

**2019 SENATE POLITICAL SUBDIVISIONS COMMITTEE**

**SB 2139**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB2139  
1/10/2019  
Job # 30657

- Subcommittee  
 Conference Committee

Committee Clerk: Mary Jo Wocken

### Explanation or reason for introduction of bill/resolution:

Relating to cost-sharing and duties of the state water commission.

### Minutes:

Written attachment #1 Sen. Luick  
Written attachment #2 Mr. Jack Dwyer  
Written attachment # 3 Photos Chad Engles  
Written attachment #4 Katie Anderson  
Written attachment #5 Dennis Reep  
Written attachment # 6 Justin Johnson

**Chairman Burckhard** opened the hearing on SB2139. All senators are present.

**Senator Luick**, District 25, introduced SB 2139, and also spoke in favor of the bill. **Written attachment #1.**

**Mr. Jack Dwyer**, Executive Secretary for the North Dakota Water Resource Districts Association, and lobbyist on behalf of the ND Water Users as well. **Written attachment #2.** (2:08-4:19)

**Senator J. Lee:** Will there be someone who is testifying who will tell us a bit of the history of what is going on with this, about the fact that it was there and it's not there now and you want it back, that kind of stuff? Will that be part of what somebody might have to tell us about the history of the issue?

**Mr. Jack Dwyer:** replied he will be in committee to follow up any questions at the end.

**Senator J. Lee:** Are we looking for something new or are you looking for something to be restored?

**Mr. Jack Dwyer:** In 2001, Sen. Tom Fischer from Cass County introduced a snagging and clearing process that was passed and in an abbreviated assessment process that allows snagging clearing projects along with that the state has been able to cost share snagging and clearing projects for up to 50% of the cost. So, in 2017, HB 1374 which is a water policy bill, prohibited the state from cost sharing on snagging and clearing projects including of natural water ways. Snagging and clearing has always been for just natural ways, and so HB1374 prohibited the state from cost sharing so we are trying to restore eligibility for snagging and clearing projects.

**Senator J. Lee:** That is exactly what I wanted us to hear.

**Mr. Gary Thompson:** Chairman of the Red River Joint Board (6:50-9:55) Board member of the North Dakota Water Resource Districts Association and also a water manager from Traill County. I think I will start with Traill County. Traill County has been doing this snag and clear for a number of years probably from 2003-04 up until they took the cost share away. I would guess that on the Elm River for instance, I took about six to seven or eight years to finish the whole miller tributary north and south branch, with that 50 cent assessment. With the cost share of the state water commission which Jack alluded to, which we lost, I am going to guess that maybe the amount instead of 50 cents was in that 30 to 35 cent range for the land owners. So it didn't turn out to be the 35 cents. We can go up to the 50 cent assessment but that is as much as we can go. We can go up to the \$100,000 project and that is high as we can go. So with the State Water Commission funding that allowed us to get our county commissioners to be onboard basically to approve these projects prior to that. We never had this ability. Now that the cost share has been taken away, our county commissioners in Traill has said they will not approve it until we can get the cost share back again to help the landowners out there. Because instead of 50 cents it drops it way down to in that 20, to 35 cent range. It doesn't sound like a lot and it really isn't but it helps everybody out within the water shed in taking the debris out. You will see how much of a problem it is in front of the bridges. It helps out the infrastructure for the counties. It takes and alleviates the problem from the county commissioners from their budget.

**Chairman Burckhard:** Why was the cost share money taken away? Was it our tight budget or what was the reason that they took it away?

**Mr. Gary Thompson:** I don't know.

**Senator J. Lee:** I am thinking of cities of too.

**Mr. Gary Thompson:** There is benefit to everybody, cities and every land owner. Example of Mayville (10:54-11:33)

**Senator J. Lee:** I absolutely understand and agree with what you just said. But, is it only the county that can participate in this cost sharing, so for example, if the bridge is entirely within Mayville, does the city of Mayville get involved with this at all or does the county get involved with it only? Not that they can't fix it, because its running through Mayville. Help me sort that out please?

**Mr. Gary Thompson:** The process is through the county commissioners and the water board strictly. The statute says that the county commissioners shall and the water board shall have a hearing and during that hearing you will hear the people who are for and against. I believe that I have only seen two individuals in 16 years that we've done this in Traill that had questions on it. Otherwise it's been a slam dunk. So that's the process. The cities can come in and talk about it during the hearing, but it is strictly through the county commissioners and water board and a 2/3 vote of each one.

**Mr. Chad Engels**, Engineering Consultant to Water Resources, testified in support of SB2139. (13:21) The conversation that has been had already is correct. The purpose of this is to restore the State Water Commission's ability to provide cost and standing claim if they so choose rather than prohibit them from doing that. To answer the question that was asked earlier, why are we here? This was HB1374 in the last session, and it was liable to using 1374 but there were some things that the water community (13:56) had issues with and this is one of them. We let our feelings be known last session and it narrowly passed the Senate 1374, just by a handful of votes. It was because of some of the things that the water community is strongly opposed to. This was one of them. The possible reasons, I remember being very confused by the discussion that some were having. We don't want to see the state participate in maintenance on projects and neither do we. It is our job to build public facilities, we have assessment districts to pay for the maintenance of those things and we have never asked for cost share for maintenance. But yet somehow, rivers got caught up in that this discussion that rivers were man made public projects with assessment districts. We know rivers are just a force of nature that us human beings have to deal with. We would love to see the State Water Commission have the ability once again at their choosing to cost-share snagging and clearing. They can look at their and prioritize the importance of all projects and then make the decision and that is all we are asking for. A little bit about Sen. Anderson's question.

**Senator Larson:** So the State Water Commission you don't have any way to influence where in their priorities your particular project might fall to be able to get that cost share, is that correct?

**Mr. Chad Engels:** Absolutely. The State Water Commission does their priorities. That is required by the Legislature. I forget if its yearly or bi-annual, but, due to the priority list you may have hearings throughout the state in the different basins and that is when we bring our projects forward and we have a chance to discuss them with the minutes along with the other projects and then the State Engineer helps the State Water Commission make that prioritization. A little bit about the importance of snagging and clearing. On a personal note, I've worked with about 10 different water resource districts in the state of ND, and most of them at one time, or another have utilized me, in cleaning and as one of their tourism tool chest for water management for flood risk reduction. That is what we are talking about here. There is a handful who does snagging and cleaning routinely just because of the basin that they're in. The best example that I can give would be the Sheyenne River Basin, and it is an interesting watershed. When you drive through Valley City, of course, you see this big ravine setting, then when you cross the Sheyenne at West Fargo, you see a flat field with an incision called the Sheyenne River. The reason for that was the geology of Lake Agassiz was there for a long period of time and therefore when water was running it wasn't eroding the channel at West Fargo, that was the lake. Meanwhile those eons of erosions or whatever it was over in Valley City and that's why you have the deep ravine. A 100-year flood was 10,000cfs, coming towards Kindred, the channel at Kindred and when you get to the Agassiz beach ridge, with the flat farmland and the Sheyenne River that's has the capacity of just 4000 cfs, so 10,000cfs flowing into a 4000cfs channel and that's why we have the breakouts that you see west of West Fargo where the water is moving north. But that's a 100-year flood. Those are infrequent. The smaller floods in the range of 3000-4000cfs those happen quite frequently. If we don't have the channel capacity to handle those, then we have frequent flooding. What happens is we can see from the photos that I provided, that was my testimony

**(Written attachment #3).** Some of these blockages are quite significant and when you increase the blockages we reduce the capacity of the river, water is breaking out, and it immediately we cross the landscapes and were damaging public roads, the township roads, the county roads, bridges are washing out, culverts are washing out. All kinds of public infrastructures are being damaged on a more frequent basis if the rivers aren't kept free of debris. That's the piece I wanted to explain. (18:47)

**Chairman Burckhard:** It seems like just common sense that you would have to kept the rivers clear and free from that kind of stuff. I know in Minot, a number of people organize groups and actually clean out some of the dead loops in the Mouse River. We have dead loops that are nasty.

**Mr. Chad Engels:** There are all kinds of projects that water resource districts are involved in for the purposes of flood risk reduction and water management. The State Water Commission provides cost share for a number of those. The vast majority, and this is just another tool that we would like to have a partnership with the State Water Commission if we could. We've always had it in the past.

**Senator Kannianen:** Can you give us some idea from the last few years before 2017 like how many projects there are in a given year, how many projects would the water commission be involved in, what are the dollar amounts?

**Mr. Chad Engels:** The number of typical number of snagging and clearing projects within a year? I would estimate about one half dozen each one occurred. Some rivers we need some work in annually but quite a few just on a more infrequent basis.

**Senator Dotzenrod:** Looking at page 5, line 16 and 17, there you've overstruck water conveyance projects and added some new words, assessment drains, rather than mad-made projects and before that you're saying that that you may not that's on line 14, the commission may not provide cost share for the cost of operation, maintenance including removal of materials of assessment drains or other man-made projects. I am just wondering are you making a distinction in this bill that wasn't there 2 years ago? Two years ago when we adopted this I think there was some confusion about like we didn't think it was right to use this water bill to help out those assessments on these man made drains. But I don't know if that distinction between the natural water course and the assessment drain was not clear but it does appear to me that what you're doing in this bill is your making it clear.

**Mr. Chad Engels:** Yes, that is the intent is to help by making this clarification and distinction between a man-made project and a force of nature and hopefully that can get us through the discussion.

**Senator J. Lee:** Just talking about the causes and all of that. I've heard as we've paid attention to flooding in the Red River Basin, the part of the issue for our little bitty Red River is in addition to flowing north into the ice, the river splits under the bridge in Wahpeton where the Bois de Sioux, Otter Tail River come together and then they flow north and there is not much there. But there are 6 tributaries come in and they on the average flow and drop at 3ft per mile, and the Red drops at 1ft per mile. So 6mile tributaries are coming in to add to the problem faster than the water is moving on. So I am just asking if that is correct because I

think that it's very interesting but it seems to me the exacerbates the problem of junk moving through because it isn't necessarily always fast moving water.

**Mr. Chad Engels:** The Red River I think is about 1ft per mile as it flows north and of course the tributaries they barely miss slopes as they come off the beach ridge and they become flatter on top and flatter than the Agassiz's valley. The timing gets to be very complex. One of the issues that we have seen is that some tributaries dumping its tree debris load into the Red River and piling up against the bridge. That gets to be really problematic especially if that happens just north of the community. A lot of the flooding in the Red River Basin you only have to remember is not just on the main stem, it's those tributaries that empty into the Agassiz Basin that where the flooding is really just is bad.

**Senator Anderson:** The State Water Commission already has available finite amount of funds correct? Are those funds usually expended to you in particular biennium or how do you make the balance in which decision about which ones to spend the money on, which ones not?

**Mr. Chad Engels:** The State Water Commission receives applications for cost share from an array of water resource districts across the state for various flood damage reduction projects. They assemble that list annually and prioritization process is had. So the State Water Commission is appointed by the Governor, they review the projects and they do a prioritization so that's what is done now. In the past, it was first come first serve because we had a lot of funds. Since the last biennium it's been much more limited and there has been significant decision making by the State Water Commission in have to go through prioritization and importance of projects. That is a part of the equation (25:57).

**Ms. Katie Andersen (26:03)** One of the seven appointed members of the State Water Commission. (**Written Attachment #4**).

**Chairman Burckhard:** It seems so obvious to me that this is important stuff.

**Ms. Katie Anderson:** Your talking about a lot of natural vegetation that happens along the river and its great habitat for our little organisms and animals that live along the river, and that serves well for the aesthetic value of the river as well but when the trees fall in and become a problem that's when they need to be taken care of.

**Mr. Dennis Reep,** Vice-Chairman Burleigh County Water Resource District and a private consultant as well (32:21-34:46) (**Written attachment #5**) Senator Lee asked a question about cities, and Gary Engels had answered it in the realm of a special assessment district. That is a water resource district activity to set up those special assessment districts. However, I do believe that cities themselves could also apply for this cost share for snagging clearing through this grant program. There is nothing that prohibits them from applying themselves.

**Senator J. Lee:** Would it not in many cases just be beneficial if it was all one project? Obviously the river runs through and so the city and county could. I didn't even know that cities were eligible I guess I thought it needed to be counties and that was part of my question. So in your opinion a city could, but a natural waterway doesn't stop at the city boundary.

**Mr. Dennis Reep:** Yes, your exactly right. In my recollection of history, no city has ever applied for this cost share policy but they could. Your right, and it also would be logical for the Water Board to apply for the cost share and run that whole project through the city community. You would not break it apart.

**Mr. Justin Johnson** (35:56-38:17) Works with the Richland County Water Resource District. **(Written attachment # 6).**

**Senator Anderson:** When we do these projects do we have to get every project approved by the Corp of Engineers when you're working in the river? Do they give blanket approval or is that Water Resource Board decide or how does that work?

**Mr. Justin Johnson:** I know I asked that question to our engineer which is Chad, and he says no. My straight answer is if you remove something from the river it doesn't especially if its' just debris in there, it's not okay if you put something in the river. You can remove it without any permit or what not.

**Mr. Phil Murphy:** (39:11-40:05) North Dakota Soybean Growers, I expect that my comments will fall well in your Shakespeare definition. I simply have to point out what I believe to be obvious which is not. Farmers need roads and they need bridges or their going to fail. This is what happens where many farms are located which is in the flatland but as Dennis said other parts of the state. When water backs up it damages roads, and it damages bridges and they are very expensive to replace. That's all I really wanted to make sure. I just want to make sure that farmers are represented today and heard.

**Mr. Larry Syverson:** (40:21-41:46) I am a soybean grower in Traill County in Hillsboro, and Mayville townships and I pay into an assessment drain which is managed by Mr. Thompson, and his Board, and I am also Executive Secretary of the North Dakota Township Officers Association. I thank Mr. Murphy for taking my thoughts on testimony about we need roads. When the log jams occur we can wipe out bridges and nobody can afford to replace bridges so it would behoove us to clear before it gathers in the bridges. One other thing I wanted to point out is if you remember the last 20 years or so, Dutch Elm disease ravaged the American Elm across our state, now they are standing dead and falling into rivers and adding greatly to the mess. We also have an Oak Wilt which I understand is adding some damage to the oak trees, and on the horizon is the Emerald Ash Boar. So were going to be adding ash trees to our mess too. We'll have to get this program going again.

**Mr. Chad Peterson:** (41:56-42:36) Cass County Commissioner. I also sit on the Board of Directors for the North Dakota County Commissioner Association and on our Legislative committee. In Cass County we have roughly 10% of the bridges in the state. We have over 500 with half are greater than 20 feet, half are less than 20ft. I don't have a lot more to say as I said before that it is important to us as a county and as a state, in support of the bill.

**Senator J. Lee:** Thanks for coming! As you know I live in the Sheyenne Diversion area, so I have paid my special assessments and continue to pay my maintenance fees so if work is going to be done on the Sheyenne River, as it comes through West Fargo, maybe Jack or Dennis or somebody else can answer this too, but I am just curious about if I am in an

assessment district does that mean then that I can't be eligible then for a grant for snagging that would go through the city of West Fargo? I will yield to the engineers.

**Mr. Chad Engels:** S. E. Cass Water Resource District is the project sponsor for snagging and clearing (43:49-) of the Sheyenne River in Cass County. They snag and clear the Sheyenne River on an annual basis both outside of and in the city limits. The SE Cass Water Resource District is more a little different financial situation than the vast majority of water resource districts in the state. They use their general funds, the money they collect from their mill for snagging and clearing and then in the past they've always matched that with the State Water Commission cost share. So they have never set up a special assessment district just for snagging and clearing. They've used their general funds to accomplish those projects. The other water districts don't have that luxury.

**Senator J. Lee:** I am happy to have paid the special assessment but a lot of people and it's only going to get worse. But I wouldn't even object to paying additionally for the thing and paying part of the difference, so my question is whether or not one affects the other. What happens when a private citizen contributes to one and not the other?

**Mr. Chad Engels:** You are in the assessment district for the Sheyenne Diversion and your assessment is paying for the maintenance of the Sheyenne Diversion project. Residents of Cass County also pay a general mill to the water resource districts. It's those monies that are used for snagging and clearing and Cass County has never utilized or the Southeast Cass Water Resource District has never utilized the statute that would allow them to set up yet another special district just for snagging or clearing. They have never done that.

**Senator Dotzenrod:** Kind of following that same line of thinking with Sen. Lee, in this bill we refer to assessment districts in man-made water channels which the diversion would be. It would seem to me that when you have a project that big, it would be good if they could get a cost estimate from the water commission on the me. It is going to be a large undertaking to have to clear out the man-made channel at diversion. It seems to me that I had hoped this bill wouldn't preclude them from being able to get or be eligible to get some help there. I think that would be okay. Is this going to map that out or what?

**Mr. Chad Engels:** Engineer S.E. Cass Water Resource District. The thing that you need to understand that these are separate items. The Sheyenne Diversion has man-made channels as you call them and they are owned by S.E. Cass Water Resource District. They are in an assessment district. That's been established and in place but collects monies for the maintenance of the Sheyenne Diversion. The State Water Commission does not participate nor do we request cost share from maintenance of the Sheyenne Diversion. Public projects are not; the State Water Commission does not fund the maintenance of local projects. The reason for that is because we have maintenance assessment districts that serve that purpose. The State Water Commission does cost share the building of those projects, like a diversion but once their built, the State Water Commission does not participate in the maintenance of them, that's the purpose of the assessment district that's in place.

**Senator J. Lee:** I think I get this and maybe this will be helpful. The diversion is not the river. It's a separate channel and we really have a tree there. My special assessments that I pay and everybody else happily pays takes care of that part but the Sheyenne River which is

reduced by the diversion ditch that is going around so to speak that simplifies it all, the river itself runs through town would be something that would benefit from this snagging and clearing thing. Is that correct?

**Mr. Chad Engels:** Yes, that is correct. The Sheyenne River that you see in West Fargo and in Horace, that is not the diversion project that is absolutely right. That is still just a natural channel and so when we clean and remove debris, we reduce maintenance and cleaning in town in West Fargo. We cannot use the Sheyenne Diversion maintenance district to pay for that. We use our general mill levy to pay for that which has always been matched by the State Water Commission.

**Chairman Burckhard** asked for opposition testimony. No one came forward. He then asked for neutral testimony. No one came forward.

**Chairman Burckhard** closed the hearing on SB2139. He asked the committee if they wanted to do anything on SB2139?

#### **Committee Discussion:**

**Senator Anderson:** Did we get a clear explanation as to why it was taken out of the authority of the State Water Commission?

**Senator Dotzenrod:** That the objection to it was there two years ago was what they did not want the State Water Commission to be contributing to projects that were in assessment districts. Those projects in the maintenance and cleaning were those of the responsibility of those people that were inside that taxing district and not the State Water Commission. They thought there was some confusion here, that there was a mix-up or misunderstanding two years ago that but that isn't those projects that are assessed in those separate taxing districts or can't use water commission money for that. When we made that very clear in this bill, I don't know if it was unclear before, but I remember the floor debate on it two years ago, because I was quite concerned that was part of the argument. But they made it clear in this bill, that you can't, the Water Commission money can't be used in assessment district drains. So this really would apply only to natural water courses and rivers.

**Senator Anderson:** I just listened to Sen. Dotzenrod about that and whose water districts can levy up to four mills, including those natural water courses. That's an assessment district too, right?

**Senator Dotzenrod:** That is correct. **Sen. Anderson:** So they can't, those are the ones that are eligible for the grants. **Sen. Dotzenrod:** No, **Sen. Anderson:** It's just that the ones that are man-made structure like Sen. Lee was talking about they won't do a maintenance on those. Only a natural water course. I think those are the people that are applying for these grants and they can have up to four mills.

**Senator J. Lee:** The Cass Water District has enough money available to do it because of the scope of the project, but these other places that are trying to do this there isn't enough money in four mills to do anything.

**Senator Anderson:** I can't understand why Sen. Dotzenrod, is not correct about the natural water courses because they can have up to four mills to clear those rivers and are eligible for the grant. I think that what I heard.

**Sen. Dotzenrod:** What we heard two years ago was they took this out of the law to get it away from the water commission because they felt the water commission was using State Water Commission monies as grants in man-made assessment district grants. They weren't sure they were doing that so they were going to take that authority away so that is what happened. So what this bill makes clear is that if that is the worry we are going to specifically prohibit it in this bill. That is my understanding.

**Chairman Burckhard:** So, do we want to do something?

**Senator J. Lee:** I move a do pass on SB2139.

**Senator Dotzenrod:** 2<sup>nd</sup>

**Discussion:**

**Senator Anderson:** One thing I didn't hear was from anybody who might get the money if we didn't spend it for this. Maybe someone didn't know about it or didn't think that, because right now its spending all the money that the Water Commission has for projects. Obviously if we spend some for this there is going to be somebody who gets lower on the priority list and doesn't get any.

**Senator J. Lee:** Yes, all this does is make them eligible in a way they always have been. Sen. Tom Fisher put this in the first place in 2001 and it has been used for the projects it was intended for during that time and the Water Commission had a boatload of money they made clear at that time. So it wasn't a real issue. But now particularly because of the reduced income that the state has it means the Water Commission's budget is less as well. So, this doesn't guarantee them anything, it just allows them to be eligible for it in the State Water Commission would be the ones who determine what the value is of any of the projects that come forward. They said it was 5 a year maybe.

**Senator Kannianen:** He did not really answer how much each project costs like when he said the assessments are up to 50 cents and up to \$100,000 a project is that what he is talking about. That's what the State Water Commission will share is up to \$100,000?

**Senator J. Lee:** He didn't say it would be up to \$100,000 and that is an appropriation question too I assume. What it has been is it would be 35-50% matches or 1to 1. So I wasn't really clear on the 35 cents or 50 cents, maybe Sen. Dotzenrod can clarify.

**Senator Kannianen:** The \$100,000 is the maximum.

**Senator Dotzenrod:** I am not sure they that they follow the same priority in every project. I think they take a look at an applicant who comes in who wants the project and they may look at how much local level they have to work and say well we'll give you the grants to help you do this, of \$15,000 in some cases maybe much more. But while I think that's how they do it. More appropriate that this should really get into the question of policies that are followed on a case by case lease within the Water Commission and I guess they would probably have somebody come in and explain that. I don't know just how it works.

**Senator Dotzenrod:** My understanding of what's going on here is all we are doing is simply prohibiting in that you can't use it on an assessment lending projects. It says specifically on page 5 of the bill, line 14,

**Chairman Burckhard:** It says including the Mouse River Basin, the Red River Basin, the James River Basin, the Sheyenne River Basin, and the Tongue Lake Basin.

**Senator Dotzenrod:** I am page 5, line 14 of the bill, "The commission may not provide a cost-share for the for the costs of operation or maintenance, including removal or vegetative materials and sediment, of assessment drains and other man-made projects." So this bill, allows the commission to grant grants in natural course waterways, rivers is a little bit specifically says. I think that was the issue that created this trouble and took it out of; like there was a leak that they were using water commission money to do maintenance on man-made lanes. I think that's where I would call for debate on the floor on the Senate side that that's what I didn't like what they did in taking that authority away if my memory is right on this.

**Chairman Burckhard:** We have a motion for a do-pass on SB2139.

**Roll call vote: 6 Yea, 0 No, 0 Absent**

**Carrier: Senator J. Lee**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB2139  
1/24/2019  
Job # 31431

- Subcommittee  
 Conference Committee

Committee Clerk Signature Mary Jo Wocken

### Explanation or reason for introduction of bill/resolution:

Relating to cost-sharing and duties of the state water commission.

### Minutes:

Written attachment #1,2,3 Sen. Schaible

**Chairman Burckhard** re-opened the hearing on SB2139. We did pass it 6-0 do pass but we've had a lot of people who have other input since then. So I am re-opening the hearing today to those opposed to the bill. Then I will re-open it to those in favor if there is some more testimony to come before us. All senators are present.

**Senator Schaible:** (:57-6:20) I am here to discuss some concerns that I have with 2139. This was supposed to be on the floor last Friday for a vote. I had some concerns with it then and I wasn't ready to speak with it on the floor so I asked them to roll it over. That is my extent to what happened. As it came back Chairman Burckhard informed me that they were going to re-open the hearing and give me chance to speak to it there rather than on the floor. So, I didn't ask to re-open the hearing, but that's what happened. **Written attachment #1.** Senator Schaible referenced the **Handbook for North Dakota Water Managers Written attachment #2, pages 50,13,17,18)** in his testimony. Included in his **Written testimony #3** is the proposed **amendment 19.0506.01003**, which he explained to the committee.

**Chairman Burckhard:** So in simple layman's language what is subsection 1, and subsection 2 mean individually?

**Senator Schaible:** Is snagging and clearing considered a maintenance and in theory should not be included or is considered a project and then would be included. The concern that we discussed in 1374 and during the water topics, you know there's basically two types. If some of that gets done on a regular basis and done locally we think that's maintenance. If it's a big project that needs to be done on a basin type theory where you're effecting up stream and down-stream and what you do here effects somebody else, that's a basin type thing. We think if it's a basin type project it should be also state responsibility and considered for state money. Otherwise if it's not it should be local concern.

**Senator Judy Lee:** I am quite committed to the idea that snagging and clearing at the extent that we see it on the flatland, is a different thing than maintenance. It is not maintenance. So, in a way I can sort of see that it may be possible to move something forward but this is a fairly convoluted process. It isn't that I don't think it should be considered in how it might affect upstream or downstream, but we're talking natural waterways here. I think that is a really important distinction. So, what kind of time and commitment is it going to take on the part of the parties involved to see that a bridge is going to be taken out in Richland County because that river and the trees and junk that is collected there as it moves along. That is more than the adjoining property owners can take care of, and it isn't just that spot. I see a ton of that on the Sheyenne River because the water and the river bank is soft and trees fall into the river and they end up piling up somewhere they shouldn't be. So, how logistically how is this really going to work? Tell me whether or not you were part of the group that saw this as a problem. Try to put your neutral hat on. I appreciate your efforts to try and figure out a way to try solve this.

**Senator Schaible:** This conversation has been on-going. It's not coming up now. My interest was this is that we put a lot of work into 1374, and spent a lot of time with that, and tried to address those issues. I guess part of the concern we have is that some of this stuff that should be done on an annual basis before it gets so bad, that it creates the bridge of the Sheyenne. There is a lot of different things. If you've got a flood stage which causes up and now creates all that to move into the bridge, yes, that's probably a concern which this should effect. But if it's just where snagging and clearing hasn't been done on a regular basis and the maintenance has not been done continuously and now it becomes a bigger problem. Those are kind of the questions and they are very subjected or how they became there, is it big or little branches or one big tree? All that has to be considered. Lots of big trees.

**Senator Dotzenrod:** You know how the Sheyenne when it goes through the National Grasslands there, that the course of the river moves around and it doesn't stay. We've had places where the townships roads they have actually had to abandon the road. They tried to maintain the curve in the road to get so that the road didn't have to be closed, finally they just had to give up cause the river just keeps moving and it slumps in and its fairly tall bank from the top where the edge is down to where its moving. So it seems like the base course is, I don't know how you would go about stabilizing banks on that kind of ground where the river is just over a period of time you'll see it move each year and its starting to take those oxbows and they spread and get bigger and bigger and pretty soon the road is gone. I don't know just how and it's probably not even smart to try to stabilize the river bank. Usually the river will win out. Any stabilization that we've seen the river once it decides its moving you're going to have an awful hard time stopping it. I don't know if that happens on all those rivers or if it just in the area I am familiar with, but I think that this appears to be a kind of a simple straight forward amendment. But I think trying to accomplish this bank stabilization in situations where I don't know if it is wise to try to stabilize banks when it's pretty clear the river just decided it's going to move.

**Senator Anderson:** You must have some similar problems on the Knife and the Cannonball River down in your country. How is that usually handled?

**Senator Schaible:** It doesn't rain in my neck of the woods very often. But like I said, there again we are creating state wide water policy for the state. So this should be consistent where

you have the need for this. That was the theory behind 1374 that we were doing things on a basin basis and trying to create a plan that was doable for everybody. So I don't live in the Sheyenne and I don't get flooded every other year, so it is a little different story, but like I said it was just the work that was done in the last two interims and also serving on Energy and Natural Resources it just seems like this problem keeps coming back forth. We are trying to create a system where it's. The biggest thing is who should pay for it? Snagging and clearing need to be done? Absolutely, it is just who is responsible way is and who should pay for it.

**Senator Diane Larson:** I know that when we had this discussion the first time, Senator Anderson had asked a question about if we are putting this into the State Water Commission then how will that affect other building not maintenance types of projects that are in the queue. Is this going to be something that is going prohibit some things that otherwise would. Do you know where that balance is or if the State Water Commission can absorb this pretty easily or what?

**Senator Schaible:** I guess how to fix other things in the queue. I mean they are done by water by buckets in different areas. That's not my area of expertise. But that is like I said the work was done on it that we create a different funding source with the buckets which is not my area, but we also create changes to the State Water Commission which we spend a lot of time on to try to address these concerns so that whose responsibility is it, and to make sure that the responsibility was the right one.

**Senator Judy Lee:** I think this is a more-simple issue than some of this conversation is. The issue is that snagging and clearing were always on the list of projects to be considered by the State Water Commission, always since it was born until two years ago when there was an effort to take it out. So now we're looking at what has happened in the last two years that did not permit those projects to be considered by the Water Commission when they are distributing their dollars. All we are looking at here it seems to me on the original bill is the opportunity to be considered again. If it isn't a priority of the State Water Commission, it's not going to get funded. So, I think it's important that we not stick beans up the babies nose and try to make this a whole lot more complicated that what it really is. But rather, see what the real charge is and we need something and maybe we do, need something as complicated as this but I would want to visit with my local people about this before I would vote on this.

**Chairman Burckhard** asked for anyone else opposed to 2139. Last time we had many that were in favor of including Senator Luick, Jack Dwyer, Gary Thompson, Chad Engels, Katie Anderson, Dennis Reep, Justin Johnson, Phil Murphy, Chad Peterson. Is there any reason to step forward be in favor of this bill? Anyone want to step up and talk about the amendment?

**Mr. Jack Dwyer:** Executive Secretary of the ND Water Resource Districts Associations. (17:03-18:15) We had a positive hearing on 2139, when we heard it the first time. Snagging and clearing is critical for the state and our membership believes that the state should incentivizes snagging and clearing projects by cost sharing. I have discussed this proposal with Rep. Schmidt, and this is the first time that I've seen this amendment. I guess there would be some concern about more administration. Right now, snagging and clearing projects are done at a local level. A lot of resource boards are of course subject to political boundaries not watershed boundaries. So, I am not sure if there would be concern with my membership unless I ran it up the flagpole.

**Senator Diane Larson:** Can you explain to me a little bit more about what clearing means? I mean we see these pictures of these big logs, is that all it does is just take the big logs out of the way? What else is involved in the snagging and clearing?

**Mr. Jack Dwyer:** I will defer this question to Dennis Reef. That would be appropriate.

**Mr. Dennis Reef:** Water Resource District Association Board of Directors. Yes, (18:53) that is a primary effort as removing fallen trees and fallen brush. But it really can entail other debris whatever that may be. Any type of obstacle that is going effect the conveyance of the natural water course and then also more importantly impact infrastructure. That would be bridges, culverts, township roads, county roads.

**Senator Diane Larson:** Because it seems like I am looking at these big trees and that seems like a big problem, but it does seem more like maintenance is like bottles and cans and weeds are growing into the water. That seems more like maintenance. Do you know what I mean? I guess I am not exactly sure what it is. I can see almost separating out the purpose of being able to go to the State Water Commission for. I see stuff like this in front of the bridge and I think that is pretty alarming. But maybe if that's really not what this is going to address, it's going to address things that I would think in my mind would be more maintenance. That's where the divide is, I don't know.

**Mr. Dennis Reef:** Let me clarify my response. That is the primary driver what you are seeing in that picture is the primary driver. If there is an opportunity to be out there in a snagging and clearing project obviously they are going to remove other debris as necessary as they encounter it. They are already out there. It's just cost effective to do it in that aspect. Again that is the primary driver is that type of debris.

**Chairman Burckhard:** This water thing seems very complicated to me and it doesn't seem like it should be very complicated. Tell me the difference between maintenance and what qualifies as a project when it's still debris in the river?

**Mr. Dennis Reef:** Maintenance, and I am an engineer, to me means something that you maintain that has been installed by man. A project and it's differing where you have natural debris in the river to me, that's more of a project.

**Chairman Burckhard:** Which one has the open checkbook?

**Mr. Dennis Reef:** That is my first impression of maintenance or project.

**Senator Judy Lee:** It was brought up about if we did this stuff annually then we wouldn't have to do it in such a big project. I am thinking at least in my part of the state, there would be some modest things that would be taken care of but that ordinarily that some event that happens that would cause this. I may be wrong so I am asking you cause you're the engineer. So what is the difference between fullness and branches out, and the kind of work that we saw in these photos that is there entirely different.

**Mr. Dennis Reef:** Right. Annually is maybe in my mind would be almost to frequent because there are parts of the project you need to have access to the river and to get access to the river you often have to cross private property. This can be problematic for a lot of Resource Boards. So, regularly is probably in my mind a better term to use rather than annually. But again regularly will prevent the larger issues that can occur when you do have a big flow event where you have these trees that are dead or are dying that have not entered the water course, but as the water rises in these bigger flood events can enter course and cause damages to the infrastructure downstream.

**Senator Anderson:** The amendment seems to speak to asking one, to have maybe from one of the river to the other a Joint Water Resources District that would talk about how the whole thing is managed. Then if that joint board then decided that there should be some regulator or whatever work in there, then they can go to the Water Commission and get the money to do it. Do you see that as practical and of course this also allows them then the joint district to levy two mills and collect some of their own money for that? So what do you think about those two options?

**Mr. Dennis Reef:** If the political infrastructure is already in place I think that is a workable solution. If the joint board already exists as a joint powers board in certain instances, this is an extreme example Burleigh and Morton we do not have a Joint Powers agreement. We don't have a Joint Board and if so we would have to administer that as a joint entity we would have to go through the process of forming that joint board which is not always a smooth or pleasant process and it creates additional work. For that reason, I would say it would be easier to administer as boards exist right now on the political divisions. But, if the Joint Boards in place serves already exists, to me that would be logical to administer it that way as well.

**Senator Diane Larson:** I am still just trying to picture this. (Ex.cited. 24:52) To me it's like I don't know then across the state if there are Water Resource Districts that are not just doing their regular maintenance and leaving it until it's a major project or if they do regular maintenance and never-the-less major projects come along, and I am not sure if that's evaluated in the decision. Do you know what I am getting at?

**Mr. Dennis Reef:** Again I think it's an individual perspective. You have different people that manage their cars and rivers different ways and so. I think having the option to the State Water Commission to provide that cost-share assistance is a good avenue. Again it can be prioritized through the State Water Commission themselves. One thing I might add is that in the big picture these snagging and clearing projects are very minute percentage of the entire state water commission budget.

**Senator Dotzenrod:** I was going to ask Dennis. You know the terms that are in the amendment are surface drainage works, bank stabilization, snagging and clearing of the water course. Sometimes these snagging and cleaning of the river are there precipitated by a flood, a big flood event. Sometimes when that event is over the river is no longer where it ways, 10 years earlier. As you might have maintained a river course or you might have cleaned stuff up and to some degree that kind of detracts from the ability to have bank stabilization. A lot of bank stabilization has to do with trying to get some roots and growth and cover in that area, to keep the bank from eroding and then you get a flood event and now the river is no longer where it was, and it seems to me you could spend time trying to

maintain and then find out that there is a lot of stuff in there that got pulled into the river because the river moved. I think it's hard to do bank stabilization and keep the thing maintained and clear.

**Mr. Dennis Reef:** The snagging and clearing projects are there not to necessarily remove viable vegetation that are still alive and flourishing. It's more to pick out the dying or dead limbs and trees that have the ability to float and to move downstream and cause other issues downstream. So I am not sure that answers your question or addresses what you're getting at.

**Senator Dotzenrod:** I am thinking that some of those big logs in that river they were not very close to the river until the flood came. Now the river has moved and all of those things got pulled in to the river.

**Mr. Dennis Reef:** yes, the situation you prescribed there is not necessarily part of the mainstream effort of snagging and clearing. It is kind of an out-lire where.

**Senator Judy Lee:** What if I am 3 miles from the river and I am not getting any benefit, do I have to pay the 2 mills? I am just trying to screw everything up right now?

**Chairman Burckhard:** That goes with the tennis court question? I am closing this rehearing. Thank you for allowing me to consider having a rehearing. I am not sure I accomplished anything by doing that. He closed the hearing.

# 2019 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB2139  
1/25/2019  
Job # 31479

- Subcommittee  
 Conference Committee

Committee Clerk Signature Mary Jo Wocken

### Explanation or reason for introduction of bill/resolution:

Relating to cost-sharing and duties of the State Water Commission

### Minutes:

**Chairman Burckhard** asked the committee for a follow up discussion on SB2139.

**Senator Kannianen:** I just remember last year and I don't remember the bill number, but it came from the House the water bill, right before crossover and they had the water tax they attached on there. We ended up taking that off on our side, but never-the-less I just remember watching the video of that bill being carried on the House side and the gentleman that carried that bill was of course the same gentleman that wanted this bill referred back to committee. I remember him commenting how the reason given for wanting to put a tax on the water is because it is state owned or the state owns and has control of the water. We should have the right to tax and so forth. I guess along those same lines, what Senator Dotzenrod was saying, when the water and the waterways are state controlled, state owned I just don't see a reason why there shouldn't be cost-sharing. Even with the cost-share of the local property owners are still sharing in the burden. To me it makes sense to have a cost-sharing option anyway in place.

**Chairman Burckhard:** Some of the debate was whether it was maintenance or project. Right. I understand what maintenance is, but this is an issue that they don't seem to agree on.

**Senator Judy Lee:** I am sorry I should know better. This really isn't even about this. This not about philosophy. We're back to tap dancing around what the central issue is and the people who are trying to make decisions about this. I had asked yesterday and I haven't gotten a response, except for one from a local person who has been very involved with watching water issues. In fact, it's his business he is an engineer and works with them all over the state. The comment was that the prime sponsor keeps pushing his federal ways and there is concern about his actual knowledge of water management. There is more of a "I want to take care of it this way". It's become even more difficult than Senator Dotzenrod may not agree with me and I will be happy to hear what you have to say, but, I think because of the change in the water commission make-up it isn't that we didn't need some changes there. I think probably

everybody agrees there, but everybody is pretty much new now. We don't have anybody from really southeast ND. Our basin is represented by somebody from Valley City which is fine, and very knowledgeable about water. But it's different when you're driving into a valley where the water comes down like it does in Valley City and in the Red River Valley which is part of the same basin, and so the expertise about what's happening, there is no sense of history. It's been 22 years since 1997 when we had the first of the last terrible floods. The other was in 2009. When your laying 3million sandbags and you're counting on college and junior high and high school students to help you bail this out, and people and millions of dollars in lost business because they were closed. What people don't get because we forget about it including people who live in my home community, is that happens now and then. Again, 12 years later, in 1997 and 2009 mobilized all these young people again. If it weren't for the colleges Fargo would have been under water in a heartbeat. The Mayor of Fargo, Bruce Furness who was so good at hiring good people and enabling them to do their work. The engineering crew and the public works crew were just magnificent. The Mayor was called the "Bravest Man in North Dakota" because he had two governors on the wrong side of the secondary dike, because both Sinner and Schaeffer live in the same area of south Fargo and the secondary dike was placed right outside their neighborhood. If the last 2 inches had gone, they would've been flooded as well. So, Minot has had terrible flood events. I am not telling you anything you don't already know. Those kinds of things that we saw in those pictures are not an uncommon thing. This amendment is really, when looked at by the person who was visiting with me about this in email is really an effort to make this more like a federal water project where you have to do all of these kinds of things. It will take two years to establish some of these. What it all boils down to really is I think, all we are asking to do is continue the way it was before where it was available to the Water Commission to consider. We're not telling them they have to do it. Why would we not want to allow it to be on the list so that the Water Commission could decide whether or not it was important for the health and safety of the people in the region affected? Because there are parts of the Sheyenne for example that aren't going to have any problem there. Farther up the loop, but they may be troublesome perhaps to some of your neighbors and some to mine. It's the same in every part of the state and every watershed.

**Senator Dotzenrod:** A lot of what we are seeing in our pictures we got and the testimony is that this damage that is done by not having this clean-out done or the sort of crisis that develops when it has to do with these large amount of debris coming down the river and pushing against a bridge. That's really where our roadways and maybe other public infrastructure but what really creates an emergency that needs some attention and costs some money is this clean out that is trying to protect these assets. To my way of thinking, we already have the property owners involved because the grant from the Water Commission isn't going to pay for the whole thing. It will help cost share it. The locals still have it. Since the infrastructure that we're protecting is in most cases owned by the state, a state bridge, a state highway, and so that was the question I was asking the committee. I think in some of these unique situations that we're seeing across the eastern part of the state is the infrastructure that is at risk here is a state-owned asset. Normally we don't assess local people to take care of state highways or state bridges. Normally we put that obligation to protect that on the state. We already have even with the grants there is a local participation to make sure that we deal with that. They happen usually because of single dramatic event. Some sort of unusual single event, maybe over several days, but a lot of water comes all at once and then we have to react to that. It is going to cost quite a bit of money, and it seems

right to me that there is some cost-sharing your protecting the state asset to have the state have some participation in reacting and getting this fixed. You clean the stuff around it and get that bridge so it's not going to get hurt, but then you usually find there's other debris then that isn't just maybe. Before the project is done they may have to go back a mile or so to work on cleaning to get it right. I think generally these events. The clean-up projects we're talking about generally are kind of localized. They are not distributed evenly across the watershed. There is a key piece of infrastructure that's being hurt. That's why I would like to see the state step up here and say, we'll make this eligible. It doesn't mean we're going to provide the grant, but they can go into the pool of those projects that get looked it.

**Senator Judy Lee:** I found the message which says, the original one from the gentleman at home who is the water engineer. He says, "Thanks for passing this along. It is a terrible amendment. I am paraphrasing the first part here. They keep trying to turn the development and construction of local water projects, water conveyance projects into federal style approval systems. There presently exists statutory authority for county water resource districts to create joint water resource districts for the purpose of developing and implementing water projects when issues and benefits cost county lines." So as Senator Dotzenrod talked about as well. They can do that but this is local and it's not the same thing as water sheds wide.

**Chairman Burckhard:** So why was cost-sharing never taken away? Did we ever learn that?

**Senator Judy Lee:** Off the record I will tell you.

**Senator Dotzenrod:** Two years ago when this came on to the floor of the Senate Senator Gary Lee was carrying the appropriations, the budget for the Water Commission. He covered this in there. I remember standing up and asking him and pointed out some situations where these projects can get expensive and they have to be done quickly sometimes. Why would you take that out, and his answer was, was an answer that I didn't realize at the time but really wasn't the right answer because he referred to the man made that if there is a project that the maintenance on that, these things that we've specifically excluded in this bill, was part of his answer. That is your constructing a project and you're in an assessment district and part of that normal operation is that the users of that system have to pay for that maintenance. That was the answer he gave. Well I wasn't aware at the time, that there is a really big distinction here that we're making in this bill. We are separating out those man-made assessment districts from the natural waterways. So, this bill makes it clear. The answer he gave me two years ago about it, it seemed probably to convince the Senate that it was probably the right thing. So, it went through on the floor of the Senate. But I didn't catch it at the time that this distinction that we probably should have made more clear in our debate at that time.

**Senator Anderson:** I think Senator Dotzenrod and Senator Kannianen made the most compelling arguments here is that assets that we are protecting might be the county or the state's assets. We aren't necessarily just the assets of where the river runs or of the water districts. They are also partly the assets the state. I think a case can be made that the state ought to kick in to that if only the local property owners is the ones that is assessed for that. You know it's true that they might get flooded or whatever else but also these state assets or county assets are also in there and part of them is for the protection of them. Now when you

talk about floods, I am not sure that you wouldn't want to plug up all of these little rivers because then the water wouldn't get down to Fargo quite as quick. It would save back on the other land. I think that's really the compelling argument here to say, that in these projects where nothing has been constructed it's not the, the district hasn't been established to pay for the maintenance it has that these projects based on the Water Commission's judgment and they can share in the cost.

**Senator Dotzenrod:** I hope people that hear this debate on the floor of the Senate would understand that we're not asking the state to pay the whole bill. This is really a cost sharing thing where there is going to be some local participation yet in virtually all of these cases.

**Senator Judy Lee:** I think we've heard a lot of detail in the committee and that's been very useful. But I think keeping it simple on the floor to the points that all the gentlemen here have made is really important. Because for the people who are listening there is a big difference between a man-made project and a natural waterway. We're talking "god-made" or "man-made", is pretty much what it amounts to here. More relating means to our natural waterways and in the discussion about which I hope you will bring up on the floor, Senator Kannianen, the fact that there are other protective resources there as well. But the other thing really of course is that this has been, that they were eligible from 2001 until last session. We may have misunderstood how it was going to work when we adopted this. As we think about how to present this, I think keeping it as simple as possible is going to be really important, but focusing on those kinds of things that are easier for the smart people with whom we sit every day to know because we have had the benefit of additional information on this. To make this more complicated than what it needs to be is not necessarily going to be helpful unless somebody asks questions and then obviously, the carrier will answer it. I don't see a reason and I am glad we had a chance to talk about it again, but I don't see any reason to recall the bill for reconsideration.

**Chairman Burckhard:** We passed it once, 6-0.

**Senator Judy Lee:** We can leave it there. We just talked about it again.

**Chairman Burckhard:** We don't need a motion to do that, we can just leave it as it was.

**Senator Anderson:** I think you need to ask that question because we did bring it back for a re-hearing. So I am not sure how they look at that original motion stands since we did bring it back and moved to say that we are going to reconsider it in this committee. We don't have to act on it again. But I am not sure.

**Chairman Burckhard:** I will look into it. So the consensus is we might just leave it 6-0 like do pass 6-0. I think Senator Lee we had you down as the carrier.

**Senator Judy Lee:** I thought Senator Dotzenrod was the carrier.

**Senator Dotzenrod:** I don't recall that. I think you've been the assigned carrier on it.

**Senator Kannianen:** I wrote down Senator Lee.

**Senator Judy Lee:** Did you really? I am happy to do it. But if somebody else is perceived as a more successful carrier. I always like to have the person ask the question that is most likely to get the answer that we want.

**Senator Anderson:** You heard then that Senator Johnson, and we can always speak out on it if you want too.

**Senator Judy Lee:** I am not unwilling to do it. I just don't want to have it be a situation that somebody thinks that it would have been better if it was someone who leans a little bit more towards the neutral spot than I do. I care about this, so it's okay.

**Chairman Burckhard:** So one of the water smart people in the room is also Senator Dwyer. Can you speak on it? He's not on the committee and he wasn't in the hearing. I know that he is going to ask me.

**Senator Judy Lee:** I know and if he wishes to speak I know that he said that he's reluctant to kind of get engaged in this because he doesn't want to be perceived as a lobbyist and not a senator. So I think just leave it up to him, if he wants to step up and clarify something I hope that he will, but I respect his concern about that when he stood in front of the legislature for allowing time.

**Chairman Burckhard:** This could generate a lot of debate.

**Senator Judy Lee:** It could. But if we keep it simple there may be less.

**Chairman Burckhard:** We could keep it simple.

**Senator Dotzenrod:** I think the Parliamentary question that you as a chairman would be asking upstairs is if there is no motion made in the committee to re-consider, then the status of the bill is what?

**Chairman Burckhard: Do Pass 6-0.**

**Senator Dotzenrod:** I think the status of the bill is that it's stands as a bill that has the vote of the committee. That's my understanding.

**Senator Judy Lee:** I hope your right.

**Chairman Burckhard:** We're done with that, 2139. I will do a little follow-up on that.

# 2019 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB2139  
1/31/2019  
Job # 31860

- Subcommittee  
 Conference Committee

Committee Clerk Signature Mary Jo Wocken

### Explanation or reason for introduction of bill/resolution:

Relating to cost-sharing and duties of the State Water Commission

### Minutes:

**Chairman Burckhard** asked the committee to come together for discussion on SB2139 with all senators present.

**Chairman Burckhard:** That is the snagging and clearing bill. We had passed 6-0 do pass. Then we re-opened the hearing for some other testimony. I've been informed by John Bjornson from Legislative Council that if any of the members of the committee wants to reconsider that then we would have to revote. If nobody on the committee want to reconsider that then we can stay with the 6-0 do pass, so let's have that discussion about if there is anybody that wants to reconsider or re-vote.

**Senator Anderson:** It seems to me we did vote to reconsider it, but I could be wrong. If we didn't I am going with it.

**Senator Judy Lee:** If were supposed to reconsider was the objective.

**Senator Anderson:** By us? **Senator Judy Lee:** By us.

**Chairman Burckhard:** So then we can just leave it as was, and we can bring it to the floor.

**Senator Judy Lee:** Mary Jo should look on January 24, because I think I erred in what I wrote about this. I don't want to leave it wrong.

**Senator Anderson:** A vote to reconsider was rejected. It would stay as it was, Do pass 6-0.

**Senator Judy Lee:** But then I got another note on the bill.

**Chairman Burckhard:** Senator Anderson you heard that Senator Johnson, can always speak out on it if you want to. I am not unwilling to do. **Senator Judy Lee:** We don't have a Senator Johnson.

**Chairman Burckhard:** Reading through the minutes, I don't think we reconsidered the bill.

**Senator Judy Lee:** I think I wrote that on the wrong bill. So never mind.

**Chairman Burckhard:** So we said Do Pass 6-0.

**Senator Dotzenrod:** I think the status of the bill is that it stands as a bill that has the vote of the committee.

**Chairman Burckhard:** That is my understanding. That is what John Bjornson said. If you are still at the vote and there is nobody on the committee that wants it to be reconsidered, on the committee 6-0 do pass, as is.

**Chairman Burckhard:** Committee is there a vote to reconsider? Is there a motion to reconsider on SB2139? I don't see any of that. So it will stay as it was 6-0 do pass with **Senator Judy Lee as the carrier.**

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2139**

Senate Political Subdivisions \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Sen. Judy Lee    Seconded By Sen. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	X		Sen. Jim Dotzenrod	X	
Vice chair Howard Anderson	X				
Sen. Diane Larson	X				
Sen. Judy Lee	X				
Sen. Jordan Kannianen	X				

Total (Yes) 6    No 0

Absent 0

Floor Assignment Sen. Judy Lee

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

**REPORT OF STANDING COMMITTEE**

**SB 2139: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2139 was placed on the Eleventh order on the calendar.**

**REPORT OF STANDING COMMITTEE**

**SB 2139: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2139 was placed on the Eleventh order on the calendar.

**2019 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2139**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 2139

3/1/2019

33063

Subcommittee

Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to cost sharing and duties of the state water commission

### Minutes:

Attachment 1,2,3,4,5,6

**Chairman Porter:** opened the hearing on SB 2139.

**Jack Dwyer,** Executive Secretary, ND Water Resource Districts Association and ND Water Users: presented **Attachment 1.**

**Rep. Keiser:** When the law changed, what number of these projects did not occur because of the law change?

**Dwyer:** I can't answer that.

4:00

**Rep. Anderson:** What's the definition of a natural water way?

**Dwyer:** It's in statute, I think there has to be defined banks. The State Water Commission can do a water course determination upon request of a local water board. They go through a set of criteria.

**Chairman Porter:** One of the issues that comes up inside of water resource boards as their boundaries overlap in a stream or river, one chooses to do and one chooses not to do a project, the flows increase into the other jurisdictional boundaries, how do we make sure we aren't causing problems as this snagging and clearing continues to flow through the boundaries?

**Dwyer:** Most water boards where the clearing projects are done, are very active and take these on as arises. Snagging and clearing projects can be isolated. Regarding use of joint boards, I wouldn't think that's necessary in most cases which are relatively small projects.

7:00

**Katie Hemmer, State Water Commission:** presented **Attachment 2.**

**Chairman Porter:** do you know what the cost was for the project you're referring to?

10:30

**Hemmer:** \$250k snagging and clearing project and was a 50/50 grant. Jamestown's share was \$125,000. The share came out of the City of Jamestown general fund. In our original application we partnered with the Water Resource District and Stutsman County. As the project moved forward into the grant as opposed to snagging and clearing, it did become a City of Jamestown project.

**Rep. Anderson:** If they had to clear the Mouse River north of Towner, it'd consume half of the state resource trust fund. I think it's going to be a big issue.

**Rep. Roers Jones:** What is the CDBG grant and where do the funds come from?

**Hemmer:** Community Development Block Grant, out of the governor's discretionary fund.

12:30

**Dennis Reep,** board member of ND Water Resource Districts Association, ND Water Users Association, Burleigh County Water Resource District Association, also a private consultant: presented **Attachment 3**

13:40

**Rep. Mitskog:** comment on activity of projects prior to 2017 HB 1374 legislation and what's happened the last two years, the number of projects across the state for snagging and clearing.

**Reep:** I don't have any data on the activity prior to and after the 2017 legislation. I just know it's an important option for water resource districts to proactively manage the water resources to prevent damages to transportation facilities, prevent erosion of banks, maintain hydraulic capacity of the channels so they can flow properly during flood events.

14:53

**Chad Engels,** West Fargo ND: in strong support of SB 2139. I'm a registered professional engineer working with water resource boards. Presented **Attachment #4.**

**Rep. Keiser:** By restoring this, we create a problem. State Water Commission has a certain amount of money, and determines which projects. If this bill were to pass, many requests will come in and requests millions (in total, not individually). Should this be a separate fund managed by the Water Commission, that's reviewed every 2 years?

**Engels:** We all appreciate the budget challenges. I know the people I work with respect the water commission's challenges of prioritizing the limited funds they have available and we accept their decisions. We're simply saying, to allow the water commission to make that determination.

**Gary Thompson,** chairman of the Red River Joint Water Resource District: presented **Attachment 5.**

32:51

**Chairman Porter:** What is your operating budget, Trail County, ND?

**Thompson:** 4 mills is the max you can assess, approximately \$50,000 per mill, but we don't use that for the snag and clear. That \$200,00 is for our operation of the board. It pays for the water board members, handling complaints, tile projects we're only allowed to charge \$150, our vouchers, secretary, technician, engineers fees, legal counsel. When it comes to snag and clear, we are able

to assess up to 50 cents an acre in that Goose River watershed area, published ad for hearing. County Commissioners have to approve the project at 2/3 vote along with the water resource districts at a 2/3 vote. That's where our funding comes from with the snag and clear. In Century Code we can only spend up to \$100k project. Smaller counties can't afford that; we need the assessment. When we're able to get Water Commission funds, it cuts it in half or more depending on what the watershed takes in on that assessment.

**Chairman Porter:** 4 mills is the max you can assess do you carry any reserve funds?

**Thompson:** No. In fact we've been in the negative.

**Chairman Porter:** What has been the total dollar spent on the 2016-17?

**Thompson:** \$100,000 per project. Out of all those, \$900,000. We spent \$50k and the State spent \$50k. Century Code tells us we can only do a \$100k project at a time.

**Chairman Porter:** Did you ever find the State Water Commission didn't have funds and you did the project anyway?

**Thompson:** No

**Rep. Mitskog:** Do you see farmers stepping forward and do these themselves?

**Thompson:** No. I'm guessing maybe they've been done and we don't hear about it.

**Vice Chairman Damschen:** Prior to 2017 and HB 1374, there was also cost share from State Water Commission for assistance with drains, that has disappeared. Would you be opposed to that?

**Thompson:** We're looking at that going back into the general water management budget in 2020, that would solve that problem.

42:00

**Vice Chairman Damschen** I think 2007 referring to Rep. Keiser's question. I'm glad to hear your comments. I think that \$100,000 limit was put in so there couldn't be a big project established circumventing a normal assessment drain project. There was a lot of concern water boards would set up a lot of projects under the snagging and clearing title and circumvent the process for legal assessed drain. There's some opinions, maybe the state should be snagging and clearing rivers. Like previous comment, we'd be using up that funding pretty quick if we did that.

44:00

**Jason Benson, Cass County Engineer:** In the past we had an incident where trees piled up against a wooden bridge significantly damaging the bridge and had to shut it down. After \$200,000-\$300,000 of emergency repairs that bridge was able to be opened up again, too late for beet harvest causing all the beet harvest trucks through the town of Kindred, an extra 8 mile round trip. Trees get piled up against our bridges or out in the river where the current rushes up against the bank and erodes the bank, encroaches into road right of ways. I get calls from folks on the Wild Rice, Sheyenne and Maple River, even in West Fargo residents see a tree get jammed up against and lose feet as that bank moves closer to their home. The cost share is critical. We have four counties, Walsh, Traill, Richland and Cass where we own and operate about 50% of the bridges in the state. When we look at all those tributary rivers and the infrastructure, the dollar value of that, upkeep, maintaining, the amount of the cost share is a small amount in maintaining and managing our critical infrastructure to the ag

community. I know the Association of Counties and the Association of County Engineers are very supportive of reinstating this cost share. I urge you to support SB 2139.

**Rep. Mitskog:** The number of projects you've done, or not done?

**Jason Benson:** In the last 2 years I don't have the exact number, but we have significantly reduced the number. We've only gone out and targeted key areas posing an immediate threat versus in the past where we looked at a corridor of several miles that had significant issues and contract and target that. At the county level on one of the Wild Rice bridges and it was \$25,000 to remove all the trees pushed up against the bridge.

**Justin Johnson,** Civil technician, Richland County Water Resource District, presented **Attachment 6.**

**Linda Svihovec,** Association of Counties: We stand in support.

**Rep. Keiser:** For those counties using mill levies to fund it now, can we expect a reduction in those mills if we pass this bill?

**Svihovec:** I can't speak to that.

52:00

**Phil Murphy, ND Soybean Association:** this bill is about economics. An ounce of prevention. When you slow down a farmer's ability to get around or increase that time substantially, you're slowing down economy.

53:30

**Rep. Anderson:** What do you think is the longest span for someone to go around to get to their fields? When you look at the cost of maintaining bridges, down the road in some places some of those bridges may have to be removed and we'll have to drive a little longer to get to our fields.

**Phil Murphy:** I'm sensitive to losing bridges as are others.

**Rep. Anderson:** In one instance in my district they had 3 bridges within 6 miles. To be realistic do they need 3 bridges in 6 miles?

**Larry Severson,** ND Township Officers Association: I am here in support of SB 2139.

**Chairman Porter:** further testimony, further support, further opposition.  
Anyone here from the State Engineer's office? Why isn't there a fiscal note for this bill?  
Closed the hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 2139  
3/21/2019  
34095

- Subcommittee  
 Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to cost sharing and duties of the state water commission

### Minutes:

**Chairman Porter:** opened the hearing on SB 2139 on the snagging and clearing bill. There were no proposed amendments.

**Rep. Devlin:** I would move a Do Pass.

**Rep. Zubke:** second.

**Chairman Porter:** I have a motion and a second for a Do Pass SB 2139. Discussion?

**Vice Chairman Damschen:** I was hoping to offer an amendment but didn't have the chance to run it by the sponsor. I don't have any concern about cost sharing but I'm a little concerned how it's being used. I'm also wondering, Page 5, Subsection J, "to finance the construction, establishment, operation, and maintenance of public and private works, dams, and irrigation projects." I'm wondering if that would include the establishment and the initial construction of an assessment drain. I realize in the second part of that J, it cannot be used for operation or maintenance of an assessment drain. I'm wondering if that would allow cost sharing on the establishment and the initial construction of an assessment drain. That has been in the past but in the last session that all got taken out. I'd be happy if that meant that it was included now.

**Chairman Porter:** I am not clear; the language is the permissive language going back to the title of 61-02-14 Powers of the commission. The commission is authorized and Sub J is to finance the construction, establishment, operation and maintenance of public and private works. Is that considered a private works?

**Vice Chairman Damschen:** I did have a call in to Legislative Council to get their opinion.

**Chairman Porter:** Is there anywhere else in the bill that talks about the definition of private works? Page 3 on the bottom, Line 30 and top of Page 4 is where the definitions of what "works" would be.

**Vice Chairman Damschen:** I'm not sure, it may be included but I know it's not allowed to be used for operation or maintenance. I was thinking maybe the assessment drains fell under that definition.

**Chairman Porter:** Sub J Page 5, the commission may not provide a cost share for any operation, maintenance including those areas of assessment drains or other manmade projects. So it is not allowed now but they're taking out the water conveyance project which is the snagging and clearing. So snagging and clearing could be provided at cost share the way it's worded but the assessment drains or other manmade projects could not.

**Vice Chairman Damschen:** I was interpreting to say that operation maintenance of an assessment drain rather than manmade projects.

**Chairman Porter:** They cannot provide a cost share for the costs of the operation or the maintenance including the removal of vegetative materials and sediment of assessment drains or other manmade projects, is what it's going to end up as.

**Vice Chairman Damschen:** but there is a difference between the establishment and initial construction of an assessment drain.

**Chairman Porter:** Right. I think the sentence before that is that it does allow them to do the construction establishment and operation maintenance of public and private works, dams and irrigation projects which the commission feels are necessary and advisable. The rest is prohibitive language.  
Further discussion?

**Rep. Anderson:** Is there any money. How much money is in that?

**Chairman Porter:** No. They're working, the water budget is in House Appropriations. How that looks when they're done is a guess.

**Rep. Anderson:** is that first come first serve on that or do they have other priorities?

**Chairman Porter:** My understanding is once it's in the bucket, then the water commission sets the priorities. If there's money left or the project is voted to move on, then it would fall into it.

**Rep. Anderson:** So those commissioners in several different basins, they're the ones that basically decide who will get the money.

**Chairman Porter:** correct. Last session, the language was taken out in Appropriations to allow them to do that. This bill is putting what was taken out, in 17, is putting it back in. There's no guarantee of any funding.

**Rep. Anderson:** So these people inside their water basin, they should approach their representative on the state water and work through them to get their project done. Do they go through the water commissioner in their basin.

**Chairman Porter:** I think they have the water board in that district sends in their projects and they're basically in front of the commission and they decide if they have the funding to do it. I think they start at their local and work their way to the state.

**Rep. Anderson:** Do they go through the water commissioner in their basin?

**Chairman Porter:** They would have to, to get it on the agenda.

**Rep. Anderson:** I think that's what Rep. Schmidt wanted in the end for that process to do that. That way it would give the other counties some input in the decisions that go on. In our area a lot of the upper stream counties, they drain water on the lower counties and you're basically knee deep in it all the time.

**Vice Chairman Damschen:** the process I'm familiar with, the assessment drain has been voted in by the local people and the water board goes to the State Water Commission requesting cost share and they make that decision based on what they hear and see.

**Rep. Anderson:** I know that's the way it goes. But we just saw that water course bill come through here and some of the county water boards look out for the people who are on the board and then there's some that do a good job. It gets pretty political in these counties sometimes.

**Vice Chairman Damschen:** I agree, it gets political. The process has worked in the past because the county board comes in and it's made by all members of the water commission. So they hopefully will work out for their area they represent too.

**Chairman Porter:** further discussion? Roll call vote: 14 yes, 0 no, 0 absent. Rep. Lefor is carrier.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 2139  
3/28/2019  
34325

- Subcommittee  
 Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to cost sharing and duties of the state water commission

### Minutes:

Attachment 1

**Chairman Porter:** opened the hearing on SB 2139.

**Rep. Keiser:** Move to reconsider.

**Rep. Mitskog:** second.

**Chairman Porter:** motion and a second to reconsider our actions on SB 2139. Voice vote, motion carried. Rep. Lefor's amendment 01003 was distributed (Attachment 1).

**Rep. Schmidt:** reviewed several items that needed to be cleaned up.

- Page 1, Lines 12-13-14. What we did last session, we said that we want to have an economic analysis on flood control projects and water conveyance projects. The bill reads now, by taking out "conveyance" and putting "management" in, means we're going to do an economic analysis on every water project over \$1 million. If you look at the summary report the Water Commission puts out we have irrigation projects, water supply projects that are over \$1 million and we would have to do an economic analysis on all of those and that was not the intent, it was only flood control and water conveyance.

**Chairman Porter:** so we would take the word management out and remove the overstrike on conveyance?

**Rep. Schmidt:** that's correct.

**Rep Bosch:** why was the word management put in there?

**Rep. Schmidt:** I have no idea.

**Chairman Porter:** that came from the bill sponsor in the Senate.

**Rep. Schmidt:**

- Page 3 Line 28 No. 10, the definition of water conveyance has been taken out. We had it in there because we use water conveyance in appropriating dollars to the State Water Commission budget.
- When we put in water conveyance including snagging and clearing, bank stabilization, and assessment drains always go together and will be a lump thing. When we lump, we do not pick projects, we fund purposes, the State Water Commission picks projects. My suggestion is to leave the definition of water conveyance projects in and instead of surface drainage, use assessment drains.

**Chairman Porter:** Page 3, Line 28 change surface to assessment?

**Rep. Schmidt:** correct.

**Rep. Schmidt:**

- Page 5, Line 12 Item J. To finance the construction, establishment, operation and maintenance of public and private works, drains, irrigation projects, etc. I have no idea, nor the State Engineer, how long this has been in code, but we do not do that anymore. We do not pay for operation and maintenance for those, if we did, we wouldn't have any money for anything else. Suggestion is to strike in the first sentence, operation and maintenance.
- The 2<sup>nd</sup> sentence, starting with the commission may not provide cost share for operation, maintenance including the removal of vegetative materials and sediment. I would suggest in what we need for appropriations, keep water conveyance, and put a dash between water conveyance and assessment drains.
- The last part of that is "or other manmade projects". That is an antiquated comment. We could say constructed channels or infrastructure. I don't think manmade is appropriate. I would leave that to the committee.
- I understand the objective of this is to provide cost share for clearing and snagging in natural waterways. We need to keep that in this bill.

**Chairman Porter:** on the Page 5 suggestions, because we're putting water conveyance back into the code and changing the definition to say it is assessment drainage works. I don't know we need to list assessment drains on Lines 16-17 because it's part of the definition. Do we need to just change the definition of water conveyance to include the other manmade projects and then we don't have to worry about listing them in here?

**12:00**

**Rep. Schmidt:** it would cause a bit of a problem how the buckets work. If we say water conveyance- snagging and clearing, that we're going to pay for that project, just list it as that. That's where the bill identifies back on Page 2, Line 4, that's where I think, the bill would say something to the effect we will provide cost share for water conveyance/clearing and snagging on natural drainage, or water systems, or whatever. The reason we have snagging and clearing with the assessment drains and wrap rip raff, it deals with moving and making it easier for water to go from point A to point B. It's a conveyance thing. If we look at Page 5 Line 1-2, underneath the powers and duties of the State Water Commission, it is to improve the channels of the streams for more efficient transportation of the available water in the

streams. That's what those projects do. Clearing and snagging make it easier for the water to go through. We're trying to identify the purposes to make sure the money goes to that purpose.

They put it in general water this session is there's a concern the governor will again veto part of this bill. According to Legislative Council, he can use general water other places. When you ask what are we buying in general water. It's like buying a can of mixed nuts. You don't know exactly what you're going to get. We're trying to identify those purposes, but not specifically projects and water conveyance helps do that.

**Rep. Keiser:** Page 5. I understand Line 16, you want water conveyance reinstated hyphen assessment drains.

**Rep. Schmidt:** correct.

**Rep. Keiser:** I think that's the wrong approach. I think it should be comma. Because the minute you put the hyphen in, the only thing you can finance are water conveyance projects which are also assessment drains. You are tying those together.

**Rep. Schmidt:** I would yield to what the committee believes as long as you know our intent is to keep water conveyance in those projects in it.

**Chairman Porter:** by putting water conveyance back in, and put it back in the definition and say it's assessment drains, that sentence is saying what they cannot provide cost share for. I think that 2<sup>nd</sup> sentence is correct. We don't want them to provide cost share to remove vegetative materials and sediments from an assessment drain or other manmade projects. That's only to be used for main river channels. I think the 2<sup>nd</sup> sentence is correct as is.

**Rep. Schmidt:** correct. The only reason I want water conveyance is to associate the assessment drains to that water conveyance.

**Chairman Porter:** it's says MAY NOT.

**Rep. Schmidt:** That's correct, we do NOT want to do that.

**Chairman Porter:** Inside snagging and clearing we don't want to provide funds in a water conveyance project at all for snagging and clearing?

**Rep. Schmidt:** Snagging and clearing is merely taking the vegetative material out of the river.

**Chairman Porter:** Page 3 Ln 10 putting that definition back in water conveyance project is going to include snagging and clearing.

**Rep. Schmidt:** Yes it would.

**Chairman Porter:** So if we put it back in on Line 16 Page 5, it says they can't do it.

**Rep. Schmidt:** how you want to word that is fine with me (not clear on tape 16:58).

**Chairman Porter:** I think we know the intent and will make sure it all fits.

**Rep. Schmidt:** My intention is to make a bill better, not stand on the floor and oppose it.

- Rep. came to me with an amendment to add an additional State Water Commission member. I agree with what the Rep wants to do. That's why we temporarily had it attached to HB 2020. It better fits with this bill and leave that discussion with Rep. Lefor. The EE division agreed with this.

**Rep. Devlin:** If we pass the bill with legislative intent it will go back to what it was before last session when it was inadvertently taken out.

**Rep. Schmidt.** That would be for your committee to do.

**Rep. Lefor:** Page 2 Lines 6-7 do we want water conveyance back in or leave as is?

**Rep. Schmidt:** I'll leave it up to you as long as I have the definition.

**Chairman Porter:** Does it work the way it is now?

**Rep. Schmidt:** I'd rather go back to what Rep. Keiser said about the comma verses the dash between water conveyance and assessment drains.

**Jack Dwyer,** executive director ND Water Resources Division:

- we take no issue with restoring the definition of water conveyance.
- Page 1 Line 13 restore the word conveyance and strike the word management
- Page 2 Lines 6-7 we believe this strike in the bill and assessment drains needs to stay; if we add water conveyance projects back into the bill the prohibition for cost sharing, staking, clearing would still be there; needs to stay the same as in the bill
- Page 3 Lines 28-29 we mirror the suggestion to restore the definition of water conveyance project; agreeable with the use of assessment drain instead of surface drain
- Page 5 words water conveyance projects in Lines 16 should continue to be stricken and use the words assessment drains.

**Chairman Porter:** on Line 12 remove operation maintenance of public and private works, dams, and irrigation projects which in the judgement may be necessary and advisable – should operation maintenance be removed?

**Jack Dwyer:**

- I believe the word operation and should be stricken from Line 12, add the word extraordinary in front of maintenance,
- Line 13 strike the words and private,

**Chairman Porter:** so it would read of public works

**Rep. Anderson:** give an example of extraordinary

**Jack Dwyer:** maybe Craig Odenbach would be better to answer that question.

**Rep. Keiser** that needs to be defined, it's a very general term.

**Jack Dwyer:** that was language I'd worked out this morning with Mr. Odenbach.

**Chairman Porter:** when we say extraordinary, normal or emergency maintenance? What are you trying to capture?

**Jack Dwyer:** This is cleanup language. This is not something we're pushing.

- Line 15 add in between operation or regular, add regular in front of maintenance to read provide cost share for the costs of operation or regular maintenance, that would be consistent with Page 2 Line 5.
- Line 16-17 of vegetative materials and sediment, of assessment drains.

**Chairman Porter:** So by including other manmade projects that aren't dams or irrigation projects, what other man made projects are there? I don't want to open up a wide array of projects. The intent is to go back to what it was.

**Jack Dwyer:** I agree, we're only seeking cost share for snagging and clearing of natural streams and rivers. By adding the words or other manmade projects, we're trying to make sure it's scoped.

**Craig Odenbach,** Water Development Division director at ND State Water Commission: came forward to answer questions.

**Chairman Porter:** It has been the intent of this committee to restore snagging and clearing inside of our waterways, not expand or move into other areas of financing. Do you think we're accomplishing that?

**Craig Odenbach:** with the changes Rep. Schmidt and Mr. Dwyer have offered I think that will put the ability of the water commission to fund snagging and clearing projects back on the table. It doesn't expand their ability to do so to what existed prior to 2017.

**Chairman Porter:** As far as the language on Page 5, Line 17, leaving or other manmade projects locks it down to make sure we aren't in expanding it to allow people to come in with projects that aren't on the list.

**Craig Odenbach:** Our original concern was that it seemed a little bit ambiguous. In speaking with Rep. Schmidt, one example is the ice jam issue on the lower Heart River. Part of that has been channelized.

**Rep. Lefor:** what if we put a "period" on Line 14 after the word advisable and strike the rest of the wording. Isn't telling what you can do sufficient?

**Craig Odenbach:** If we look back on Page 2 Line 4-7 we've already stated you can't fund the removal of vegetative materials for assessment drains. We've already said what you can't do. You're almost restating the same thing.

**Rep. Zubke:** Line 12, Page 5, how do you feel about the word extraordinary.

**Craig Odenbach:** Page 2 Line 4-5, says the commission shall exclude operations and regular maintenance. So we can't pay for regular maintenance. In an attempt to differentiate I was saying we can fund extraordinary maintenance.

**Rep. Lefor:** the reason I brought this forward was because last session, the intent was to have a water commission board seat for this particular area listed in the Little Missouri River, Upper Heart River and Upper Cannonball Basin areas, but it was taken out of that. They said it got bias. So southwest ND feels there should be one additional seat representing those 3 particular basins. Rep. Schmidt was going to put it into SB 2020 where he felt it would pass. However, he felt put it on a policy bill would be a better way to accomplish this. There didn't appear to be opposition. I don't think the water commission weighed in.

**Chairman Porter:** going to go to a subcommittee to work this out.

**Rep. Ruby:** I'm curious why we're having an even numbered commission.

**Rep. Lefor:** yes that was discussed. When you look at the last item, the quorum was changed from 5 to 6 members rather than worry about the even odd

**Chairman Porter:** appointed a subcommittee then closed the hearing.

Subcommittee;

Rep. Lefor

Rep. Zubke

Vice Chairman Damschen

Rep. Mitskog

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 2139  
3/28/2019  
34339

- Subcommittee  
 Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to cost sharing and duties of the state water commission

### Minutes:

**Rep. Lefor** opened the subcommittee hearing on SB 2139

**Subcommittee members present:** Rep. Damschen, Rep. Zubke, Rep. Mitskog

**Others in attendance:** Claire Ness, Legislative Council

- Discussed additional changes to the SB 2139 with Claire Ness.
- Discussed Rep. Lefor's amendment.
- Claire Ness will work on a Christmas Tree version.

The subcommittee meeting adjourned.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 2139

3/28/2019

34358

Subcommittee

Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to cost sharing and duties of the state water commission

### Minutes:

Attachment 1-2-3

**Rep. Lefor** opened the subcommittee hearing on SB 2139

**Subcommittee members present:** Rep. Zubke, Rep. Mitskog, Rep. Damschen,

**Others in attendance:** Claire Ness, Legislative Council, Jack Dwyer, Craig Odenbach, Larry Luick

**Claire Ness**, ND Legislative Council

- Presented Attachment 1
- reviewed the Christmas tree version of the bill, Attachment 2

**Rep. Lefor:**

- Further reviewed the Christmas tree version
- definition watercourse was reviewed
- reviewed Attachment 3

**Jack Dwyer:** suggested adding “Snagging and clearing projects are not regular maintenance.” Discussion followed.

Claire Ness will work on an updated amendment and Christmas tree version.

The subcommittee meeting adjourned.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Coteau A Room, State Capitol

SB 2139

4/5/2019

34555

Subcommittee

Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to cost sharing and duties of the state water commission

### Minutes:

Attachments 1,2

**Chairman Porter:** opened the hearing on SB 2139. We were made aware of the policy versus the way the money is appropriated.

**Rep. Lefor:** Attachments 1 and 2 were presented. We made sure the intent of snagging and clearing was put into the bill, as well as State Water Commission board seat.

**Rep. Roers Jones:** What is the definition of water courses?

**Claire Ness, Legislative Council:** It is not defined in Century Code. It's commonly known as a naturally flow course for water.

**Rep. Roers Jones:** My concern would be is it's commonly used in other water sections of code. I don't have an issue if it's commonly known what it means. But if not, and only used in this section, perhaps we ought to define it.

**Rep. Anderson:** They do have in 23.58 somewhat of a definition.

**Chairman Porter:** that's on the drain tile section only, I don't think that will fit. We're not looking at expanding what was taken out last session. We're looking at restoring what was taken out so those main rivers that are sovereign to the state have the ability to be cleared.

**Claire Ness:** We could put language in to clarify watercourse. We had a representative from here and he was not concerned.

**Rep. Lefor:** we get into wordsmithing. They felt these definitions didn't need to be made because these words are used in policy making.

**Chairman Porter:** Water course is defined in 61.06. We've got it.

**Rep. Lefor:** Move to adopt 01005 amendment.

**Rep. Zubke:** second.

**Chairman Porter:** We have a motion and a second to adopt 19.0506.01005 to SB 2139. Voice vote, motion carried.

**Rep. Lefor:** I move a Do Pass as Amended on SB 2139.

**Rep. Anderson:** second.

**Chairman Porter:** We have a motion for a Do Pass as Amended on SB 2139. Discussion? Roll call vote: 11 yes, 0 no, 3 absent. Rep. Lefor is carrier.

DP 4/3/19  
1052

PROPOSED AMENDMENTS TO SENATE BILL NO. 2139

Page 1, line 1, remove "61-02-01.3,"

Page 1, line 1, after the third comma insert "61-02-04, 61-02-07,"

Page 1, line 2, after "duties" insert "and membership"

Page 1, remove lines 5 through 16

Page 2, line 5, overstrike "and" and insert immediately thereafter an underscored comma

Page 2, line 5, overstrike "including" and insert immediately thereafter "and"

Page 2, line 8, after the period insert "Snagging and clearing of watercourses are not regular maintenance."

Page 3, line 28, remove the overstrike over "Water conveyance project" means any

Page 3, line 28, after "bank" insert "assessment drain, stream bank"

Page 3, line 28, remove the overstrike over "stabilization, or"

Page 3, remove the overstrike over line 29

Page 3, line 30, remove the overstrike over "44."

Page 4, after line 14, insert:

**"SECTION 3. AMENDMENT.** Section 61-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-04. State water commission - Members - Terms - Qualifications.**

The state water commission consists of the governor, agriculture commissioner, and ~~seveneight~~ seveneight other members appointed by the governor who shall take into account reasonable geographic considerations in making the appointments with the intent of having each of the ~~seveneight~~ seveneight major drainage basins represented by a commissioner who resides in the basin. The major drainage basins are the upper Missouri River basin; the lower Missouri River basin; the James River basin; the upper Red River basin; the lower Red River basin; the Mouse River basin; ~~and~~ the Devils Lake basin; ~~and the Little Missouri River, upper Heart River, and upper Cannonball River basin.~~ and the Little Missouri River, upper Heart River, and upper Cannonball River basin. The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at meetings that official is unable to attend. The ~~seveneight~~ seveneight appointive members of the commission must be appointed for a term of six years each with the terms of office so arranged that ~~two terms and not more than threefour~~ threefour terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

DO 4/3/19  
2019

**SECTION 4. AMENDMENT.** Section 61-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-07. Quorum - What constitutes.**

A majority of the members of the commission constitutes a quorum, and the affirmative or negative vote of ~~five~~six members is necessary to bind the commission except for adjournment."

Page 5, line 12, overstrike "operation,"

Page 5, line 12, after "and" insert "extraordinary"

Page 5, line 13, overstrike "and private"

Page 5, line 15, overstrike "or" and insert immediately thereafter ", regular"

Page 5, line 15, overstrike "including" and insert immediately thereafter "or"

Page 5, line 16, overstrike the second "of"

Page 5, line 16, after "~~project~~" insert "for"

Page 5, line 17, remove "or other man-made projects"

Page 5, line 17, after the period insert "Snagging and clearing of watercourses are not regular maintenance."

Renumber accordingly

Date: 3-21-19  
 Roll Call Vote #: \_\_\_\_\_

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2139**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Devlin    Seconded By Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marshall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep. Bosch	✓		Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Eidson	✓	

Total (Yes) 14    No 0

Absent 0

Floor Assignment Lefor

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

Date: 3-28-19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2139**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep Keiser    Seconded By Rep Mitskog

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Zubke		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Eidson		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment voice vote. Motion carried.

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

Date: 3-28-19  
Roll Call Vote #: \_\_\_\_\_

3:30 PM

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2139**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     move the amendments as discussed

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep Bosch			Rep. Ruby		
Rep. Devlin			Rep. Zubke	✓	
Rep. Heinert			Rep. Mitskog	✓	
Rep. Keiser			Rep. Eidson		

Total (Yes) 4 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 4-5-19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2139**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.0506, 01005

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep Lefor    Seconded By Rep Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Zubke		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Eidson		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Voice Vote, Motion carried

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

Date: 4-5-19  
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2139**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.0506.01005

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep Lefor    Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen		AB	Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep Bosch	✓		Rep. Ruby		AB
Rep. Devlin	✓		Rep. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser		AB	Rep. Mitskog	✓	
			Rep. Eidson	✓	

Total (Yes) 11    No 0  
 Absent 3  
 Floor Assignment Rep Lefor

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

**REPORT OF STANDING COMMITTEE**

**SB 2139: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
SB 2139 was placed on the Fourteenth order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2139: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2139 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "61-02-01.3,"

Page 1, line 1, after the third comma insert "61-02-04, 61-02-07,"

Page 1, line 2, after "duties" insert "and membership"

Page 1, remove lines 5 through 16

Page 2, line 5, overstrike "and" and insert immediately thereafter an underscored comma

Page 2, line 5, overstrike "including" and insert immediately thereafter "and"

Page 2, line 8, after the period insert "Snagging and clearing of watercourses are not regular maintenance."

Page 3, line 28, remove the overstrike over "~~Water conveyance project~~ means any"

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Page 5, line 16, overstrike the second "of"

Page 5, line 16, after "~~project~~" insert "for"

Page 5, line 17, remove "or other man-made projects"

Page 5, line 17, after the period insert "Snagging and clearing of watercourses are not regular maintenance."

Re-number accordingly

**2019 TESTIMONY**

**SB 2139**

SB 2139  
1.10.19  
Attachment #1

**SB 2139:**

1. In 2017, HB 1374 passed with several provisions relevant to water development; some were positive, but one of the provisions in that bill prohibits the State Water Commission from providing cost-share for snagging and clearing.
2. WRDs need the ability to clear natural rivers and streams of dead trees and other obstructions, for the benefit of counties and other road authorities, and for the benefit of ag producers.
3. Without snagging and clearing projects to clear rivers and streams, farmlands flood, river banks erode, and infrastructure is damaged (including County roads, bridges, and culverts).
4. If the SWC cannot provide cost share for S&C projects, the burden of paying for snagging and clearing falls entirely on local landowners; many are not in a position to pay more to protect their farms and property from flooding as a result of obstructed waterways, and to protect their properties from eroding banks.
5. The authority for snagging and clearing was proposed by Senator Tom Fisher, longtime Cass County water manager and the water leader in the ND Senate for many years. Tom's bill passed overwhelmingly in 2001, and the process has worked well since that time.
6. SB 2139 would simply make snagging and clearing eligible for SWC cost-share once again, and would make these projects possible again.

**Testimony of Jack Dwyer  
Executive Secretary**

**In Support of SB 2139  
January 10, 2019**

Dear Chairman Burckhard and Senate Political Subdivisions Committee:

The North Dakota Water Resource Districts Association (NDWRDA) and the North Dakota Water Users (NDWU) strongly support Senate Bill 2139 to allow the cost of snagging and clearing projects of natural waterways to be eligible for State cost share. This morning, you will hear from the following individuals:

- Gary Thompson and Chad Engels. Gary Thompson is the Chairman of the Red River Joint Water Resource Board and serves on the Traill County Water Resource District and the NDWRDA Board. Chad Engels is a water resource engineer from Moore Engineering who has represented a number of North Dakota water resource districts, including Traill County Water Resource District.
- Chad Peterson serves on the Cass County Commission and the North Dakota Association of Counties' Legislative Committee.
- Katie Andersen is the former mayor for the City of Jamestown, and currently serves on the State Water Commission.
- Dennis Reep is a water resource engineer who has represented a number of North Dakota water resource districts, including Ward County Water Resource District.

Snagging and clearing projects are important for a number of central and eastern North Dakota watersheds, including the Mouse River Basin, Red River Basin, James River Basin, Sheyenne River Basin, and Devils Lake Basin.



SB2139 1.10.2019 at #3 Chad Taylor photo p.1



AB139 1.10.2019 Oct #3 Chel Engels photo p.2



AB2139 1.10.2019 027#13 Neil Ingham

January 10, 2019

Senate Political Subdivisions, 9:00AM

Testimony on **SB 2139**, Katie Andersen, State Water Commission

Good morning Chairman Burckhard and members of the committee, my name is Katie Andersen. I am one of the seven Governor appointed members of the State Water Commission. From 2010-2018 I was also the Mayor of Jamestown.

I would like to share the need for state grants for snagging and clearing projects from the James River Basin area perspective and the priorities and use of the Natural Resources Trust Fund and the Water Development Trust Fund as it applies to channel clearing.

The high water years of 2009-2012 had many effects on the James River channel, as I am sure were similar in other areas of the state. The Jamestown Reservoir and the James River flooding required emergency measures such as, sandbagging and the construction of dikes and levees, to protect public and private property until the water was able to move down stream and clear the area. The more efficiently the water can move through the channel, and at the predicted flow, the more efficient and less resources required for flood fighting.

The high water, especially during the summers of 2011 and 2012 when river levels remained high throughout the entire summer saturated and destabilized the river banks. The vegetation including many large trees fell into the river. When the natural flow of the river is obstructed it can cause additional and unpredicted flooding. Furthermore, the debris can damage infrastructure such as storm water and drain inlets and bridges.

Snagging and clearing projects help mitigate flood damages. The dollars spent proactively to prevent flooding and damage to infrastructure is a smart investment into the long term flood protection efforts implemented across the state.

In 2017, the City of Jamestown and Stutsman Water Resource District partnered to apply for a snagging and clearing grant in the 2015-2017 biennium funds. Even though the application was submitted prior to the end of the biennium, the State Water Commission staff and State Engineer did not feel they funds could be granted due the change prohibiting snagging and clearing. Legislators from the

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1.10.2019  
Att #4  
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Stutsman County area appealed to the Governor's office for assistance. The 50-50 grant was awarded through CDBG grants to accommodate the needed James River project.

The Jamestown project utilized a specialized "swamp excavator" with a specifically trained operations crew, as well as, project engineering/design and observation, permitting, acquiring staging, storing and access easements, restoration of any damage to easement areas, equipment and personnel for hauling, and proper disposal of the large trees and other debris. Projects like these are not ordinary operations and maintenance. They can require specialized contractors, equipment, permits, access/easements, environmental impact research, and proper debris disposal. The local water resources districts, cities, counties, and/or townships want to help mitigate flood damages and can participate financially. However, the 50-50 grants make projects possible with the limited resources of the effected political subdivisions.

As a State Water Commissioner for just over one year, I have heard from all different types of water projects, from water supply to permanent flood protection and everything in between. Allocating the limited resources of the Natural Resources Trust Fund and the Water Development Fund is not an easy job for the Legislature or the State Water Commission. SB 2169 simply allows important snagging and clearing projects to be eligible. Each project would still be fully vetted and prioritized by the State Water Commission and the State Water Commission staff. I encourage your support of SB2169. Thank you Mr. Chairman and members of the committee, I would be happy to answer and questions you may have.

*S.B. 2139  
1.10.2019  
Att: #5  
p.1*

Testimony, SB 2139

9:00 AM, January 10, 2019

Red River Room, State Capitol, Bismarck, ND

Dennis Reep, Vice-Chairman, Burleigh County WRD, Board of Directors, ND Water Users Association, Board of Directors, ND Water Resource Districts Association, and Private Consultant (HDR Engineering) to various WRDs including Ward, Renville, and Lower Heart River

Chairman Burckhard and Members of the Political Subdivisions Committee:

My name is Dennis Reep and I am on the Board of Directors for the ND Water Resource Districts Association, North Dakota Water Users Association as well as Vice-Chairman of the Burleigh County WRD. I have nearly 34 years of working in North Dakota on projects with Water Resource Districts (WRDs) across the state. As a private consultant, I work with several WRDs whose primary responsibilities include the management of water from a local and regional perspective for beneficial uses of water, as well as for protection against flooding, erosion, and other detrimental effects of too much water. Specifically, I am here today to represent the need for snagging and clearing cost share capabilities through the North Dakota State Water Commission.

An example of the need for snagging and clearing is the Ward County Water Resource District. This district is continually presented with the need to conduct snagging and clearing activities on the Mouse and Des Lacs Rivers as well as their tributaries. These water courses have significant tree and other woody vegetation growth along their banks which provides for a continual supply of debris to the water flow. This debris invariably can be carried in the water course until it encounters bridges, sharp bends, or

A.B. 2139

1.10.2019

Att. # 5

P.2

other impediments which trap the debris and can result in significant backwater flooding, bank erosion and threats to transportation facilities and other infrastructure. Removing the debris helps prevent damages to bridges, culverts, and other infrastructure and maintains the hydraulic capacity of the channel during floods.

Reinstating snagging and clearing as an eligible cost share activity through the North Dakota State Water Commission will allow WRDs across the state to proactively manage the water conveyance systems in their jurisdiction and help prevent the economic and social impacts debris blockages can induce.

I would be happy to answer any questions the committee may have regarding this testimony.

Thank you.

J.B 2139  
1.10.2019  
Att # 6  
P.1

## Senate Bill No. 2139 Testimony

By: Justin Johnson

Good morning Mr. Chairman and members of the committee. My name is Justin Johnson; I am a Civil Technician for the Richland County Water Resource District.

I am here on behalf of the Richland County Water Resource District to request your support for Senate Bill 2139. Richland County has two river systems and multiple natural water courses that are affected by log jams on a regular basis.

Our larger snagging and clearing projects which usually occur on the Sheyenne River and Wild Rice River have been put on hold because of the snagging and clearing provision in House Bill 1374 that passed in 2017. The provision eliminated funding for snagging and clearing projects. Without the State Water Commission cost share we have been unable to move forward with larger snagging and clearing projects. The cost of these projects would come from our general fund which at 4 mills does not allow us to accomplish removing multiple large log jams.

Please look at the pictures I provided to you. Pictures 1 & 2 are of a smaller log jam along County Road #2 in Richland County.

Picture 1 is of a log jam incased in the ice of the Wild Rice River. As you can see the fallen tree debris spans across the entire river.

- Removal of the log jams.

When we do these projects, we try to remove as much of the fallen debris as we can. This usually means not just flush cutting the logs at the ice surface. We end up waiting until the ice is a little thinner so the contractor can break through and remove the tree debris underneath the ice's surface.

This is a more costly way to remove a log jam, but it is a more effective way to ensure the log jam does not return in the near future. If you only flush cut the logs at the surface other logs will eventually catch on the submerged logs and the log jam will reestablish. Cost of this

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1-10-2019  
att # 6  
p.2

smaller project was around \$30,000, but can vary widely depending on the conditions in the field.

- Erosion Concerns

Please look at picture #2 of site 1. This is a picture of site 1 after the log jam was removed. As you can see there is substantial erosion of the river bank. In this case the river bank is also running parallel to County Road #2.

Erosion is a massive concern to us when it comes to these log jams. If we are able to remove the log jams it cuts down on the erosion of the river bank. By removing these as quickly as possible it helps the adjacent landowner minimize their land loss caused by erosion, and also protect nearby homes.

- Bridges

Please look at the picture of Site 2. This picture is of a log jam on the upstream side of a bridge in Richland County. On any given year this could happen to many of our bridges. The main concern if these are not addressed is the possible damage or even loss of the bridge during a large water event.

- Conclusion

When inspecting assessment drain repair sites in Richland County I usually get more than a few questions and concerns from landowners about the removal of log jams on the natural waterways.

Landowners are happy to grant us access and will help in any way to get the log jams removed. They see firsthand the damage that these can cause to their land and homes if not addressed.

We hope to see Senate bill 2139 pass so we can go back to helping Richland County residents remove these obstructions from our waterways.

Please support this bill.

Thank you, and I can answer any questions you may have.



Picture 1, Site 1



Picture 2, Site 1



Site 2

LB2139 1.10.2019 acc: #16 p.3



# NORTH DAKOTA SENATE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

*SB2139  
1-24-19  
Written att #1  
p.1*



## Senator Donald Schaible

District 31  
9115 Highway 21  
Mott, ND 58646-9200  
R: 701-824-3168  
[dgschaible@nd.gov](mailto:dgschaible@nd.gov)

**COMMITTEE:**  
Education, Chairm.  
Energy and Natural Resourc

January 24, 2019

Good afternoon Chairman Burckhard and Political Subdivisions Committee, for the record I am Senator Don Schaible here to discuss some concerns that I have with SB2139. To give you a bit of history, a lot of changes to the State Water Commission and to water policy was address last session in HB 1374, which was heard in the Energy and Natural Resources Committee. This topic has also been discussed at length in the last two Water Topics Interim Committee, all of which I have served on. The main concern that I am here to discuss is the practice of "snagging and clearing". Existing legislation identifies snagging and clearing as a water conveyance practices as it influences the abilty of surface water to move from one location to another via a natural waterway.

Those activities as usually on an annual basis and conducted on a political boundary rather than a water basin boundary. One change that was made last session is the make up of the State Water Commission is the commissioners now represent water basins instead of just a portion of the state. Last session HB 1374 defined such practices as snagging and clearing as operation and maintenance and the State Water Commission does not

*S.B. 2139  
1.24.19  
att #1 p.2*

provide financial assistance to maintenance projects. In this bill, SB2139 proposes that snagging and clearing is not operation and maintenance and that it is conducted on natural waterways that are partial responsibility of the state. Proponents state local landowners cannot afford the practice without state financial assistance.

The big question, is snagging and clearing an annual practice of operation and maintenance? I would like to refer to the attached pages, page 50, which comes from the Handbook for North Dakota Water Managers.

Should the costs be borne by landowners and/or are there other local options for funding the practice. Again, refer to the attached sheets of Page 13,17 and 18 from the Handbook.

- Water resource districts can levy up to 4 mills of local money
- Joint Boards can levy an additional 2 mills per Water Resource Districts
- Water Resource Districts can assess up to 50 cents per acre for snagging and clearing
- Opportunities to work with townships and communities that create (cause) and/or receive (effect) for financial assistance

As a compromising effort to what is proposed in SB 2139, I would offer the following amendment. The intent of this amendment is to get snagging and clearing efforts to be done a basin consideration so that up or down stream is not adversely effect by a single effort and to insure that the state is only contributing what is the state responsibility and not paying for what should be a local concern. With that I will try to answer any questions.

of the property. For projects with federal participation, the cost-share may be up to 50 percent. Water retention structures constructed with State Water Commission cost-share must meet state dam safety requirements, including the potential of cascade failure. A hydrologic analysis including the operation plan, quantifying the flood reduction benefits for 25, 50, and 100-year events must be submitted with the cost-share application.

**6. SNAGGING AND CLEARING PROJECTS.** Snagging and clearing projects consist of the removal and disposal of fallen trees and associated debris encountered within or along the channel. Snagging and clearing projects are intended to prevent damage to structures such as bridges, and maintain the hydraulic capacity of the channel during flood flows. The State Water Commission may provide cost-share for up to 50 percent of the eligible items for snagging and clearing as well as any sediment that has accumulated in the immediate vicinity of snags and any trees in imminent danger of falling in the channel on watercourses as defined in N.D.C.C. § 61-01-06. Items that are not eligible include snagging and clearing of man-made channels; the dredging of watercourses for sediment removal; the clearing and grubbing of cattails and other plant vegetation; or the removal of any other unwanted materials.

**D. RURAL FLOOD CONTROL.** The primary purpose of rural flood control projects is to manage runoff or drainage from agricultural sources or to provide flood control in a rural setting. Typically, rural flood control projects consist of drains, channels, diversion ditches, or ring dikes. Items that are not eligible include projects that are managing runoff or drainage from residential or urban sources.

**1. DRAINS, CHANNELS, OR DIVERSION PROJECTS.** These projects are intended to improve the drainage and management of runoff from agricultural sources. The State Water Commission may provide cost-share up to 45 percent of the eligible items for the construction of drains, channels, or diversion ditches. Expansions and improvements may be cost-shared on the basis of increased drainage

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1.24.2019  
Att # 2 p. 2

## WATER PROJECT FINANCING

A Water Resource District can finance its operations or local projects in one or more of the following ways:

- a. General district-wide mill levy (not more than 4 mills for each individual water resource district, with 2 additional mills for joint boards)
- b. Special Assessment
- c. User Fees
- d. Revenue Bonds or Improvement Warrants
- e. State Water Commission Cost-Share Program

Developing and financing water projects is more fully discussed in the project development section (Chapter 6) of this Handbook.

## REGULATORY AND ENFORCEMENT

Water Resource Districts have the statutory responsibility to review and approve or deny permits for the following activities:

- a. Dikes, dams, and other devices which are capable of retaining, impounding, diverting, or obstructing more than (50 acre-feet of water or 25 acre-feet of water for a medium-hazard or high hazard dam. (See Dikes and Dams, Chapter 9)
- b. Drains which drain a pond, slough, lake, or sheetwater, or any series thereof, with a watershed area of 80 acres or more. (See Drainage and Wetlands, Chapter 7, and also the North Dakota Wetlands Management Handbook)
- c. "Subsurface water management systems," also known as drain tile, with footprints of eighty acres of land area or more (See Subsurface Drainage, Chapter 8)

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att # 2  
p.3

assessment for snagging and clearing projects. This method does not include a landowner vote, but rather a two-thirds vote of the water resource board and the county commission. The statute is self-explanatory.

**61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debris removal of bridges and low-water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section 61-16.1-17. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be determined by the state engineer. All provisions of this chapter apply to assessments levied under this section except:
  - a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; and
  - b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members.
    - (1) If a board that undertakes a project

LB. 2139  
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p.4

finds that the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.

(2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by a vote of two-thirds of its members.

(3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are resolved pursuant to section 61-16.1-10. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside the boundaries of the district.

c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.

2. Before an assessment may be levied under this section, a public hearing must be held and attended by a quorum of the affected water resource boards and a quorum of the affected boards of county commissioners. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the

PROPOSED AMENDMENTS TO SENATE BILL NO. 2139

Page 1, line 1, after "to" insert "create and enact section 61-16.1-11.1 of the North Dakota Century Code, relating to basinwide project planning; and to"

Page 7, after line 4, insert:

"**SECTION 5.** Section 61-16.1-11.1 of the North Dakota Century Code is created and enacted as follows:

**61-16.1-11.1. Basinwide plans for water conveyance projects.**

1. Each water resource district shall form a joint water resource district with the other water resource districts and joint water resource districts in a common basin to develop annually a plan identifying water conveyance projects, including surface drainage works, bank stabilization, and snagging and clearing of water courses, to be undertaken in the joint district. The board of the joint water resource district shall submit the plan to the state water commission and, for water conveyance projects in the plan which the state water commission approves, serve as the sponsor and enter into a contract with the state water commission for funding, oversight, and construction.
2. The agreement with the state water commission must describe the roles of the joint water resource board and the boards of member districts; identify the amount of funds to be provided by the state, the joint water resource district, and each member district for the approved project; and set milestones for which state funds may be disbursed. The state water commission shall disburse state funds approved for the projects to the joint water resource board, which shall allocate the funds to member boards as the joint water resource board deems appropriate for completing work in an appropriate manner. The joint water resource board shall monitor progress on each approved project and ensure work on each approved project is conducted in an appropriate manner.
3. The joint water resource board may levy by resolution a tax not to exceed two mills upon the taxable valuation of the real property within the joint water resource district. The levy may be in excess of any other levy authorized for a water resource district."

Renumber accordingly

**Testimony of Jack Dwyer  
Executive Secretary**

**In Support of SB 2139  
March 1, 2019**

Dear Chairman Porter and House Energy and Natural Resources Committee:

The North Dakota Water Resource Districts Association (NDWRDA) and the North Dakota Water Users (NDWU) strongly support Senate Bill 2139 to allow the cost of snagging and clearing projects of natural waterways to be eligible for State cost share.

In 2017, snagging and clearing of natural streams and rivers was made ineligible for SWC cost sharing, with the mistaken view that such projects constituted maintenance of projects. Previously, the State could provide 50% of the cost of a snagging and clearing projects.

Snagging and clearing refers to the cleaning or clearing of natural rivers and streams of trees and debris and obstructions to maximize river channel capacity, to protect public infrastructure and private property from flooding. These are relatively small but important projects for reducing flood risk.

The assessment process for snagging and clearing, which is an abbreviated assessment process used only for snagging and clearing projects, was proposed by Senator Tom Fisher, longtime Cass County water manager and the water leader in the ND Senate for many years. Tom's bill passed overwhelmingly in 2001, and the process has worked well since that time.

SB 2139 would simply make snagging and clearing projects eligible for SWC cost-share once again, and would provide greater ability for our water boards and county commissions to take on these projects.

This bill does not alter that the State does not fund maintenance of legal assessment drains. Further, this bill does not increase the State Water Commission's overall spending. It simply makes snagging and clearing projects eligible for State funding, if a snagging and clearing project is high enough on the priority list at a time when the State has money available for such a project.

Snagging and clearing projects are important for a number of central and eastern North Dakota watersheds, including the Red River basin, the Mouse River Basin, the James River Basin, the Sheyenne River Basin, and the Devils Lake Basin.

March 1, 2019

House Energy and Natural Resources Committee, 9:30AM  
Testimony on **SB 2139**, Katie Hemmer, State Water Commission

Good morning Chairman Porter and members of the committee, my name is Katie Hemmer. I am one of the seven Governor appointed members of the State Water Commission. From 2010-2018 I was also the Mayor of Jamestown.

I would like to share the need for state grants for snagging and clearing projects from the James River Basin area perspective and the priorities and use of the Natural Resources Trust Fund and the Water Development Trust Fund as it applies to channel clearing.

The high water years of 2009-2012 had many effects on the James River channel, as I am sure were similar in other areas of the state. The Jamestown Reservoir and the James River flooding required emergency measures such as sandbagging and the construction of dikes and levees, to protect public and private property until the water was able to move down stream and clear the area. The more efficiently the water can move through the channel, and at the predicted flow, the more efficient and less resources required for flood fighting.

The high water, especially during the summers of 2011 and 2012 when river levels remained high throughout the entire summer saturated and destabilized the river banks. The vegetation including many large trees fell into the river. When the natural flow of the river is obstructed it can cause additional and unpredicted flooding. Furthermore, the debris can damage infrastructure such as storm water and drain inlets and bridges.

Snagging and clearing projects help mitigate flood damages. The dollars spent proactively to prevent flooding and damage to infrastructure is a smart investment into the long term flood protection efforts implemented across the state.

In 2017, the City of Jamestown and Stutsman Water Resource District partnered to apply for a snagging and clearing grant in the 2015-2017 biennium funds. Even though the application was submitted prior to the end of the biennium, the State Water Commission staff and State Engineer did not feel the funds could be granted due to the change prohibiting snagging and clearing. Legislators from the Stutsman County area appealed to the Governor's office for assistance. The 50-50 grant was awarded through CDBG grants to accommodate the needed James River project.

The Jamestown project utilized a specialized "swamp excavator" with a specifically trained operations crew, as well as, project engineering/design and observation, permitting, acquiring staging, storing and access easements, restoration of any damage to easement areas, equipment and personnel for hauling, and proper disposal of the large trees and other debris. Projects like these are not ordinary operations and maintenance. They can require specialized contractors, equipment, permits, access/easements, environmental impact research, and proper debris disposal. The local water resources districts, cities, counties, and/or townships want to help mitigate flood damages and can participate financially. However, the 50-50 grants make projects possible with the limited resources of the effected political subdivisions.

As a State Water Commissioner for just over one year, I have heard from all different types of water projects, from water supply to permanent flood protection and everything in between. Allocating the limited resources of the Natural Resources Trust Fund and the Water Development Fund is not an easy job for the Legislature or the State Water Commission. SB 2139 simply allows important snagging and clearing projects to be eligible. Each project would still be fully vetted and prioritized by the State Water Commission and the State Water Commission staff. I encourage your support of SB2139. Thank you Mr. Chairman and members of the committee, I would be happy to answer and questions you may have.

Testimony, SB 2139  
9:30 AM, March 1, 2019  
Coteau A Room, State Capitol, Bismarck, ND

Dennis Reep, Vice-Chairman, Burleigh County WRD, Board of Directors, ND Water Users Association, Board of Directors, ND Water Resource Districts Association, and Private Consultant (HDR Engineering) to various WRDs including Ward, Renville, and Lower Heart River

Chairman Porter and Members of the Energy and Natural Resources Committee:

My name is Dennis Reep and I am on the Board of Directors for the ND Water Resource Districts Association, ND Water Users Association as well as Vice-Chairman of the Burleigh County Water Resource District (WRD). I have nearly 34 years of working in North Dakota on projects with WRDs across the state, including the Ward County WRD. WRD's primary responsibilities include the management of water from a local and regional perspective for beneficial uses of water, as well as for protection against flooding, erosion, and other detrimental effects of too much water. Specifically, I am here today to represent the need for snagging and clearing cost share capabilities through the North Dakota State Water Commission (NDSWC).

The Ward County WRD is a perfect example of the need for snagging and clearing projects. This district is continually presented with the need to conduct snagging and clearing activities on the Mouse and Des Lacs Rivers as well as their tributaries. These water courses have significant

tree and other woody vegetation growth along their banks which provides for a continual supply of debris to the water flow. This debris is invariably carried in the water course until it encounters bridges, sharp bends, or other impediments which trap the debris and can result in significant backwater flooding, bank erosion and threats to transportation facilities and other infrastructure. Removing the debris helps prevent damages to bridges, culverts, and other infrastructure and maintains the hydraulic capacity of the channel during floods.

Reinstating snagging and clearing as an eligible cost share activity through the NDSWC will allow WRDs across the state to proactively manage the water conveyance systems in their jurisdiction and help prevent the economic and social impacts debris blockages can induce.

I would be happy to answer any questions the committee may have regarding this testimony.

Thank you.

Testimony in Support of:  
SB 2139: Snagging & Clearing  
House Energy and Natural Resources Committee of the 66<sup>th</sup> Legislative Assembly  
March 1, 2019  
Submitted by Chad Engels, PE

Chairman Porter and members of the House Energy and Natural Resources Committee. My name is Chad Engels and I work in West Fargo North Dakota. I am here today to testify in strong support of SB 2139.

I am a registered professional engineer in the States of North Dakota and Minnesota. I work in the area of water resources and I specialize in the planning, development, and design of flood damage reduction projects. I hold both a Bachelor of Science Degree and a Master of Science Degree that resulted in a published scientific paper in the field of hydrology. During my career of nearly 20 years, I have served as the engineer of numerous North Dakota Water Resource Districts. I have served on numerous technical committees of Red River based water management organizations and I am a past executive board member of the North Dakota Water Users Association. My engineering team and I have been front and center in the development of the region's most significant flood damage reduction projects, including the Maple River Dam, Baldhill Dam raise, Sheyenne Diversion, FM-Diversion, and countless urban levees and rural flood control projects up and down the Red River basin. In 2009 and 2011 I was actively engaged in flood preparation and emergency response efforts for numerous communities. In summary, my team and I are recognized as leading technical authorities in the field of water resources, hydrology, hydraulics, and watershed management. I am here today to share my expert opinion with you and why it is important that you vote YES on SB 2139.

I want to start off by saying there is no silver bullet for flood prevention. The term "silver buckshot" is actually more appropriate. Flood damage reduction can only be achieved through the implementation of numerous types of projects and practices that work together to solve the flood equation. It is critical that we take advantage of all the tools available, especially the most economical tools like Snagging and Clearing. Fallen trees that block waterways result in reduced river capacity, higher flood stages, increased river breakouts, damage to public bridges and public roadways, damage to residential structures and property, and an increased public safety risk. The practice of snagging and clearing addresses all of these issues directly.

Local WRDs often take the lead to complete S&C work along our State's rivers and natural waterways for the purposes of flood prevention. Many of these rivers and natural waterways are deemed "Navigable Waters of the State of North Dakota". The lands within navigable waters are sovereign and the management of these lands is the responsibility of the State Engineer who sits as the head of the State Water Commission. One could argue that S&C projects along these rivers should be the responsibility of the State alone. However, WRDs have a strong history of stepping up to take the lead on these projects which has removed this burden from the State Engineer and State Water Commission. I can assure you that the State Engineer would be getting numerous phone calls if it weren't for local WRDs completing this important flood damage reduction work.

A small minority as argued that the State Water Commission should not partner with local WRDs to complete S&C work. An example of this would be the fact that this bill passed the Senate 41 to 5. Those 5 individuals likely held this view. ~~However, it is important to note that the State Water Commission, who on this issue concern does not hold this view. I have heard a State Water Commissioner say in testimony that of all the flood risk reduction work that they partner in, snagging and clearing is one of the best to go for their buck. Who doesn't support the wise use of tax dollars?~~ The minority will argue that S&C is "maintenance" and that the State Water Commission should not fund "maintenance". However, snagging and clearing is a practice, it is not maintenance. The State Water Commission does not fund the maintenance of public infrastructure projects. No legal assessment drain, no diversion, no levee, no dam, no flood control project of any kind receives cost share from the State Water Commission for maintenance. Nor do WRDs want cost share for

maintenance. The SWC only provides cost share for the development and construction of public infrastructure projects, but not the maintenance of them.

Natural rivers and natural waterways of the State of North Dakota are not "man-made infrastructure". They were not built by humans. Someday, if I am fortunate enough to make to heaven, I will ask the good Lord to be certain, but I don't believe He ever submitted a cost share request to the State Water Commission for river construction. They were free. Rivers and natural waterways are not "public infrastructure projects". They are simply a force of nature that we all must live with together. They are a part of the natural landscape, ever changing. Indeed, Snagging and Clearing is NOT maintenance because there is no basis for the original condition. There is no original design to go back to. When maintenance work is completed on public infrastructure projects the goal is to bring the project back into conformance with the original design. Rivers are ever-changing, there is no original condition to go back to. Indeed, Snagging and Clearing is best defined as a PRACTICE. A very important flood damage reduction practice. A practice that has a long tradition of partnership between the State and local water resource districts for the benefit of our citizens. That is until 2 years ago when this prohibition was attached to a much larger bill.

As previously stated, the past partnership between the SWC and local political subdivisions was very successful and beneficial to our citizens. We simply wish to restore this partnership and allow the SWC to have the option to once again provide cost-share for S&C projects IF THEY SO CHOOSE. The comments we received from legislators at the Senate hearing were..."this is common sense", "this seems obvious", "this is so simple". Yes, it is all of these things. This bill received a unanimous "do-pass" in the Senate hearing and an overwhelming vote of support in the chamber.

As I previously stated, I am a registered professional engineer in the State of North Dakota. I am one of a small group of Water Resources professionals that works and lives in our great State. I am here today with a sense of duty and because I am compelled by my professional obligation to assure that our water resources are managed in a way that safeguards the public's life, health, property, and welfare pursuant to Chapter 43-19.1 of the North Dakota Century Code. Snagging and clearing is one of the most important tools we have to assure this outcome. Partnerships are good. It is a good thing for the State to have local Water Resource Districts willing to take on this very important work within our States Rivers. Therefore, I strongly urge you to vote YES on SB 2139 and restore the long tradition of this very beneficial partnership.



TESTIMONY IN SUPPORT OF SB 2139  
PREPARED AND OFFERED BY GARY THOMPSON  
MARCH 1, 2019

Mr. Chairman and committee members, my name is Gary Thompson and I am the chairman of the Red River Joint Water Resource District, a joint water resource district with our home base in Hillsboro, North Dakota. I represent our members that include water resource districts in Pembina, Walsh, Grand Forks, Nelson, Traill, Steele, Cass, Barnes, Richland, Ransom and Sargent. I am also representing the North Dakota Water Resource Districts Association as a member of the board of directors. Both the Red River Joint Water Resource District and the North Dakota Water Resource Districts Association strongly support this bill, and we ask for your support of SB 2139.

You will recall from the 2017 session that HB 1374 was a policy bill that contained several water development provisions; some of the items in 1374 were important for sensible water development. However, one provision prohibits the State Water Commission from providing cost-share for snagging and clearing projects, and that has been incredibly damaging for our natural watercourses, rivers, and communities. The portion of the State Water Commission budget spent on snagging and clearing cost-share was miniscule. On our side, however, the lack of cost-share dollars has basically eliminated Water Resource Districts' ability to adequately maintain our river channels. HB 1374 was positive in many ways, but this seemingly small provision that prohibits Water Commission cost-share for these operations has been incredibly damaging.

Most Water Resource Districts have very limited general funds and simply cannot spend dollars on snagging and clearing projects; we need our general funds just to operate. We relied on the State Water Commission's snagging and clearing cost-share program to manage our rivers and

natural channels, to clean up fallen trees and debris. From a state perspective, the return on investment is significant; the State spends very little on cost-share for snagging and clearing, yet the snagging and clearing operations conducted by water resource districts with those dollars saves bridges and culverts, reduces riverbank erosion, and reduces flooding in adjacent ag fields.

Snagging and clearing allows us to remove deadfall that otherwise jams the bridge systems, and that deadfall and debris then compromises the bridges and destroys culverts. Without snagging and clearing, the altered flow in our rivers and natural watercourses backs up and causes bank erosion, and even threatens nearby roads. We are frequently fighting to keep water in its channels, and these snagging and clearing projects help us do that. Without the cost-share dollars, water resource districts lack the funds to conduct these projects and, as a result, several communities have seen erosion and riverbank slumping; our Township and County roads are at risk of washing out; and our bridges and culverts are damaged and sometimes compromised from a safety perspective.

In addition, when the flow in our rivers and natural watercourses is obstructed by deadfall and debris, the natural runoff from adjacent ag fields backs up; the flooded channels no longer accept the runoff and drainage from adjacent fields. As a result, adjacent ag fields flood.

Some have asked if snagging and clearing is really just maintenance of “water conveyance systems.” Our rivers and natural channels are not manmade drains. Drainage is absolutely crucial to the ag community, but we are not talking about maintaining legal drains. The Water Commission cost-share policy was always very clear that snagging and clearing cost-share was not available for legal drains; only snagging and clearing of rivers and natural channels qualified. Any attempt to prohibit snagging and clearing to take a shot at legal drains or ag drainage is

misguided. *We cannot request, and do not receive, State Water Commission cost-share funds to maintain our assessment drains.*

Water resource districts do not own river channels, but our constituents, farmers, and communities need these natural channels clean and need them to operate. Before HB 1374 passed, the State Water Commission could provide 50% cost-share to ensure we could afford to keep these channels clean. Without that cost-share, the only way water resource districts can afford snagging and clearing projects is to ask landowners if they are willing to pay assessments to pay for snagging and clearing of the rivers and natural watercourses. The ag economy is struggling in many areas and farmers lack the funds to pay for these operations.

In Traill County we have three branches to the Goose River: the Main Branch, the North Branch, and the South Branch. This river system is in desperate need of snagging and clearing; landowners are in need of relief from flooding caused by the deadfall and debris in all of the branches. We started the snagging and clearing program on the Goose River in phases in 2010, with the idea that every year we would do what we could afford based on State Water Commission funding. We nearly completed the Main Branch before HB 1374 froze the cost-share dollars, but we have not even touched the North and South branches.

The operations we have completed have ensured adequate outlets in our rivers and natural watercourses for ag producers in Traill County, and our township officers and the County Highway Department have relied on these operations to protect their bridges, culverts, and roads. However, since HB 1374 froze the cost-share dollars, the Traill County Commissioners have made it clear to the Traill County Water Resource District that, until the Legislature once again permits the State Water Commission to provide cost-share for these snagging and clearing projects, the County Commission cannot afford to participate in the costs for snagging and clearing.

Mr. Chairman and Committee members, HB 1374 provided some really helpful water policy for our state, but the provision that prohibits State Water Commission cost-share was a mistake. That mistake is hurting our communities, our road authorities, and our ag economy. We ask for you to support HB 2139 simply to reverse that mistake in HB 1374. Thank you for allowing me to testify here today, and on behalf of the Red River Joint Water Resource District and the North Dakota Water Resource Districts Association, we strongly urge a DO PASS for SB 2139.

Existing ND Water Resource District Joint / Watershed Boards  
February 2019

1. Cass County Joint Board
2. Devils Lake Basin Joint
3. Dickey-Sargent Joint
4. Elm River Joint WRD, Cass, Steele & Traill
5. Forest River Joint
6. Griggs/Barnes Joint WRD
7. Hurricane Lake Joint
8. James River Joint Board
9. Lower Heart River Water Resource District
10. Maple River & Barnes County Joint
11. Maple River-Ransom Joint
12. Maple River-Richland Joint
13. Maple River-Rush River Joint
14. Maple River-Southeast Cass Joint WRD
15. Maple River-Steele County Joint
16. McLean-Sheridan Joint
17. Missouri River Joint
18. North Cass and Rush River Joint Board
19. Oak Creek
20. Oliver County Water Resource District
21. Park River Joint Water Resource District
22. Red River Joint
23. Richland-Cass Joint Water Resource Board
24. Richland-Sargent Joint Water Resource District
25. Rocky Run Joint
26. Sheyenne River Joint
27. Souris River Joint
28. Southeast Cass - Rush River Joint
29. Tri-County
30. Tri-County Joint WRD Exec Bd
31. Upper Sheyenne River Joint
32. West River Joint

33. Griggs/Nelson Joint Board
34. Steele/Nelson Joint Board





**Trail  
County**

# Tribune

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E-mail: [tribune@polarcomm.com](mailto:tribune@polarcomm.com)

SERVING THE HEART OF THE VALLEY SINCE 1881

## Will Trail County flood in 2001?

by Lori Brandsted

With the threat of a flood looming over the county, a special meeting of the Trail County Board of Commissioners was held on Tuesday, April 10, to declare a state of emergency for the county.

"By declaring a state of emergency, it enables the county to use the emergency funds to fight the flood," said Sheriff Mike Crocker.

Crocker, who serves as Trail County's director of Disaster Emergency Services reported that as of Wednesday afternoon, the Goose River was sitting at 6.97 feet in Hillsboro, with the potential of reaching 11 feet on Sunday. The flood stage is seven feet.

The Red River's flood stage near Halstad, Minn., is 24 feet, and as of Wednesday, the river was at 37 feet with a projected crest of 39-40 feet by April 18.

"If the Red crests at 40 feet, that would only be seven-tenths of a foot below 1997," Crocker said. "It all depends on the weather over the

next couple of days and how much rain we actually receive."

In preparation for the flood, eight rural residents located near Hillsboro and south have been sandbagged.

Last Sunday, Minnesota's Polk County began the tedious task of clearing an ice jam that threatened

the bridge near Nielsville, Minn.

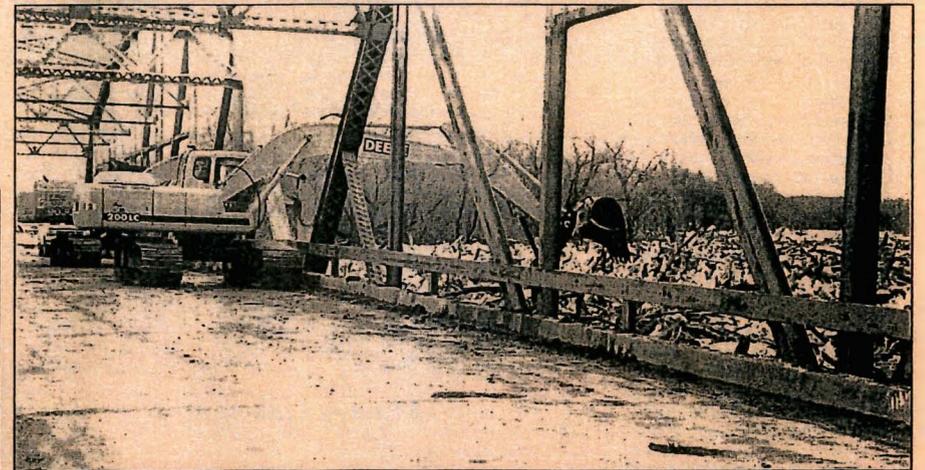
On Monday, Polk County requested Trail County's help in clearing the jam.

According to Crocker, the ice jam was successfully cleared by Wednesday morning.



The magnitude of the ice and log jam that occurred at the Nielsville bridge early this week is shown in the photo at right, as the jam extended for several hundred yards downstream.

In the photo above, a trackhoe from Polk county in Minnesota works on the huge and thick ice and log jam in the background of the photo, while another trackhoe from Traill County works in the foreground.



In the photo above, the two trackhoes work on the ice and log jam in the center of the Nielsville bridge, although the jam extended the entire length of the structure, putting enormous pressure on the bridge, located five miles north and 10 miles east of the Hillsboro sugar beet factory. Photos by Brad Tastad

### NOTABLES

**Driver's license site schedule**

by Brad Tastad

The rumor bug that has been flying around the communities of

The university has received approval from the Senate of the

its life expectancy was 13 years," summed up Rettew. "We've gotten

Ray Gerszewski.

Dennis Schultz, facilities service

the final say on which bid to accept.

Will the legislature also accept

The good news is, by this time

next week, both issues of where and

## Graduations key issue in fieldhouse floor repair

## Senate Bill No. 2139 Testimony

By: Justin Johnson

Good morning Mr. Chairman and members of the committee. My name is Justin Johnson; I am a Civil Technician for the Richland County Water Resource District.

I am here on behalf of the Richland County Water Resource District to request your support for Senate Bill 2139. Richland County has two river systems and multiple natural water courses that are affected by log jams on a regular basis.

Our larger snagging and clearing projects which usually occur on the Sheyenne River and Wild Rice River have been put on hold because of the snagging and clearing provision in House Bill 1374 that passed in 2017. The provision eliminated funding for snagging and clearing projects. Without the State Water Commission cost share we have been unable to move forward with larger snagging and clearing projects. The cost of these projects would come from our general fund which at 4 mills does not allow us to accomplish removing multiple large log jams.

Please look at the pictures I provided to you. Pictures 1 & 2 are of a smaller log jam along County Road #2 in Richland County.

Picture 1 is of a log jam incased in the ice of the Wild Rice River. As you can see the fallen tree debris spans across the entire river.

- Removal of the log jams.

When we do these projects, we try to remove as much of the fallen debris as we can. This usually means not just flush cutting the logs at the ice surface. We end up waiting until the ice is a little thinner so the contractor can break through and remove the tree debris underneath the ice's surface.

This is a costlier way to remove a log jam, but it is a more effective way to ensure the log jam does not return in the near future. If you only flush cut the logs at the surface other logs will eventually catch on the submerged logs and the log jam will reestablish. Cost of this smaller project was around \$30,000, but can vary widely depending on the conditions in the field.

- Erosion Concerns

Please look at picture #2 of site 1. This is a picture of site 1 after the log jam was removed. As you can see there is substantial erosion of the river bank. In this case the river bank is also running parallel to County Road #2.

Erosion is a massive concern to us when it comes to these log jams. If we are able to remove the log jams it cuts down on the erosion of the river bank. By removing these as quickly as possible it helps the adjacent landowner minimize their land loss caused by erosion, and also protect nearby homes.

- Bridges

Please look at the picture of Site 2. This picture is of a log jam on the upstream side of a bridge in Richland County. On any given year this could happen to many of our bridges. The main concern if these are not addressed is the possible damage or even loss of the bridge during a large water event.

- Conclusion

When inspecting assessment drain repair sites in Richland County I usually get more than a few questions and concerns from landowners about the removal of log jams on the natural waterways.

Landowners are happy to grant us access and will help in any way to get the log jams removed. They see firsthand the damage that these can cause to their land and homes if not addressed.

We hope to see Senate bill 2139 pass so we can go back to helping Richland County residents remove these obstructions from our waterways.

Please support this bill.

Thank you, and I can answer any questions you may have.



Picture 1, Site 1



Picture 2, Site 1



Site 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2020

Page 1, line 2, after "commission" insert "; and to amend and reenact sections 61-02-04 and 61-02-07 of the North Dakota Century Code, relating to the number of state water commission members and votes to bind the commission"

Page 1, after line 24, insert:

**SECTION 3. AMENDMENT.** Section 61-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-04. State water commission - Members - Terms - Qualifications.**

The state water commission consists of the governor, agriculture commissioner, and ~~seven~~<sup>eight</sup> other members appointed by the governor who shall take into account reasonable geographic considerations in making the appointments with the intent of having each of the ~~seven~~<sup>eight</sup> major drainage basins represented by a commissioner who resides in the basin. The major drainage basins are the upper Missouri River basin; the lower Missouri River basin; the James River basin; the upper Red River basin; the lower Red River basin; the Mouse River basin; ~~and~~; the Devils Lake basin; and the Little Missouri River, upper Heart River, and upper Cannonball River basin. The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at meetings that official is unable to attend. The ~~seven~~<sup>eight</sup> appointive members of the commission must be appointed for a term of six years each with the terms of office so arranged that ~~two terms and not more than three~~<sup>four</sup> terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

**SECTION 4. AMENDMENT.** Section 61-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-07. Quorum - What constitutes.**

A majority of the members of the commission constitutes a quorum, and the affirmative or negative vote of ~~five~~<sup>six</sup> members is necessary to bind the commission except for adjournment."

Re-number accordingly

19.0506.01004

Sixty-sixth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2139**

Introduced by

Senators Luick, Osland, Vedaa

Representatives Beadle, Mitskog, Pyle

1 A BILL for an Act to amend and reenact sections ~~61-02-01.3~~, 61-02-01.4, 61-02-02, 61-02-04,  
2 61-02-07, and 61-02-14 of the North Dakota Century Code, relating to cost-sharing and duties  
3 and membership of the state water commission.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 ~~SECTION 1. AMENDMENT. Section 61-02-01.3 of the North Dakota Century Code is~~  
6 ~~amended and reenacted as follows:~~

7 ~~61-02-01.3. Comprehensive water development plan.~~

8 ~~Biennially, the commission shall develop and maintain a comprehensive water development~~  
9 ~~plan organized on a river basin perspective, including which must include an inventory of future~~  
10 ~~water projects for budgeting and planning purposes. As part of the commission's planning~~  
11 ~~process, to facilitate local project sponsor participation and project prioritization, and to assist in~~  
12 ~~education regarding life cycle analyses for municipal water supply projects, and economic~~  
13 ~~analyses for flood control and water conveyance management projects expected to cost more~~  
14 ~~than one million dollars, the commission shall develop a policy that outlines procedures for~~  
15 ~~commissioner hosted meetings within the upper Red River, lower Red River, James River,~~  
16 ~~Mouse River, upper Missouri River, lower Missouri River, and Devils Lake drainage basins.~~

17 **SECTION 1. AMENDMENT.** Section 61-02-01.4 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **61-02-01.4. State water commission cost-share policy.**

20 The state water commission shall review, gather stakeholder input on, and rewrite as  
21 necessary the commission's "Cost-share Policy, Procedure and General Requirements" and  
22 "Project Prioritization Guidance" documents. The commission's cost-share policy:

23 1. Must provide a water supply project is eligible for a cost-share up to seventy-five  
24 percent of the total eligible project costs.

- 1        2.    May not determine program eligibility of water supply projects based on a population  
2            growth factor. However, a population growth factor may be used in prioritizing projects  
3            for that purpose.
- 4        3.    Must consider all project costs potentially eligible for reimbursement, except the  
5            commission shall exclude operations expense and regular maintenance, including  
6            removal of vegetative materials and sediment, for ~~water conveyance-~~  
7            ~~projects~~ assessment drains, and may exclude operations expense and regular  
8            maintenance for other projects. The commission shall require a water project sponsor  
9            to maintain a capital improvement fund from the rates charged customers for future  
10          extraordinary maintenance projects as condition of funding an extraordinary  
11          maintenance project.
- 12       4.    May not determine program eligibility of water supply projects based on affordability.  
13          However, affordability may be used in prioritizing projects for that purpose.

14        **SECTION 2. AMENDMENT.** Section 61-02-02 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16        **61-02-02. Definitions.**

17        In this chapter, unless the context or subject matter otherwise requires:

- 18        1.    "Commission" means the state water commission.
- 19        2.    "Cost of works" includes:
  - 20            a.    The cost of construction, the cost of all lands, property rights, water rights,  
21            easements, and franchises acquired which are deemed necessary for such  
22            construction;
  - 23            b.    The cost of all water rights acquired or exercised by the commission in  
24            connection with ~~such~~ the works;
  - 25            c.    The cost of all machinery and equipment, financing charges, interest ~~prior-~~  
26            ~~to~~ before and during construction and for a period not exceeding three years after  
27            the completion of construction;
  - 28            d.    The cost of engineering and legal expenses, plans, specifications, surveys,  
29            estimates of cost, and other expenses necessary or incident to determining the  
30            feasibility or practicability of ~~any~~ a project;
  - 31            e.    Administrative expenses;

- 1 f. The construction of the works and the placing of the ~~same~~works in operation; and
- 2 g. ~~Such other~~Other expenses as may be necessary or incident to the financing
- 3 authorized in this chapter, including funding of debt service, repair and
- 4 replacement reserves, capitalized interest, and the payment of bond issuance
- 5 costs.
- 6 3. "Cost-share" means funds appropriated by the legislative assembly or otherwise
- 7 transferred by the commission to a local entity under commission policy as
- 8 reimbursement for a percentage of the total approved cost of a project approved by
- 9 the commission.
- 10 4. "Economic analysis" means an estimate of economic benefits and direct costs that
- 11 result from the development of a project.
- 12 5. "Grant" means a one-time sum of money appropriated by the legislative assembly and
- 13 transferred by the commission to a local entity for a particular purpose. A grant is not
- 14 dependent on the local entity providing a particular percentage of the cost of the
- 15 project.
- 16 6. "Life cycle analysis" means the summation of all costs associated with the anticipated
- 17 useful life of a project, including project development, land, construction, operation,
- 18 maintenance, and disposal or decommissioning.
- 19 7. "Loan" means an amount of money lent to a sponsor of a project approved by the
- 20 commission to assist with funding approved project components. A loan may be
- 21 stand-alone financial assistance.
- 22 8. "Owner" includes all individuals, associations, corporations, limited liability companies,
- 23 districts, municipalities, and other political subdivisions of this state having any title or
- 24 interest in any properties, rights, water rights, easements, or franchises to be acquired.
- 25 9. "Project" means any one of the works defined in subsection 4110, or any combination
- 26 of such works, which are physically connected or jointly managed and operated as a
- 27 single unit.
- 28 10. "Water conveyance project" means any ~~surface drainage works~~assessment drain,
- 29 bank stabilization, or snagging and clearing of water courses.
- 30 11. "Works" includes:

- 1 a. All property rights, easements, and franchises relating thereto and deemed
- 2 necessary or convenient for their operation;
- 3 b. All water rights acquired and exercised by the commission in connection with
- 4 such works;
- 5 c. All means of conserving and distributing water, including ~~without limiting the~~
- 6 ~~generality of the foregoing two subdivisions~~, reservoirs, dams, diversion canals,
- 7 distributing canals, channels, lateral ditches, pumping units, mains, pipelines,
- 8 treatment plants, and waterworks systems; and
- 9 d. All works for the conservation, control, development, storage, treatment,
- 10 distribution, and utilization of water, including ~~without limiting the generality of the~~
- 11 ~~foregoing subdivisions~~, works for the purpose of irrigation, flood control, watering
- 12 stock, supplying water for public, domestic, industrial, and recreational use, fire
- 13 protection, and the draining of lands injured or in danger of injury as a result of
- 14 such water utilization.

15 **SECTION 3. AMENDMENT.** Section 61-02-04 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **61-02-04. State water commission - Members - Terms - Qualifications.**

18 The state water commission consists of the governor, agriculture commissioner, and  
19 ~~seven~~eight other members appointed by the governor who shall take into account reasonable  
20 geographic considerations in making the appointments with the intent of having each of the  
21 ~~seven~~eight major drainage basins represented by a commissioner who resides in the basin. The  
22 major drainage basins are the upper Missouri River basin<sub>;</sub> the lower Missouri River basin<sub>;</sub> the  
23 James River basin<sub>;</sub> the upper Red River basin<sub>;</sub> the lower Red River basin<sub>;</sub> the Mouse River  
24 basin<sub>;</sub> ~~and~~<sub>;</sub> the Devils Lake basin<sub>;</sub> and the Little Missouri River, upper Heart River, and upper  
25 Cannonball River basin. The governor or the agriculture commissioner, or both, may appoint a  
26 representative to serve in that official's capacity at meetings that official is unable to attend. The  
27 ~~seven~~eight appointive members of the commission must be appointed for a term of six years  
28 each with the terms of office so arranged that ~~two terms and~~ not more than ~~three~~four terms  
29 expire on the first day of July of each odd-numbered year. Each appointive member must be a  
30 qualified elector of the state and is subject to removal by judicial procedure. In case of a  
31 vacancy, the vacancy must be filled by appointment by the governor for the remainder of the

1 unexpired term. Before entering upon the discharge of official duties, each appointive member  
2 shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

3 **SECTION 4. AMENDMENT.** Section 61-02-07 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **61-02-07. Quorum - What constitutes.**

6 A majority of the members of the commission constitutes a quorum, and the affirmative or  
7 negative vote of ~~five~~six members is necessary to bind the commission except for adjournment.

8 **SECTION 5. AMENDMENT.** Section 61-02-14 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **61-02-14. Powers and duties of the commission.**

11 The commission ~~shall have full and complete power, authority, and general jurisdiction~~  
12 authorized:

- 13 1. To investigate, plan, regulate, undertake, construct, establish, maintain, control,  
14 operate, and supervise all works, dams, and projects, public and private, which in  
15 itsthe commission's judgment may be necessary or advisable:
- 16 a. To control the low-water flow of streams in the state.
  - 17 b. To impound water for the improvement of municipal, industrial, and rural water  
18 supplies.
  - 19 c. To control and regulate floodflow in the streams of the state to minimize the  
20 damage of such floodwaters.
  - 21 d. To conserve and develop the waters within the natural watershed areas of the  
22 state and, subject to vested rights, to divert the waters within a watershed area to  
23 another watershed area and the waters of any river, lake, or stream into another  
24 river, lake, or stream.
  - 25 e. To improve the channels of the streams for more efficient transportation of the  
26 available water in the streams.
  - 27 f. To provide sufficient water flow for the abatement of stream pollution.
  - 28 g. To develop, restore, and stabilize the waters of the state for domestic,  
29 agricultural, and municipal needs; irrigation; flood control; recreation; and  
30 wildlife conservation by the construction and maintenance of dams, reservoirs,  
31 and diversion canals.

- 1 h. To promote the maintenance of existing drainage channels in agricultural lands  
2 and to construct ~~any~~ needed channels.
- 3 i. To provide more satisfactory subsurface water supplies for the state's  
4 municipalities ~~of the state~~.
- 5 j. To finance the construction, establishment, ~~operation~~, and extraordinary  
6 maintenance of public ~~and private works~~, dams, and irrigation projects, which in  
7 its the commission's judgment may be necessary and advisable, ~~except the~~. The  
8 commission may not provide a cost-share for the costs of operation or regular  
9 maintenance, including removal of vegetative materials and sediment, of a ~~water~~  
10 conveyance project assessment drains or other man-made projects.
- 11 k. To provide for the storage, development, diversion, delivery, and distribution of  
12 water for the irrigation of agricultural land and supply water for municipal and  
13 industrial purposes.
- 14 l. To provide for the drainage of lands injured by or susceptible of injury from  
15 excessive rainfall or from the utilization of irrigation water, and subject to the  
16 limitations prescribed by law, to aid and cooperate with the United States and any  
17 department, agency, or officer thereof of the United States, and with any county,  
18 township, drainage district, or irrigation district of this state, or of ~~other~~  
19 states another state, in the construction or improvement of ~~such~~ the drains.
- 20 m. To provide water for stock.
- 21 n. To provide water for the generation of electric power and for mining and  
22 manufacturing purposes.
- 23 2. To define, declare, and establish rules and regulations:
- 24 a. For the sale of waters and water rights to individuals, associations, corporations,  
25 limited liability companies, municipalities, and other political subdivisions of the  
26 state and for the delivery of water to users.
- 27 b. For the full and complete supervision, regulation, and control of the water  
28 supplies within the state.
- 29 c. ~~Repealed by S.L. 1975, ch. 575, § 2.~~
- 30 d. Governing and providing for financing by local participants to the maximum  
31 extent deemed practical and equitable in any water development project in which

Sixty-sixth  
Legislative Assembly

- 1                   the state participates in cooperation with the United States or with political  
2                   subdivisions or local entities.
- 3       3.   To exercise full power and control of the construction, operation, and maintenance of  
4       works and the collection of rates, charges, and revenues realized ~~therefrom~~from the  
5       works.
- 6       4.   To sell, lease, and otherwise distribute all waters which may be developed,  
7       impounded, and diverted by the commission under ~~the provisions of~~ this chapter, for  
8       the purposes of irrigation, the development of power, and the watering of livestock,  
9       and for any other private or public use.
- 10      5.   To exercise all express and implied rights, power, and authority that may be  
11      necessary, and to do, perform, and carry out ~~all of~~ the expressed purposes of this  
12      chapter and ~~all of~~ the purposes reasonably implied incidentally ~~thereto~~ or lawfully  
13      connected ~~therewith~~with the expressed purposes of this chapter.
- 14      6.   To acquire, own, and develop lands for irrigation and water conservation and to  
15      acquire, own, and develop damsites and reservoir sites and to acquire easements and  
16      rights of way for diversion and distributing systems.
- 17      7.   To cooperate with the United States and any department, agency, or officer ~~thereof~~  
18      the United States in the planning, establishment, operation, and maintenance of dams,  
19      reservoirs, diversion and distributing systems, for the utilization of the waters of the  
20      state for domestic, municipal, and industrial needs, irrigation, flood control, water  
21      conservation, and generation of electric power and for mining, agricultural, and  
22      manufacturing purposes, ~~and in this connection the state water.~~ The commission is  
23      ~~hereby authorized~~may, within the limitations prescribed by law, ~~to~~ acquire, convey,  
24      contribute, or grant to the United States, moneys, real and personal property, including  
25      land or easements for dams and reservoir sites and rights of way and easements for  
26      diversion and distribution systems or participate in the cost of any project.
- 27      8.   To consider cost-sharing for water quality improvement projects.

**NDLA, Intern 01 - Carpenter, Katie**

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**From:** Ness, Claire J.  
**Sent:** Thursday, March 28, 2019 3:05 PM  
**To:** Lefor, Mike  
**Cc:** NDLA, Intern 01 - Carpenter, Katie  
**Subject:** definitions

Representative Lefor,

This responds to our recent discussion by phone regarding the phrases “extraordinary maintenance” and “extraordinary repairs”.

- The phrase “extraordinary maintenance projects” is used currently in sections 24-02-03.2, 61-02-01.4, 61-24.3-11, 61-24.3-16, 61-24.6-06, 61-24.6-08, and perhaps others without a definition. The State Water Commission may have a working definition or understanding for the phrase. I did not find any agency rules defining the phrase.
- The phrase “extraordinary repairs” is found in chapters 30.1-18, 30.1-29, 59-04.2, and 59-16, but it is not defined in them.
- In section 15.1-09.1-09, the phrase “extraordinary service” is defined as “duties beyond those reasonably expected of members...” If the committee would like to define “extraordinary maintenance,” you may want to consider whether extraordinary maintenance would be maintenance “beyond that which is reasonably expected”.

I will be down to the committee room shortly.

Thanks,  
Claire

Claire J. Ness  
Counsel  
Legislative Council  
600 East Boulevard Avenue  
Bismarck, ND 58505  
(701) 328-3208

PROPOSED AMENDMENTS TO SENATE BILL NO. 2139

Page 1, line 1, remove "61-02-01.3,"

Page 1, line 1, after the third comma insert "61-02-04, 61-02-07,"

Page 1, line 2, after "duties" insert "and membership"

Page 1, remove lines 5 through 16

Page 3, line 28, remove the overstrike over ""~~Water conveyance project~~" means any"

Page 3, line 28, after "works" insert "assessment drain"

Page 3, line 28, remove the overstrike over ", ~~bank stabilization, or~~"

Page 3, remove the overstrike over line 29

Page 3, line 30, remove the overstrike over "44."

Page 4, after line 14, insert:

**"SECTION 3. AMENDMENT.** Section 61-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-04. State water commission - Members - Terms - Qualifications.**

The state water commission consists of the governor, agriculture commissioner, and ~~seveneight~~ seven other members appointed by the governor who shall take into account reasonable geographic considerations in making the appointments with the intent of having each of the ~~seveneight~~ seven major drainage basins represented by a commissioner who resides in the basin. The major drainage basins are the upper Missouri River basin; the lower Missouri River basin; the James River basin; the upper Red River basin; the lower Red River basin; the Mouse River basin; ~~and~~ the Devils Lake basin; and the Little Missouri River, upper Heart River, and upper Cannonball River basin. The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at meetings that official is unable to attend. The ~~seveneight~~ seven appointive members of the commission must be appointed for a term of six years each with the terms of office so arranged that ~~two terms and~~ not more than ~~three~~ four terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

**SECTION 4. AMENDMENT.** Section 61-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-07. Quorum - What constitutes.**

SB 2139

3.28.19

Attachment 3

A majority of the members of the commission constitutes a quorum, and the affirmative or negative vote of ~~five~~six members is necessary to bind the commission except for adjournment."

Page 5, line 12, overstrike "operation,"

Page 5, line 12, after "and" insert "extraordinary"

Page 5, line 13, overstrike "and private works"

Page 5, line 15, after "or" insert "regular"

Page 5, line 17, remove "or other man-made projects"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2139

Page 1, line 1, remove "61-02-01.3,"

Page 1, line 1, after the third comma insert "61-02-04, 61-02-07,"

Page 1, line 2, after "duties" insert "and membership"

Page 1, remove lines 5 through 16

Page 2, line 5, overstrike "and" and insert immediately thereafter an underscored comma

Page 2, line 5, overstrike "including" and insert immediately thereafter "and"

Page 2, line 8, after the period insert "Snagging and clearing of watercourses are not regular maintenance."

Page 3, line 28, remove the overstrike over "~~Water conveyance project~~ means any"

Page 3, line 28, remove the overstrike over the overstruck comma

Page 3, line 28, after "~~bank~~" insert "assessment drain, stream bank"

Page 3, line 28, remove the overstrike over "~~stabilization, or~~"

Page 3, remove the overstrike over line 29

Page 3, line 30, remove the overstrike over "~~11.~~"

Page 4, after line 14, insert:

**SECTION 3. AMENDMENT.** Section 61-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-04. State water commission - Members - Terms - Qualifications.**

The state water commission consists of the governor, agriculture commissioner, and ~~seven~~eight other members appointed by the governor who shall take into account reasonable geographic considerations in making the appointments with the intent of having each of the ~~seven~~eight major drainage basins represented by a commissioner who resides in the basin. The major drainage basins are the upper Missouri River basin;; the lower Missouri River basin;; the James River basin;; the upper Red River basin;; the lower Red River basin;; the Mouse River basin,~~and~~; the Devils Lake basin; and the Little Missouri River, upper Heart River, and upper Cannonball River basin. The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at meetings that official is unable to attend. The ~~seven~~eight appointive members of the commission must be appointed for a term of six years each with the terms of office so arranged that ~~two terms and~~ not more than ~~three~~four terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

**SECTION 4. AMENDMENT.** Section 61-02-07 of the North Dakota Century Code is amended and reenacted as follows:

SB 2139  
4.5.19  
Attachment 1

**61-02-07. Quorum - What constitutes.**

A majority of the members of the commission constitutes a quorum, and the affirmative or negative vote of ~~five~~six members is necessary to bind the commission except for adjournment."

Page 5, line 12, overstrike "operation,"

Page 5, line 12, after "and" insert "extraordinary"

Page 5, line 13, overstrike "and private"

Page 5, line 15, overstrike "or" and insert immediately thereafter ", regular"

Page 5, line 15, overstrike "including" and insert immediately thereafter "or"

Page 5, line 16, overstrike "of"

Page 5, line 16, after "~~project~~" insert "for"

Page 5, line 17, remove "or other man-made projects"

Page 5, line 17, after the period insert "Snagging and clearing of watercourses are not regular maintenance."

Renumber accordingly

19.0506.01005

Sixty-sixth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2139**

Introduced by

Senators Luick, Osland, Vedaa

Representatives Beadle, Mitskog, Pyle

1 A BILL for an Act to amend and reenact sections ~~61-02-01.3~~, 61-02-01.4, 61-02-02, 61-02-04,  
2 61-02-07, and 61-02-14 of the North Dakota Century Code, relating to cost-sharing and duties  
3 and membership of the state water commission.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 ~~SECTION 1. AMENDMENT. Section 61-02-01.3 of the North Dakota Century Code is~~  
6 ~~amended and reenacted as follows:~~

7 ~~61-02-01.3. Comprehensive water development plan.~~

8 ~~Biennially, the commission shall develop and maintain a comprehensive water development~~  
9 ~~plan organized on a river basin perspective, including which must include an inventory of future~~  
10 ~~water projects for budgeting and planning purposes. As part of the commission's planning~~  
11 ~~process, to facilitate local project sponsor participation and project prioritization, and to assist in~~  
12 ~~education regarding life cycle analyses for municipal water supply projects, and economic~~  
13 ~~analyses for flood control and water conveyancemanagement projects expected to cost more~~  
14 ~~than one million dollars, the commission shall develop a policy that outlines procedures for~~  
15 ~~commissioner-hosted meetings within the upper Red River, lower Red River, James River,~~  
16 ~~Mouse River, upper Missouri River, lower Missouri River, and Devils Lake drainage basins.~~

17 **SECTION 1. AMENDMENT.** Section 61-02-01.4 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **61-02-01.4. State water commission cost-share policy.**

20 The state water commission shall review, gather stakeholder input on, and rewrite as  
21 necessary the commission's "Cost-share Policy, Procedure and General Requirements" and  
22 "Project Prioritization Guidance" documents. The commission's cost-share policy:

- 23 1. Must provide a water supply project is eligible for a cost-share up to seventy-five  
24 percent of the total eligible project costs.

- 1        2.    May not determine program eligibility of water supply projects based on a population  
2            growth factor. However, a population growth factor may be used in prioritizing projects  
3            for that purpose.
- 4        3.    Must consider all project costs potentially eligible for reimbursement, except the  
5            commission shall exclude operations expense ~~and~~, regular maintenance, ~~including~~ and  
6            removal of vegetative materials and sediment, for ~~water conveyance~~  
7            projects assessment drains, and may exclude operations expense and regular  
8            maintenance for other projects. Snagging and clearing of watercourses are not regular  
9            maintenance. The commission shall require a water project sponsor to maintain a  
10           capital improvement fund from the rates charged customers for future extraordinary  
11           maintenance projects as condition of funding an extraordinary maintenance project.
- 12       4.    May not determine program eligibility of water supply projects based on affordability.  
13           However, affordability may be used in prioritizing projects for that purpose.

14        **SECTION 2. AMENDMENT.** Section 61-02-02 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16        **61-02-02. Definitions.**

17        In this chapter, unless the context or subject matter otherwise requires:

- 18        1.    "Commission" means the state water commission.
- 19        2.    "Cost of works" includes:
  - 20            a.    The cost of construction, the cost of all lands, property rights, water rights,  
21            easements, and franchises acquired which are deemed necessary for such  
22            construction;
  - 23            b.    The cost of all water rights acquired or exercised by the commission in  
24            connection with ~~such~~ the works;
  - 25            c.    The cost of all machinery and equipment, financing charges, interest ~~prior~~  
26            to before and during construction and for a period not exceeding three years after  
27            the completion of construction;
  - 28            d.    The cost of engineering and legal expenses, plans, specifications, surveys,  
29            estimates of cost, and other expenses necessary or incident to determining the  
30            feasibility or practicability of ~~any~~ a project;
  - 31            e.    Administrative expenses;

- 1 f. The construction of the works and the placing of the sameworks in operation; and
- 2 g. ~~Such other~~Other expenses ~~as may be~~ necessary or incident to the financing
- 3 authorized in this chapter, including funding of debt service, repair and
- 4 replacement reserves, capitalized interest, and the payment of bond issuance
- 5 costs.
- 6 3. "Cost-share" means funds appropriated by the legislative assembly or otherwise
- 7 transferred by the commission to a local entity under commission policy as
- 8 reimbursement for a percentage of the total approved cost of a project approved by
- 9 the commission.
- 10 4. "Economic analysis" means an estimate of economic benefits and direct costs that
- 11 result from the development of a project.
- 12 5. "Grant" means a one-time sum of money appropriated by the legislative assembly and
- 13 transferred by the commission to a local entity for a particular purpose. A grant is not
- 14 dependent on the local entity providing a particular percentage of the cost of the
- 15 project.
- 16 6. "Life cycle analysis" means the summation of all costs associated with the anticipated
- 17 useful life of a project, including project development, land, construction, operation,
- 18 maintenance, and disposal or decommissioning.
- 19 7. "Loan" means an amount of money lent to a sponsor of a project approved by the
- 20 commission to assist with funding approved project components. A loan may be
- 21 stand-alone financial assistance.
- 22 8. "Owner" includes all individuals, associations, corporations, limited liability companies,
- 23 districts, municipalities, and other political subdivisions of this state having any title or
- 24 interest in any properties, rights, water rights, easements, or franchises to be acquired.
- 25 9. "Project" means any one of the works defined in subsection 4410, or any combination
- 26 of such works, which are physically connected or jointly managed and operated as a
- 27 single unit.
- 28 10. "Water conveyance project" means any ~~surface drainage works, bank~~assessment
- 29 drain, streambank stabilization, or snagging and clearing of water courses.
- 30 11. "Works" includes:

- 1 a. All property rights, easements, and franchises relating thereto and deemed
- 2 necessary or convenient for their operation;
- 3 b. All water rights acquired and exercised by the commission in connection with
- 4 such works;
- 5 c. All means of conserving and distributing water, including ~~without limiting the~~
- 6 ~~generality of the foregoing two subdivisions~~, reservoirs, dams, diversion canals,
- 7 distributing canals, channels, lateral ditches, pumping units, mains, pipelines,
- 8 treatment plants, and waterworks systems; and
- 9 d. All works for the conservation, control, development, storage, treatment,
- 10 distribution, and utilization of water, including ~~without limiting the generality of the~~
- 11 ~~foregoing subdivisions~~, works for the purpose of irrigation, flood control, watering
- 12 stock, supplying water for public, domestic, industrial, and recreational use, fire
- 13 protection, and the draining of lands injured or in danger of injury as a result of
- 14 such water utilization.

15 **SECTION 3. AMENDMENT.** Section 61-02-04 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **61-02-04. State water commission - Members - Terms - Qualifications.**

18 The state water commission consists of the governor, agriculture commissioner, and  
19 ~~seven~~eight other members appointed by the governor who shall take into account reasonable  
20 geographic considerations in making the appointments with the intent of having each of the  
21 ~~seven~~eight major drainage basins represented by a commissioner who resides in the basin. The  
22 major drainage basins are the upper Missouri River basin; the lower Missouri River basin; the  
23 James River basin; the upper Red River basin; the lower Red River basin; the Mouse River  
24 basin; ~~and~~ the Devils Lake basin; and the Little Missouri River, upper Heart River, and upper  
25 Cannonball River basin. The governor or the agriculture commissioner, or both, may appoint a  
26 representative to serve in that official's capacity at meetings that official is unable to attend. The  
27 ~~seven~~eight appointive members of the commission must be appointed for a term of six years  
28 each with the terms of office so arranged that ~~two terms and~~ not more than ~~three~~four terms  
29 expire on the first day of July of each odd-numbered year. Each appointive member must be a  
30 qualified elector of the state and is subject to removal by judicial procedure. In case of a  
31 vacancy, the vacancy must be filled by appointment by the governor for the remainder of the

1 unexpired term. Before entering upon the discharge of official duties, each appointive member  
2 shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

3 **SECTION 4. AMENDMENT.** Section 61-02-07 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **61-02-07. Quorum - What constitutes.**

6 A majority of the members of the commission constitutes a quorum, and the affirmative or  
7 negative vote of ~~five~~six members is necessary to bind the commission except for adjournment.

8 **SECTION 5. AMENDMENT.** Section 61-02-14 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **61-02-14. Powers and duties of the commission.**

11 The commission ~~shall have full and complete power, authority, and general jurisdiction~~  
12 authorized:

- 13 1. To investigate, plan, regulate, undertake, construct, establish, maintain, control,  
14 operate, and supervise all works, dams, and projects, public and private, which in  
15 its~~the~~ commission's judgment may be necessary or advisable:
- 16 a. To control the low-water flow of streams in the state.
  - 17 b. To impound water for the improvement of municipal, industrial, and rural water  
18 supplies.
  - 19 c. To control and regulate floodflow in the streams of the state to minimize the  
20 damage of ~~such~~ floodwaters.
  - 21 d. To conserve and develop the waters within the natural watershed areas of the  
22 state and, subject to vested rights, to divert the waters within a watershed area to  
23 another watershed area and the waters of any river, lake, or stream into another  
24 river, lake, or stream.
  - 25 e. To improve the channels of the streams for more efficient transportation of the  
26 available water in the streams.
  - 27 f. To provide sufficient water flow for the abatement of stream pollution.
  - 28 g. To develop, restore, and stabilize the waters of the state for domestic,  
29 agricultural, and municipal needs; irrigation; flood control; recreation; and  
30 wildlife conservation by the construction and maintenance of dams, reservoirs,  
31 and diversion canals.

- 1 h. To promote the maintenance of existing drainage channels in agricultural lands  
2 and to construct ~~any~~ needed channels.
- 3 i. To provide more satisfactory subsurface water supplies for the state's  
4 municipalities ~~of the state~~.
- 5 j. To finance the construction, establishment, ~~operation~~, and extraordinary  
6 maintenance of public ~~and private~~ works, dams, and irrigation projects, which in  
7 its the commission's judgment may be necessary and advisable, ~~except the~~. The  
8 commission may not provide a cost-share for the costs of operation ~~or~~, regular  
9 maintenance, including or removal of vegetative materials and sediment, ~~of a~~  
10 water conveyance project for assessment drains ~~or other man-made projects~~.  
11 Snagging and clearing of watercourses are not regular maintenance.
- 12 k. To provide for the storage, development, diversion, delivery, and distribution of  
13 water for the irrigation of agricultural land and supply water for municipal and  
14 industrial purposes.
- 15 l. To provide for the drainage of lands injured by or susceptible of injury from  
16 excessive rainfall or from the utilization of irrigation water, and subject to the  
17 limitations prescribed by law, to aid and cooperate with the United States and any  
18 department, agency, or officer thereof of the United States, and with any county,  
19 township, drainage district, or irrigation district of this state, or of ~~other~~  
20 states another state, in the construction or improvement of ~~such~~ the drains.
- 21 m. To provide water for stock.
- 22 n. To provide water for the generation of electric power and for mining and  
23 manufacturing purposes.
- 24 2. To define, declare, and establish rules and regulations:
- 25 a. For the sale of waters and water rights to individuals, associations, corporations,  
26 limited liability companies, municipalities, and other political subdivisions of the  
27 state and for the delivery of water to users.
- 28 b. For the full and complete supervision, regulation, and control of the water  
29 supplies within the state.
- 30 c. ~~Repealed by S.L. 1975, ch. 575, § 2.~~

- 1           d. Governing and providing for financing by local participants to the maximum  
2           extent deemed practical and equitable in any water development project in which  
3           the state participates in cooperation with the United States or with political  
4           subdivisions or local entities.
- 5           3. To exercise full power and control of the construction, operation, and maintenance of  
6           works and the collection of rates, charges, and revenues realized ~~therefrom~~from the  
7           works.
- 8           4. To sell, lease, and otherwise distribute all waters which may be developed,  
9           impounded, and diverted by the commission under ~~the provisions of~~ this chapter, for  
10          the purposes of irrigation, the development of power, and the watering of livestock,  
11          and for any other private or public use.
- 12          5. To exercise all express and implied rights, power, and authority that may be  
13          necessary, and to do, perform, and carry out ~~all of~~ the expressed purposes of this  
14          chapter and ~~all of~~ the purposes reasonably implied incidentally ~~thereto~~ or lawfully  
15          connected ~~therewith~~with the expressed purposes of this chapter.
- 16          6. To acquire, own, and develop lands for irrigation and water conservation and to  
17          acquire, own, and develop damsites and reservoir sites and to acquire easements and  
18          rights of way for diversion and distributing systems.
- 19          7. To cooperate with the United States and any department, agency, or officer ~~thereof~~  
20          the United States in the planning, establishment, operation, and maintenance of dams,  
21          reservoirs, diversion and distributing systems, for the utilization of the waters of the  
22          state for domestic, municipal, and industrial needs, irrigation, flood control, water  
23          conservation, and generation of electric power and for mining, agricultural, and  
24          manufacturing purposes, ~~and in this connection the state water.~~ The commission is  
25          ~~hereby authorized~~may, within the limitations prescribed by law, ~~to~~ acquire, convey,  
26          contribute, or grant to the United States, moneys, real and personal property, including  
27          land or easements for dams and reservoir sites and rights of way and easements for  
28          diversion and distribution systems or participate in the cost of any project.
- 29          8. To consider cost-sharing for water quality improvement projects.