoid that. I'm trying to do everything we can to encourage this process to happen rather than court action. In this project and in the future, I think that should be our goal to try to keep them out of court action as much as we possibly can.

Chairman Porter – The other 2 requirements in the current law: the 2/3 vote from both the water board and the county commission, how do they hamper the example you have given? Did it lose by a vote, or was it unanimous that the county didn't want to do it from the non participating county, how did the water board vote on that also?

Sen. Olafson – The 2/3 wasn't a close vote in the case I'm thinking of.

Rep. Nottestad – I can see the situation where, if it is simple enough where they both agree on it, there probably isn't a need for this bill. If it is so major it will go to court anyway. What's in the law right now that keeps them from doing the same thing?

Sen. Olafson – If they wanted to enter into some arbitration process right now I would assume they could do that. There's nothing in the law preventing that. Putting this process into the law

spells out how the process would work. It would give water boards some comfort knowing how the process will work.

Rep. Nottestad – How many have gone to court in the last 5 years?

Sen. Olafson – I don't know.

Rep. Keiser – The difference here verses current law, they could engage the state engineer and ask them to mediate and participate in the discussion, but the decision wouldn't be binding. This bill does make it binding unless they go to court. That is the big difference.

Sen. Olafson – You're absolutely right.

Rep. Hofstad – Some of these water disputes goes on for years. That's within a single county. Often times these water projects are projects that by necessity involve other counties. Working with both counties sometimes is very difficult. This is an opportunity to resolve some of those issues that water boards within counties encounter. Questions?

Chairman Porter – Further testimony in support of SB 2428? Any opposition to SB 2428?

Mr. Frink – Did not sign registration sheet – This would give me responsibilities I don't have now. I would have the responsibility of levying a tax on a portion of the land owners. That part of it is very unusual. I am not sure how often it would be used. I work with the water boards a lot and if you have a water board that doesn't think they can get an assessment vote you won't find very many that will agree to push it forward. As far as cost, we could try to come up with something. If we do run into one, it would cost us some money. I don't think there will be very many. In terms of allocating the cost back to the districts, my gut feeling on it, I'd rather just incur the costs. I don't think it is significant in terms of our budget.

Vice Chairman Damschen – I understand the taxation part of it is very irregular, but your office does have the resources to make a qualified determination in most of these cases.

Mr. Fink – It will involve quite a bit of legal work. The attorney general won't be involved. Once you get into hearings and court, that's attorney general. As far as the state water commission or the state engineer making a determination, we can do that.

Rep. Hofstad – I think it is important to understand this is not only assessment projects, but it could be a very very small project that's funded out of your operating budget. Are we not also talking about those kinds of projects? There could be a dispute in regard to a culvert in a road, and that project being funded out of the general fund of ?????????????? Resource district. We could be talking about a project of that size.

Mr. Fink – I hadn't thought of things on that small of scale. Maybe your right, I don't know. This bill actually was developed of a very much larger project. It is totally in Pembina Co. and 2/3 of the water shed is in Cavalier Co. and NRCS did some major reconstruction work on the dam. It's 75% federal and the state water commission is putting in 50% of the non federal and Red River basin is adding some and Pembina Co. is and Cavalier is having a difficult time coming up with theirs through an assessment. I don't know if the \$2.00 listed here would actually do it or not. I was thinking more in terms of larger projects than these smaller projects. I don't know, would a water board get into a dispute between 2 culverts?

Rep. Keiser – I like the concept they are trying to attempt here. The major concern I have with the bill, is you are going to become a clerk. You can come in as an objective providing information. The minute we put you in a position to make a ruling you now, the water commission, creates enemies in water resource districts. This is their fighting between water resource districts and families and counties. We now create enemies for your dept. They can create a lot of problems down the road for your dept.

Mr. Frink – That's some very good points. It does make enemies.

Chairman Porter – All the work as far as the engineering and everything done at the water board level. Then you have elected officials decide not to do something. They give it to you to make the arbitration. Shouldn't it go to the administrative law judges or some other entry judiciary system to clear the air with it.

Mr. Frink – I think if they appeal my decision it would go first to the administrative law judge. I think it would be an administrative hearing first.

Rep. DeKrey – It would change the court case too. The court is not going to now look at the two opposing parties and try to decide where the middle ground is. The court will become – is the state engineer right or not.

Vice Chairman Damschen – We dealt with another amendment to this section of law yesterday. Something came up in the testimony. Maintenance of federally constructed projects. There is going to be some question whether an 8 million dollar dam is maintenance or reconstruction. If an entity applying this section of law is reconstruction within the boundaries of their authority.

Mr. Frink – I'd call it major reconstruction rather than maintenance. The limiting factor here is the \$2.00 an acre. That will limit it. In the case I talked about he's got 75% federal, then state water commission cuts it in half, then the Red River basin throws a little bit in, and then you split it between 2 counties. Maybe you can do it for 2, but in most cases I think that would limit the size of the project.

Vice Chairman Damschen – The situation that sort of sparked this, is a tough determination because you have the dam in question, quite a ways from the county line. Quite a ways downstream. You always think the main benefactor is the person who doesn't have to deal with the water the dam is holding back. Yet you do have land above the dam contributing to the problem it is solving.

Mr. Frink – In this case I think the Cavalier Co. Water Board feels some responsibility. There is some responsibility for the water, and there is some drainage.

Rep. Nottestad – As this goes on, I'm surprised you weren't up earlier on the against portion of it. These situations are so complex to begin with.

Chairman Porter – Further questions? Seeing none we will close the hearing on SB 2428.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2428

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-12-09

Recorder Job Number: 10812

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter – Pull up SB 2428. I had some discussions with Sen. Olafson and he remains fairly adamant that only both water districts should be able to trigger this process. The other discussion we had was who should pay for the decision. Should it be equally shared, the way it's written the state of ND is on the hook for doing that, and then the other question that really has to come up is should this be the job of the state engineer's office or should it be pushed to an ALJ process, or should it be left the same and just go to the county court like it currently does. No one else had any other questions I followed up on, so that's where we are with this particular piece of legislation.

Rep. Keiser – Did we adopt these amendments?

Chairman Porter – We did not. The ones from Senator Olafson?

Rep. Keiser – 0201

Chairman Porter – I'm not sure why they would be titled 0201 when the bill was already amended. There's a set in here that came from the Senate – 0202 – was put on in the senate. Why would there be an 0201 now? That should be something different than 0201. He had presented these to the Senate Natural Resources committee and they didn't put them on.

They had 0202. He didn't draft new ones, he just brought the same one into us. The 0201 is not on this bill. Discussion

Rep. Hofstad – This bill speaks to only statute. The remaining statutes that deal with different kinds of projects. Even if we were to pass this legislation, and I'm not so sure it addresses the issue or solves the problem. We have all kinds of other projects we kind of leave out there now, so I don't think it's good legislation.

Vice Chairman Damschen – I hesitate to oppose it, but one of the things that came to light is if this happens the state engineer is going to alienate one water board in each case. That is a negative aspect of the bill.

Chairman Porter – If they disagree with the state engineer's decision, then it goes to district court, then it's the state of ND against one of the water boards. Not the water board against the water board. Now they are disputing what the state has decided.

Rep. Keiser – I move a Do Not Pass.

Chairman Porter – We have a motion from Rep. Keiser for a Do Not Pass is there a 2nd?

Rep. Hofstad – 2nd.

Chairman Porter – 2nd from Rep. Hofstad. Further discussion?

Rep. Keiser – I do think that the original intent was a legitimate attempt to adjust a real problem, but for all the reasons we've talked about, the state engineer has a very good relationship with every water district and board in the state. You put him in this position and you will alienate somebody. They will not be able to perform their function in the manner they are currently doing it. In addition it puts the state into the mix.

Chairman Porter – Any further discussion? The clerk will call the roll on a Do Not Pass.

Yes 11 No 1 Absent 1 Carrier Clark

Date: 3-12-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2428

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Keiser Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunsakor		
Rep Clark	✓		Rep Keish		✓
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Clark

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

REPORT OF STANDING COMMITTEE (410)
March 12, 2009 12:04 p.m.

Module No: HR-45-4687
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2428, as engrossed: Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO NOT PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING).
Engrossed SB 2428 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2428

Cavalier County Water Resource Board

*901 Third Street, Suite 8
Langdon, ND 58249 Tel. (701-256-2220)*

RE: SENATE BILL NO. 2428

Cavalier County Water Resource District will speak in favor of **Bill No. 2428** as it is written, without any amendments added to it; but do feel it adds another level of bureaucracy, which takes away the incentive to bring the project before the vote of the people.

Olafson, Curtis

From: kent vesterso [kentves@utma.com]
Sent: Thursday, March 05, 2009 8:11 PM
To: Olafson, Curtis
Subject: Re: Support for 2428

Dear Curtis Olafson,

I'm am writing in strong support of SB 2428. I am the chairman of the Towner County Water Board and President of the ND Water Users.

This bill relates to a problem that our county has had in trying to do an assessment project with a neighboring county. In our case, we tried to set up a taxing district in a watershed that is shared by both counties, but the cleanout part of the project was in our county. The adjacent county water board refused to set up the taxing district of the watershed, in spite of the fact that the farmers in the area to be taxed were in full support of paying their share of the taxes on their land in the watershed. Because we had no way of arbitrating, the county in question completely walked away from their responsibility of helping to pay for downstream problems that they should have shared in paying for. In our case, there should have been an appeal process to present our case to. SB 2428 is the first step in accomplishing this goal and I think it is a good step forward. I also support the amendments that have been added.

Sincerely, Kent Vesterso

----- Original Message -----

From: Olafson, Curtis
To: kent vesterso
Sent: Thursday, March 05, 2009 5:34 PM
Subject: Support for 2428

Senator Curtis Olafson
District 10
13041 84th St NE
Edinburg, ND 58227
701-993-8240 Home
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www.senatorolafson.com
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colafson@polarcomm.com

90473.0201
Title.

Prepared by the Legislative Council staff for
Senator Olafson
February 4, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2428

Page 2, line 7, after "agree" insert "to do so"

Page 2, line 13, replace "board's decision" with "board" and replace "erroneous" with "not participating"

Page 2, line 17, replace the first "may" with "shall", after "hearings" insert "in the county in which the sponsoring water resource district is located", replace the second "may" with "upon notice shall", and replace "property" with "all lands"

Renumber accordingly