

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1146

2007 HOUSE NATURAL RESOURCES

HB 1146

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

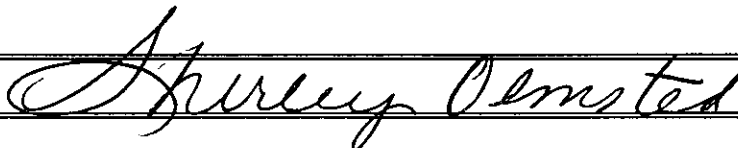
House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2559

Committee Clerk Signature



Minutes:

Chairman Porter opened the hearing on HB 1146 and asked the clerk to read the title.

Representative Lyle Hanson, District #12 from Jamestown introduced HB 1146 as a sponsor.

He made reference to land that has been sold during the past few years and the hunting rights

have been sold separately from the land of the sale. This is happening in the badlands.

Representative Chet Pollert from District 29 also came forward in support of HB 1146.

Mr. Curt Decker from Dickinson came forward as a concerned sportsman. We need to stop this before it gets too far. He thinks that down the road these hunting rights owners are going to come back and demand more rights. They may not even live in this state. If you want to receive the benefits of this state, you should be a resident and taxpayer of this state. I urge a do pass on this bill.

Chairman Porter asked if he thought it would be a potential problem if these severed rights were sold to groups who may or may not want hunting on the property and the affects it may have for that surface owner.

Mr. Decker said most definitely. There are going to be some negative aspects to the whole thing. Look at what is happening with mineral rights. It can lead to a negative chain reaction down the road. There have some wonderful properties sold in western North Dakota sold just

for the hunting rights. The average person cannot compete with some of these out of state hunters who are buying these rights.

Representative Drovdal wanted to correct the record on the sale of mineral rights. He said that they pay 11-1/2% production severance tax and they have to pay income tax in North Dakota for any of their income.

Mr. Decker said that is absolutely true but the large percentage of what they receive they are taking with them and the tax paying citizens of ND are having to pick up the negative impacts of what is happening out there. I think this bill will help protect our limited resources.

Representative Nottestad asked about the land being sold for one thousand dollars per acre. What does this have to do with this bill?

Mr. Decker said nothing. I just mentioned that in passing. These property values are being driven up and I am not sure how severing will affect those land values. Right now they are paying higher values for the hunting rights.

Representative Nottestad said what if there was a bill to restrict the value of your home in Dickinson. To me this is exactly the same thing. If there is a farmer who chooses to sell his land and it is better for him to sell the hunting rights separate from the land. Doesn't that take away his rights?

Mr. Decker said yes it probably would. It is a catch 22 situation. I think it would be a positive bill to protect what we do have here in ND.

Representative Charging asked if these rights are being separated now and how would you propose to deal with those that have been severed already.

Mr. Decker said yes it is happening but he doesn't know how to deal with it. He said I guess you can grandfather those in that have already been severed.

Representative Charging asked him if he was a landowner.

Mr. Decker said no but he has a lot of wonderful friends that are landowners. In some cases, it may save some of these ranches if they could sever those hunting rights, but then down the road what happens. There are a lot of scenarios.

Representative Solberg said he supports this bill. He said an example of this would be someone who sells his land and retains the hunting rights. Later he decides to sell his hunting to someone else and they can come in and overrun the surface owner's property and he would have no say in controlling this. There are a lot of negative things that can occur.

Representative DeKrey asked if an oil producer comes in the land and the mineral rights have been severed, does that company have to work with the surface owner before they can drill that well?

Representative Solberg said they have to work with the surface owner but that doesn't relate to this.

Representative DeKrey asked why doesn't it. If we are talking about rights here, you sold those hunting rights, why would that give the owner of the hunting rights the ability to just go on the land without working with the surface owner.

Representative Solberg said it would be different said the person who owns those hunting rights could just go in and start hunting.

Ms. Julie Ellingson of the ND Stockman's Association came forward in support of HB 1146. She said private property rights are the cornerstone of the ND Stockman's Association philosophy. They feel severing the hunting rights from the property would be very confusing and could also affect the landowner's ability to manage their land if not in the short term but in the long term down the line. Surface rights are very important to the management of a livestock operation. Our organization does not view hunting as a right but as a privilege.

Representative Charging said we are trying to govern the landowner here and you know we cannot do that.

Ms. Ellingson said they think in the long term this will be a problem for ranchers trying to manage their land.

Representative Charging said she still does not follow this. The surface landowner should still have the right.

Ms. Ellingson said they think there is already confusion within the separation of different rights from the land. We think there will be a problem with future generations.

Representative Drovdal said most of the hunting rights that have been severed have been caused by the federal government. How would this affect the federal governments for any land they may have acquired?

Ms. Ellingson said she was the wrong person to ask.

Mr. Harold Erickson from Carrington came forward in support of HB 1146. He had an instance last year where he was hunting in Hazen with some friends. They had permission to hunt on this piece of ground from a renter and the landowner came out and very angrily told us that we could not hunt there. We immediately left but I was wondering if the renter had the hunting rights or the owner.

Chairman Porter asked for any further testimony in favor of HB 1146. Hearing none, he asked for opposition to HB 1146.

Mr. Brian Kramer of the ND Farm Bureau came forward. He said he was not sure where he stands on this bill. There are some very good reasons to sever as well as not to sever these rights. It probably is a property right to sell those rights. In reading through this bill, most of the discussion has been about the sale of the land. What if I own the land and lease those

hunting rights, whether it is to another person or to Game and Fish PLOTS program. Is that not a lease of those hunting rights? I think this bill needs some work to clarify some of this.

Chairman Porter asked how he would view the severance of hunting rights in a land sale where someone kept that right to basically trespass on someone's land and use that in a fashion that they see fit for hunting, fishing and trapping any different than a perpetual easement.

Mr. Kramer said the severing of those rights and a perpetual easement are very similar. This is a contract between the seller of the property and the purchaser. They come to an agreement and who is to say that is right or wrong. I understand where your line of questioning is coming from. We do have a real problem with perpetual easements. What will happen down the road two generations from now? They see no benefit from that severance but they are stuck with easement on the property or the hunting rights.

Chairman Porter asked what happens in a situation where I take it upon myself to go out and acquire hunting rights permanently. I am getting a permanent easement on someone's land. I don't know who the owner is and ten years from now and I don't care. I gather up this group of hunting rights and then I sell them to the nature conservancy or to Ducks Unlimited or perhaps to the federal government. There is nothing in the current statute that says the purchase of these is restricted to anybody or for any purpose so I could get them into the lands of PETA and virtually stop hunting in North Dakota. The new landowner who buys the land and farms the land and all the livestock is running through and defragating that land couldn't even walk out and shoot a deer during the deer season or shoot a coyote that has taken one of his calves. Don't you see that as a huge potential problem by allowing the severance of those rights?

Mr. Kramer said yes it is a dilemma. I think unless a contract is specifically laid out there will be problems here. There will be problems between the person owning the land and the person leasing the land.

Representative Hofstad asked said we have talked a lot about leasing and we certainly do have a number of easements in ND with the wildlife services, but don't you think a person coming in to buy that land is going to evaluate that land based on the leases against it.

Mr. Kramer said he was correct. The purchaser down the road will have to put a value on that himself.

Representative DeKrey asked if this had been litigated anywhere or in any other states.

Mr. Kramer said not that he was aware of.

Representative Nottestad said we are talking about the separation here and to him if the land rights are separated by a sale it would have to be recorded in the Register of Deed's Office in the county. Do you know of any recordings that have taken place?

Mr. Kramer said he did not.

Representative Clark said that suppose someone acquires the hunting rights to a piece of land and he is of the opinion that everyone should be able to hunt on his land where he has the rights. If he doesn't post it, does that mean it is open to everyone?

Mr. Kramer said he did not have the answer to that but he would assume yes.

Representative Meyer asked with the right, are we talking about a perpetual easement or a right? Is the hunting a right or are we talking about a permanent easement?

Mr. Kramer said I believe that this is access to that property. Is that a right or is that an easement? I cannot honestly answer that. The hunting right is probably the access to be on that property.

Representative Rod Froehlich of District #31 came forward on HB 1146. He said in 1961 his uncle died and in 1969 they had a public auction where my father bought my uncle's land at that sale. When they reviewed the abstract before that, there is one party that my uncle had bought the land from that retained the hunting rights. We knew that when we bought the property. One day two pickups came driving up and we had the land posted. We did not know these people so my father asked them why they were there hunting. He asked them who gave them permission to hunt on this land. He said the owner of the hunting rights had given them permission to hunt there. My father said the contract reads that the owner's family has permission to hunt here and not just anyone. In this case, there was an easement in place for that family. They couldn't sell that easement because it was recorded at the courthouse and this is just one incident. He said he bought some land and the family wanted to retain the hunting rights. He said no one else could hunt on the land because the right was sold specifically to that family and that is how it was recorded. He said we can sell our mineral rights, and our coal rights, and whatever you want to call it, but I am not going to sell my hunting rights unless I have to. Whatever you work out with a willing buyer is your right as long as you come to a mutual understanding. I am opposed to something that says you cannot do this as a property owner. I look at it as being no different than being able to sell my mineral rights to someone.

Representative Solberg said he thought this example would be a good reason to pass this bill.

Representative Froehlich said we knew what we were getting into when we bought it. It has to be a willing buyer and a willing seller. If we are going to limit my ability to sell my property or my interests in my property, you are opening up a court case.

Representative Damschen said couldn't you have accomplished the same thing with a contract and not severed the hunting rights?

Representative Froehlich said he did a contract for deed and that is exactly what this family did when we bought this last property. We put it in a contract and they specified in that contract that if that family wanted to hunt on that property, they had to contact me the day before. We don't have any problems at all. They cannot sell it and if they did I would take them to court. The contract reads that it is for that family only. It has to be a willing buyer and a willing seller and you can work that out.

Mr. Steve Tomac from Farm Credit Services came forward as being neutral on this bill. This was a discussion prior to the legislature. We are beginning to see many requests and many abstracts where the hunting rights are reserved. As a lender we are getting concerned about what hunting rights actually mean. As an appraiser at Farm Credit, it is hard to break out what the hunting is worth to the land versus the real value of the land. Can you quantify what is agricultural and what is hunting? We are having problems with that. You need to be aware that this is happening. This is not a simple yes or no bill. There are some deep questions here. I would suggest a HCR relating to this bill whether it is passed or defeated. There are some lingering questions out there that come up often. Who is required to post the land? Is it the person with the hunting rights or the person who owns the land? There are so many unknowns in this. We have an opportunity to correct some of the mistakes that we didn't do with the minerals. Maybe we should have required an abstract for mineral rights? Maybe we need a tracking system for this. As a lender I can tell you we have some concerns because it really does impact the value of the property if the hunting rights are severed.

Representative Meyer said when you are lending are you looking at this severing of hunting rights as a right, or as a perpetual easement on that person's property. How is being handled financially?

Mr. Tomac said each case is handled separately. If there are no exceptions to the title of the land we assume that it is an absolute simple ownership and that owner is entitled to everything that happens on that land. If there are exceptions to that, and there are several variations to that, there are some restrictions. That does tend to diminish the value of the security through our eyes. We will make a deduction for that. The property may actually be ineligible as security. We try to quantify as much as we can what is missing from the title.

Representative Damschen said as this bill is written now, do you think it would prohibit the type of arrangement that Representative Froehlich has or the example that he gave us?

Mr. Tomac said he was not an attorney but some clarification is needed on this.

Representative Charging could this undo everything we have done for the PLOTS program.

Mr. Tomac said he was saying this in a general term. Most of the PLOTS programs are only for two to three years. Those programs that go on for fifteen to twenty five years have impacted us in our eyes. He doesn't feel that if this bill is passed, it will not have much of an impact on the PLOTS programs.

Mr. James Miller came forward saying he has to wonder if there really is such a thing as a hunting right. It seems to him that the rights of the game reside with the public. I question whether a land owner has hunting rights to sell. I have to consider hunting as a privilege and the landowner considers it a right. I think there is a disconnect here. Does the landowner have something to sell? I think this needs to be answered. Is he selling something that really becomes to the public?

Mr. Leland Goodman said he has been offered large amounts of money for his hunting rights and he does not have hunting rights to sell. I do have land access to sell. The state will have to monitor this. If you are talking about severing anything, it better have a taxable value to it.

There was no further testimony so the hearing was closed.

There was written testimony left from the Cass County Wildlife Club attached as Item #1.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

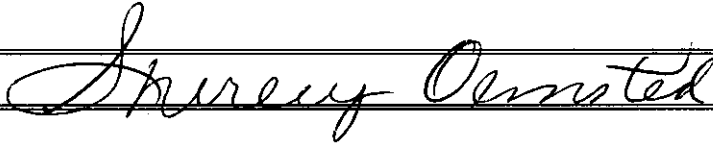
House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2646

Committee Clerk Signature



Minutes:

Chairman Porter said he was going to appoint a subcommittee for HB 1146 on the severance of hunting rights. He asked **Representative Damschen**, **Representative DeKrey** and **Representative Hanson** to be on that committee.

They agree to be on the subcommittee.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

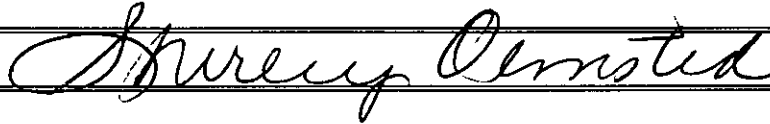
House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3158

Committee Clerk Signature



Minutes:

Chairman Porter asked the committee to consider HB 1146.

Representative Damschen said the subcommittee said each of the three people on the subcommittee came up with different amendments to this bill. He reviewed his amendments with the committee. See amendments marked 70387.0101 marked as Item #1. He is having trouble dealing with "hunting rights" versus "hunting access".

Representative Hanson discussed his amendments marked as Item #2. His just grandfathers all existing hunting rights.

Chairman Porter said wouldn't this already happen. Anything we change today is not retroactive unless we specifically say retroactive.

Representative DeKrey talked about his suggested amendments. See amendments marked as Item #3. He said his amendment turns this into a study.

Representative Meyer said going back and researching this one of the problems that she has is hunting rights are not defined in the code. The right to hunt is in our constitution but that is vastly different than hunting rights. Regardless of what you do with this, I think it needs to be studied. We should not put a law in the books that is not defined. You need to define hunting rights.

Representative Hanson said he gave Representative Meyer a copy of the century code on hunting.

Representative Meyer said that was true but is not defined as hunting rights.

Representative Drovdal said there are two organizations that probably do the most severance of access rights and those are the US Wildlife and the ND Game and Fish Department. If we pass this without a study, how is this going to affect their ability to sever that right?

Chairman Porter said he was not sure that they sever a right. He thinks they lease the right of access from the current owner. It is never severed.

Representative Drovdal you may or may not be correct on the way you stated that. My son has some land that he cannot hunt on because they have the rights to that land.

Chairman Porter said when the federal government purchased the easements to that land, if it was deemed a waterfowl resting area they have the ability to limit the functions on that land. If you sell your land to me and you sell the hunting access, I do not have any control over the trespassing on that land. The big questions is who assumes the liability if I own the land but I cannot control who can come and go on it so now I have additional liabilities because you chose to sever the right to trespass off to someone else. That is what got me interested in the bill in the first place. How does the liability flow with that? If you lease the access rights, they still belong to me as owner of the land.

Representative Keiser said that he moves to accept amendment 103 which is the study.

Representative Hofstad seconded the motion.

Representative Drovdal asked that with this amendment we cannot sever it but we can get an permanent easement for it and get the same results.

Chairman Porter said in the state of ND you cannot do anything longer than 99 years. Only the federal government can do that in the state of ND. No other individual or group can do anything more than 99 years. The only permanent easements allowed in ND are through the federal government.

Representative Damschen said we are talking about hunting rights and the right to hunt. Representative Meyer makes a good point here. There is a difference but it really boils down to access.

Representative Meyer said she feels that part of this has to be studied.

Chairman Porter asked if Representative DeKrey would be open to a word change so that it reads "severance of hunting access" and then down below it also says "related to the severance of hunting access"?

Representative DeKrey said that would be fine.

Representative Hofstad said just for the point of discussion someone asked if we would pass this legislation and deny that right, if it indeed a right, that could also be considered a taking also.

Representative Hanson said that if you sever mineral rights and if there is no activity after a certain amount of time this goes back to the surface owner. If you severed hunting rights or access that could go on forever and it may never get back to the surface owner.

Representative Damschen said he thought severing access would be a taking. What right is worth anything if you cannot have right of access. That would be a concern to me because then your owner would be denied the right of access to his own land.

Representative Meyer said on your liability questions, the surface owner always has the liability.

Representative DeKrey said as a result of all of these comments, it becomes very clear that we need a study.

Chairman Porter asked for further discussion. Seeing none, he asked if everyone was comfortable with amendment 103 and changing from rights to access in those two spots.

A voice vote was taken and the motion carried.

Representative DeKrey made a motion for a do pass as amended.

Representative Meyer seconded the motion.

Chairman Porter asked for discussion. Hearing none, the clerk was asked to call the roll on a do pass as amended on HB 1146. Let the record show there were 13 yes, 0 no with 1 absent. **Representative Meyer** will carry this bill to the floor.

70387.0101
Title.

Prepared by the Legislative Council staff for
Representative Damschen
February 5, 2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1146

Item # 1

Page 1, line 2, after "of" insert "the right of access for" and replace "rights" with "access"

Page 1, line 6, after "of" insert "the right of access for", replace "rights" with "access", and
after "to" insert "access to land to"

Renumber accordingly

70387.0102
Title.

Item # 2
Prepared by the Legislative Council staff for
Representative Hanson
February 6, 2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1146

Page 1, line 2, after "estate" insert "; and to provide for application"

Page 1, after line 11, insert:

"SECTION 2. APPLICATION OF ACT. This Act applies only to real estate transactions entered after the effective date of this Act."

Renumber accordingly

70387.0103
Title.

Item # 3
Prepared by the Legislative Council staff for
Representative DeKrey
February 8, 2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1146

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the severance of hunting rights from the surface estate."

SECTION 1. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING RIGHTS FROM SURFACE ESTATE STUDY. The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting rights from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

*rights to
access -*

February 8, 2007

**House Amendments to HB 1146 (70387.0104) - Natural Resources Committee
02/09/2007**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the severance of hunting access from the surface estate.

SECTION 1. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY. The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting access from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 2-8-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1146

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Moves for amend 103

Motion Made By Kaiser Seconded By Drystad

[illegible]

Total	Yes	No

Absent _____

Floor Assignment _____

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

Date: 2-8-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1146

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Motion Made By

Seconded By

Representatives	Yes	No	Representatives	Yes	No
Chairman – Rep. Porter	✓		Rep. Hanson	✓	
Vice-Chairman – Rep Damschen	✓		Rep. Hunsakor	✓	
Rep. Charging	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Meyer	✓	
Rep. DeKrey	✓		Rep. Solberg		
Rep. Drovdal	✓				
Rep. Hofstad	✓				
Rep. Keiser	✓				
Rep. Nottestad	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Meyer

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

REPORT OF STANDING COMMITTEE

HB 1146: Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1146 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the severance of hunting access from the surface estate.

SECTION 1. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY. The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting access from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 SENATE NATURAL RESOURCES

HB 1146

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

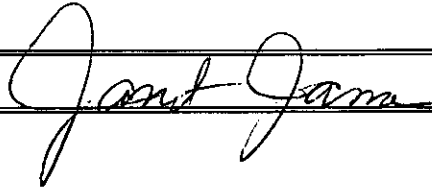
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 1, 2007

Recorder Job Number: # 4186, 4189

Committee Clerk Signature



Minutes:

Senator Ben Tollefson, Vice Chairman of the Senate Natural Resources Committee opened the hearing on HB 1146 that provides for a legislative council study of the severance of hunting access from the surface estate.

All members of the committee were present except Senator Stanley Lyson who was testifying at another hearing.

Representative Lyle Hanson of District 12 sponsor of HB 1146 introduced the bill stating it was made into a study by the House Natural Resources Committee and asked the committee to return it the original bill. He further stated how bankers have contacted him about the problems of severing the hunting rights from the land owners. People are buying land, keeping it for several years, then selling it but retaining the hunting rights. That is okay for the first time, because it is known who has the hunting rights but later the hunting rights can be sold to Peta or some other conservation society. This could result in no hunting allowed which could imbalance the number of wildlife in the area. That was the original intent of the bill to preserve the hunting rights. Since the bill has been turned into a study, many have asked that it be returned to the original form. He presented a copy of the original bill to the committee (See attachment #1).

Senator Joel Heitkamp asked why the house committee amended the bill into a study.

Representative Hanson stated they had never met. On an assigned study committee, he had added a grandfather clause so that no one had already severed the hunting rights would be affected and someone came up with the idea of a study and it was accepted.

Senator Heitkamp asked if the study was turned back into a bill, did he want a grandfather clause added back into the bill because it would then go to a conference committee.

Representative Hanson commented that it would not hurt to do so.

Wade Moser representing the North Dakota Stockmen's Association testified in support of HB 1146 and would not mind if the study went back to the original version of the bill. They took a hard look at the bill as many producers are dealing with severed minerals and the difficulty that has created for them. Before another severing another right a hard look should be made if this is what should be done. Some say it is a property right and should do as they please but when it impacts the surface there needs to be a hard look before doing so. There is also concern of further development of adding buildings or feedlots that might infringe on someone's access rights. There are kinds of scenarios that can happen and are not opposed to returning to the original bill.

Steve Tomac representing the Farm Credit testified in support of HB 1146 as a study resolution and neutral on the bill in its original form. As a lending organization the study makes a lot of sense. They are seeing hunting rights with access are being reserved with the selling of land. There are leases that are granted that are 25-30, even 99 year easements and in some cases this makes the property ineligible for mortgage simply because they are not enough rights left so there is no collateral left. If property is mortgaged with a 25 year easement that will limit production and therefore limits the value of that land. Because hunting rights are not defined in the century code therefore are not sure if the buyer or seller reserves the right what

that exactly means. There are also the concerns for the future when after many generations the hunting rights are divided among many, what will be left and how the division is made. What is $1/64^{\text{th}}$ of a hunting right? Does this mean every generation and fraction of, are able to hunt on the property or do they get part of an acre to hunt on? All this is indefinable and are of great concern. He concluded that a study makes sense before this issue proceeds to far.

Senator Heitkamp asked if it is okay to return the bill to its original form and add a grandfather clause so that someone has to deal with the values.

Steve Tomac stated that no one could deregulate someone that has already sold something but it should be defined.

Bill Pfeifer representing the North Dakota Chapter of the Wildlife Society testified in support of HB 1146 (see attachment #2).

Senator Tollefson asked for testimony in opposition of HB 1146 and hearing none asked for testimony in a neutral position of HB 1146.

Senator Heitkamp asked the North Dakota Game and Fish Department if he sold land and reserved the hunting rights could he ask the new buyer to post the land so that he could hunt it.

Paul Schadewald of the North Dakota Game and Fish Department answered that there is nothing to stop this and they do not have much experience with hunting rights and will be more of a civil legal issue.

Senator Heitkamp asked if the North Dakota Game and Fish Department has to settle a jurisdictional issue.

Paul Schadewald answered that the department has not had to do that.

Senator Ben Tollefson closed the hearing on HB 1146.

4189

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened the committee work on HB 1146.

All members of the committee were present.

Senator Ben Tollefson presented a synopsis of the testimony presented to the committee.

Senator Lyson stated he wanted to visit with the attorney general's office regarding the issue of severance.

Senator Constance Triplett pointed out issues that if severed hunting rights are passed down through generation it could create large numbers of people owning them and how would the division of those rights be handled. Also if there would be enough hunting rights left to lend against the land.

Senator Layton Freborg asked if the hunting rights could be sold to an outfitter.

Senator Triplett confirmed this to be true and the surface owner would lose control through that process. It is more of problem than the severance of mineral rights as they are visible in an abstract.

Senator Lyson stated that if hunting rights are passed down through the generations there could be a real mess after many years.

Senator Ben Tollefson referred to the severance of hunting rights as a cloud on the title of property.

Senator Triplett agreed.

Senator Heitkamp made a motion to amend HB 1146 into its original form.

Senator Triplett second the motion.

Roll call vote #1 to adopt the amendment to make HB 1146 back into the original bill was taken by voice vote indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Heitkamp made a motion to further amend HB 1146 to the language referring to a grandfather clause on HB 1146.

Senator Ben Tollefson second the motion.

Discussion was held as to the proper language to be used regarding the amendment.

Roll call vote # 2 to adopt a further amendment HB 1146 to include the grandfather clause was taken by voice vote indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Heitkamp made a motion for a Do Pass as Amended of HB 1146.

Senator Ben Tollefson second the motion.

Roll call vote #3 for a Do Pass as Amended of HB 1146 was taken indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Triplett will carry HB 1146.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

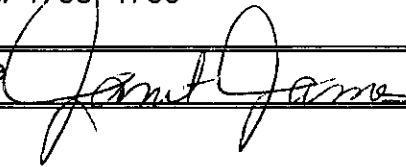
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: # 4763 4766

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened committee work on HB 1146.

All members of the committee were present.

Senator Lyson: this bill was recalled from the senate floor because the North Dakota Game and Fish Department will loose money with the PLOTS program if this bill is passed.

The committee decide they would like to hear from Paul Schadewald with the North Dakota Game and Fish Department because he wrote the fiscal note.

There is concern about people not signing up with the PLOTS program, loosing money and easement issues.

Senator Lyson asked the committee to wait until Paul from the North Dakota Game and Fish Department is able to appear before the committee.

4766

Paul Schadewald, of the North Dakota Game and Fish Department appeared before the committee stating they are asking for an exemption and will have a formal or written information for next week Thursday.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

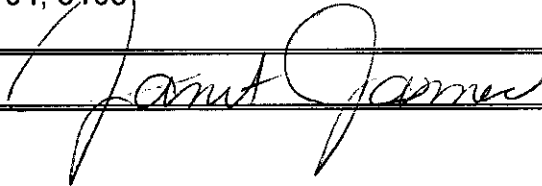
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 15, 2007

Recorder Job Number: # 5104, 5105

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened committee work on HB 1146.

All members of the committee were present except Senator Herbert Urlacher.

Paul Schadewald, Chief of Administrative Services of the North Dakota Game and Fish Department stated they were caught by surprise by turning the study back into the actual change in the law as they could have gotten to this earlier. The concern is to the way the bill is written and interpreted it will shut down the private lands program, PLOTS. The prime sponsor of the bill had no intention of shutting down the program. Often they have a contract on CRP land for 15 years with the right to hunt on the land for the 15 year term. Only terms are done and do not sever the hunting right from the land for a period of time. Some contracts on federal water shed programs are for 30 years and have public access and when the contract is up it is up. It is not a severance where it is split into parts as in a situation where these kids get this part and the other kids get this part. The department is asking if the law is passed to amend it so there is an exemption for the private lands habitat access programs. (See attachment #1).

Because of drafting requirement of the legislative council, it scratched everything after the bill but kept the same wording in the bill except for the last sentence, (see amendment).

Senator Lyson: and the game and fish department is okay with that.

Paul Schadewald: from the game & fish point of view it is okay, others might not agree and challenge it.

Senator Constance Triplett: does that specifically authorize what you described with limits or could you do more than you are doing under Title 20.1 in the sense of actually severing the hunting rights.

Paul Schadewald: it specifically authorizes the present land programs where we work with landowners. There is another section of law that deals with or we can require land. That is already there, I'm not sure that it in that chapter or not, it may be. It gives us fairly broad power.

Senator Joel Heitkamp made a motion to reconsider the action on HB 1146.

Senator Jim Pomeroy second the motion.

Roll call vote #1 for reconsider the action taken on HB 1146 was taken by voice vote indicating 6 Yeas, 0 Nays and 1 absent.

Senator Joel Heitkamp made a motion to adopt the amendments as proposed by the Game & Fish.

Senator Ben Tollefson second the motion.

Roll call vote # 2 for adoption of the proposed amendments was taken by voice vote indicating 6 Yeas, 0 Nays and 1 absent.

Senator Joel Heitkamp made a motion for a Do Pass as Amended of HB 1146.

Senator Ben Tollefson second the motion.

Roll call vote # 3 for a Do Pass as Amended of HB 1149 was taken indicating 6 Yeas, 0 Nays and 1 absent.

Senator Constance Triplett will carry HB 1146.

5105

Claus Lemke representing the North Dakota Association of Realtors asked if he could testify before the committee on HB 1146.

Although the hearing had already been held on HB 1146 the testimony was allowed.

Claus Lemke testified in opposition to HB 1146 (see attachment #1). He referred to a North Dakota Supreme Court decision attached to his testimony. This bill will take away a huge right.

Senator Lyson: are we talking about the original bill or the amendment.

Claus Lemke: the bill as amended as the study is okay.

Senator Lyson: not talking about the study, but the bill passed and had on the senate floor and bought it back.

Claus Lemke: that is the one I am talking about.

Senator Lyson: you are saying that bill, you are opposed to that bill even with the amendments.

Claus Lemke: I have not seen the amendments. And from the conversation if they protect the game and fish department- they are in principle prohibits the leasing of land – even fee hunting that is a form of leasing, but you are separating those rights. You given those hunters that right to do certain things on that property which is the right the owner has and you are prohibiting that. I have talked to Paul briefly about that before.

Senator Joel Heitkamp: you are mudding this up more than it has to be. I do not agree that we hog housed the bill, we put the bill back into its original form. Secondly, you are talking about leasing land. This bill does nothing from a landowner taking a fee or allowing a year's access. The problem is when the land is sold, and the new landowner does not get those same rights from the seller. So what we are getting into is whether land when it is transferred ownership

has that or not. I can understand why an owner might want to keep that, but don't you see all the mess it could make if this is all over the place. As a realtor I would think you would want it the other way, it would be a lot cleaner on the title.

Claus Lemke: right it would be a lot cleaner, but it is an inherit right that goes with the property. No different than mineral rights. In the eastern part of the state it is not that important but you really would not being your job if you sell the property in the western part of the state and not check to see that mineral rights are in included or not.

Senator Heitkamp: what of if the Native Americans came back and said they have all the hunting rights on this land because it was not part of the deal. How would you feel about that? It was their land years ago and they should have kept that.

Claus Lemke: the Norwegians were here first so they have the hunting rights. It is arguable how was here first.

Senator Lyson: mineral rights and hunting - there is a big difference. I'm trying to get my arms around this thing and you are not helping me a lot.

Claus Lemke: I know it might muddy the water on a transaction if someone bought some land and the hunting rights were permanently sold. We know that in Montana that has happened, they have been permanently sold.

Senator Lyson: the lease, the rights according to the game & fish is that they are getting up to 30 years. As a realtor, if I am going to buy that land, isn't your obligation to tell me there is this 30 year pending on the land.

Claus Lemke: that is correct.

Senator Lyson: so where is the problem?

Claus Lemke: the problem is that HB 1146 says you shall not separate those hunting rights from the surface rights.

Senator Constance Triplett: the reason that game & fish is asking makes sense is because they are a state agency and they are not going to be dying and further subdividing or willing their property into 16 different parcels – from a banking stand point, it may work fine as long as the buyer of the land and the hunting rights are to the same person. If the person you dies who has purchased the hunting rights and then willed to children and grandchildren and what does that mean from the banking stand point when twenty years from now there is 64 different people who own the hunting rights on one parcel of land. Does the parcel of land have any surface value at all for framing or anything else. Will a bank ever lend against that when there is 64 hunting right interests out there. That is their concern and is very unmanageable and would make land unmortgageable, where that is not a issue as game & fish will always be agency and not divisible over time. Their interests will not change, multiply or get fuzzy on us. That is why I can go with the amendment and likes the bill we passed. There is a real distinction between separating out mineral rights and this because these are both about the surface estate. They are pieces and parts of the same thing and it is about access and about the right to use the land for production over time – and those things – I think it is terrifying what we could be getting into if we allowed this to go on in term of how to manage the ownership and the right to use land and the right to mortgage against it - all of those issues. I think we are on the right track here to do this and also on the right track to give game & fish the exemption because it is a whole different thing.

Claus Lemke: I agree that this would muddy the water, but you also – I do believe that all those people who are leasing land will be in violation of HB 1146. That is my interpretation. And if you are comfortable with that – then so be it.

Senator Lyson asked if any one else wanted to speak in opposition to HB 1146.

Senator Lyson closed the hearing on HB 1146.

Senator Lyson: asked the committee if an opinion should be asked of the Attorney General's office.

Senator Constance Triplett: she is fine with that if there is the time to do that.

Senator Heitkamp: the other thing is this bill is headed to conference committee. By the time it gets to conference committee the lawyers can make an opinion and if we are wrong, the conference will end fast.

Senator Lyson agreed and asked if any one wanted to change was they had done.

March 1, 2007

JB
3-1-7

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1146

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to severance of hunting rights from the surface estate; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Severance of hunting rights prohibited. The right to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate.

SECTION 2. APPLICATION. This Act does not apply to deeds, instruments, or interests in property recorded before the effective date of this Act."

Renumber accordingly

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1246

Senate Natural Resources Committee

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Legislative Council, Washington
 Action Taken to Amend Bill Back to original form .0100

Motion Made By Anthony Seconded By Trickett

[illegible]

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

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

Date: 3-1-07

Roll Call Vote #: 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1146

Senate Natural Resources

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Heitkamp

Seconded By Tollefson

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman	✓		Sen. Joel Heitkamp	✓	
Sen. Ben Tollefson, ViceChairman	✓		Sen. Jim Pomeroy	✓	
Sen. Layton Freborg	✓		Sen. Constance Triplett	✓	
Sen. Herbert Urlacher	✓				

Total (Yes) 7 **No** 0

Absent 0

Floor Assignment Triplett

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

REPORT OF STANDING COMMITTEE

HB 1146, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1146 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to severance of hunting rights from the surface estate; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Severance of hunting rights prohibited. The right to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate.

SECTION 2. APPLICATION. This Act does not apply to deeds, instruments, or interests in property recorded before the effective date of this Act."

Renumber accordingly

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1146

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken reconsider action on Bill

Motion Made By Hickings Seconded By Pomroy

[illegible]

Total (Yes) 6 No 0

Absent

Floor Assignment _____

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

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1146

In lieu of the amendments adopted by the Senate as printed on page 688 of the Senate Journal, Engrossed House Bill No. 1146 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to severance of hunting rights from the surface estate; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Severance of hunting rights prohibited. The right to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded before the effective date of this Act and does not apply to the private lands habitat and access improvement program under Title 20.1.

Renumber accordingly

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1146

Senate Natural Resources **Committee**

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken Adapt Amendment by Come-Fish

Motion Made By Deitkamp Seconded By T. DeLeon

[illegible]

Total (Yes) 6 No 0

Absent _____ 1 _____

Floor Assignment

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

Roll Call Vote #: 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1146

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Stuking Seconded By Talfeen

[illegible]

Total (Yes) 6 No 0

Absent _____

Floor Assignment 1/2

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

REPORT OF STANDING COMMITTEE

HB 1146, as engrossed and amended: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1146, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on page 688 of the Senate Journal, Engrossed House Bill No. 1146 is amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to severance of hunting rights from the surface estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Severance of hunting rights prohibited. The right to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded before the effective date of this Act and does not apply to the private lands habitat and access improvement program under title 20.1."

Renumber accordingly

2007 HOUSE NATURAL RESOURCES

CONFERENCE COMMITTEE

HB 1146

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

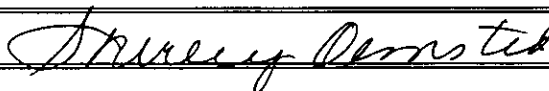
House Natural Resources Conference Committee

☒ Check here for Conference Committee

Hearing Date: March 29, 2007

Recorder Job Number: 5611

Committee Clerk Signature



Minutes:

Chairman Damschen called the conference committee to order. The clerk took roll. All were present including Chairman Damschen, Representative Hofstad, Representative Hanson, Senator Tollefson, Senator Urlacher and Senator Triplett. He asked Representative Hanson if he had secured the Attorney General's opinion for the meeting today.

Representative Hanson said he had not received it yet.

Senator Triplett asked what the question was for the Attorney General.

Representative Hanson said he was waiting for an opinion as to whether it was legal to severe hunting rights and they asked them to put it on a fast track are were hopeful that it would come back soon.

Chairman Damschen asked someone that represents the Senate to give them a brief explanation of their position on HB 1146.

Senator Tollefson said in his opinion, he is not an attorney but he feels that any sale of this type of right would provide a cloud on any clear title of property. I think you are going down the right road by going to the Attorney General's office for an opinion. If that doesn't work I would believe that a study would be in place.

Senator Triplett said all that they did was put the bill back in its original form and then added a grandfather clause and an exception for PLOTS lands. The reason we added the PLOTS was because we were concerned about the state of North Dakota subdividing the right and clouding the title. I am not sure if you heard from Credit Services, but we did and they were very concerned about this and encouraged us not to let it go for two years while we study this. It seemed important to get a grip on this now so that we don't end up with a lot of land out there with concerns for them in terms of making loans against the land. We did not hear from the Attorney General and I am glad that you asked for that opinion. I wouldn't mind putting this on hold for a week until we see if we get that. Did you get any commitment from the Attorney General about a time?

Representative Hanson said no.

Senator Urlacher said he was glad that they were getting the opinion. In his opinion it would be permissible for two parties agreeing to a contract for deeds where you have something just between those two parties and it is not part of the transaction. We do have other relationships like that where someone might sell a farm with a home on it and the seller allows the buyer to live in that home for a period of time or until he wants to move. It is a sale that is not recorded, but it is an agreement between two parties. I don't think we want to interfere with that kind of thing. I am opposed to selling indefinite rights where it becomes part of the deed and history of the sale so any way that we can separate that or not tie up the other would I would be very much in favor of that.

Senator Triplett said it does seem that some of the comments that heard about this suggested that we were trying to stop people from leasing hunting rights on their land and I don't think that was any part of our conversation. Certainly there is a right to short term leases and I think that is preserved in other parts of the statute already. This is more about the

permanent separation in the sense of how mineral rights are permanently severed. The concern that I had from listening to Steve Tomac when he was testifying with Farm Credit Services is that this relates to the same plane as it is about the use of the surface for one thing or another and his concern was if you sever this permanently and let this pass through several generations you may end up with multiple parties having hunting rights to the point that there is really no value left in what is left of the surface estate. I think it is kind of scary to let this happen.

Chairman Damschen said this was similar conversation to what they had in the House Natural Resources Committee. We are heaving a lot of the same concerns. One of the things was that we had so much discussion and questions and that is why we amended it into a study. Another concern was Section 28 of the constitution which is fairly new amendment which guarantees in that amendment but the right to access to the land and severing that was a concern to us. Senator Urlacher mentioned the lease or temporary short term would be affected by restricting or denying the severance.

Senator Urlacher said that may already be in another section of the law. I think as we ask for an opinion on this we want to recognize that so we sure about that part.

Senator Triplett asked if we had the code in the room because she thought it was in the section that we are proposing to amend here. It guarantees that hunting is a right of citizens of North Dakota. We had a problem with the wording using hunting rights. As our discussion went forward we kind of agreed that access is really the issue that we are talking about here. The right to hunt is guaranteed in the constitution

Senator Urlacher said he would hope that we could take action without waiting for a study.

Senator Tollefson said he would tend to agree. I think Senator Triplett made a good point that a study will take too long and this is happening now. If we can promote any type of opinion or decision through the Attorney General's Office it could be handled this year.

Representative Hanson said the Stockman's Association came in and supported both the study and bringing the bill back. He had talked to Wade Moser after the hearing and they are very concerned about severing. Joe Belfour said it is happening in the northeastern part of the state in the Pembina Gorge. The longer we wait, if it is even legal, we should probably get it done but if we can't do it, we can't let it go.

Senator Triplett said she would still like the Attorney General's opinion if they could get it in a reasonable amount of time, but short of that, what would people think if we left the bill in tact the way it came from the Senate but also but then also add the study on to that. If there are ways that it can be improved, we can study that.

Senator Tollefson said that would be subsequent to getting the opinion if we can't get the opinion in time.

Representative Hofstad said he there are two sides to this. I think it is very important that we take into consideration the rights of the landowners. A lot of the discussion that we had was where the lending institutions at on this process are and where is the land owner. Does he have the right and do those rights have value. Does this involve a taking if we are taking some of those rights away from the landowner? Is that an issue that we need to deal with? As I read this I am a little bit concerned that we are trying to hold back or restrict the rights to hunts or the rights of entry or all of those rights. I am having a little trouble with the wording on this bill. I will be the first to say that we do have a problem and there are people coming in from out of state that are buying this land for all the wrong reasons and inflating the price of the land and as I look at acquiring this land for future generations and what is their use and how does

this all fit in. There are a plethora of problems that are involved. I am really reluctant to doing anything. I would like to step back and put this thing into a study and get as much information as possible to look at it as objectively as we can because it is extraordinarily important to all of us.

Representative Hanson said that they could ask for a study but we might not get a study unless we request it. We can ask the Legislative Council to study it but they don't have to. The first time someone buys the hunting rights, you know who he is, but he can turn around and sell those rights to someone else you may sell it to the friends of animals or whatever and they may allow no hunting and you would be loaded down with all kinds of coyotes or ducks or whatever and you can't keep them out.

Representative Hofstad said he agreed completely but we have two sides lined up on this issue. The land owner that has that property and he has inherent rights and really need to look carefully at this issue and determine how we can best serve those rights.

Representative Hanson said he does have the right to lease but he may not have the right to sell the rights.

Senator Urlacher said we also have to protect those land rights but he has a right to write an agreement or easement for his and but not allow it to carry on to survivors and I think that is what we are trying to stop without interfering with the rights of that landowner.

Senator Triplett said she thinks of this in the long term as a protection in terms of the value of the land that is left behind.

Chairman Damschen said we certainly have to look out for the rights of the future owners too.

Senator Tollefson said all this conversation is great but priority one would be the Attorney General's opinion and take off from there.

Chairman Damschen said he was right. I think we should recess until we get the attorney general's opinion, at least for a while. We can't wait indefinitely to get that opinion, but we should give them some time.

Senator Triplett said he should be able to let us know within a week if he can get us an opinion in a timely manner or if he can't.

Representative Hanson said he would check on that.

Chairman Damschen asked if the rest of the committee members were in agreement with that.

Senator Urlacher said if we put this into a study, the danger is not getting it studied and so we may have to make every effort to get that done as well.

Senator Tollefson said the Attorney General's opinion would establish our other priorities.

Chairman Damschen said he wishes he had an opinion on whether it would be considered a taking to deny that right. This is some of the questions that came up as to why we amended it to a study as well.

Representative Hanson said the state does not allow nonprofits to own land beyond three years.

Chairman Damschen said there are some other limitations too.

Representative Hanson said there is probably a court case going right now where someone from out of state bought some land in Cooperstown and he formed a nonprofit and he is the only member.

Senator Urlacher said there are many easements on land for different reasons and we can go the route of easements.

Representative Hanson said we should wait at least a week to get the attorney general's opinion.

Page 7

House Natural Resources Conference Committee

Bill/Resolution No. HB 1146

Hearing Date: March 29, 2007

Chairman Damschen asked for a motion to close the conference committee.

Representative Hanson made a motion to adjourn the conference committee.

Senator Urlacher seconded the motion.

The conference committee meeting was closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

House Natural Resources Conference Committee

☒ Check here for Conference Committee

Hearing Date: April 5, 2007

Recorder Job Number: 5768

Committee Clerk Signature

Shirley Pernoted

Minutes:

Chairman Damschen called the conference committee on HB 1146 and the clerk took the roll.

All were present including Representatives Damschen, Hofstad, and Hanson, and Senators Urlacher, Tollefson and Triplett.

Representative Hanson said he visited with the Attorney General this morning and there is not a lot that he can say. He said they could pass the bill and they would defend it if a lawsuit came up that it was unconstitutional. He is uncertain one way or another if it is unconstitutional or not. Maybe one of the attorneys from the department would like to say something.

Mr. Tom Trenbeath of the Attorney General's Office said he did not think it was necessarily a question of whether it is constitutional or not but the questions is whether it is a valuable property right that is being taken by the government so therefore they need to be compensated for it. It would not necessarily be defending it on whether it is constitutional or not constitutional but whether it is a taking.

Chairman Damschen asked how that would compare to perpetual easements that basically we have outlawed in North Dakota.

Mr. Trenbeath said he didn't know if he could talk very intelligently about perpetual easements but there are some comparisons. If you were to ask the Attorney General today to put in

writing what his feelings are with respect to this bill and whether or not it is an exercise in eminent domain likely the answer that you would get in writing is that he doesn't feel that it is so there it is not an eminent domain taking but on the other hand in big bold type at the end of that opinion would be that this only goes as far as the courthouse door.

Senator Triplett said that on the Senate side what they were trying to do by using the word severe and permanent severance of the hunting rights from the land and not that we were trying to prevent people from profiting from the sale of easements or a more temporary thing. In the sense of being able to profit from the sale of hunting rights and it was our opinion in testimony that we heard from Steve Tomac of Farm Credit Services was that what we were doing here was actually preserving the long term value of farm land because they were very concerned about these separate interests that if the person who purchased them severed hunting rights dies without a will or whatever and they end up getting dispersed through several generations and you end up with a situation similar to what you have on the Indian Reservations where you have 64 people from three generations claiming hunting rights on the particular land and they are saying what is the value left for the original surface owner and then can would they even be able to lend against is. They don't think so we are really trying to protect the land owners interests and land values by not taking anything away from them.

Mr. Trenbeath and that is another question and it would be nice to have property titles as clean as possible. It also brings up another question when you are talking about a property right or at least an interest in property that is capable of being valued because it is capable of generating income and how should that be taxed. You have to be careful what you wish for because whether you sever it or not or whether you actually make any money off of that or not I can foresee that you are looking at some value of your property that you may not realize exists.

Chairman Damschen said one thing that differs that they kind of determined last time was that we were really not dealing with the right to hunt but the right of access to the land. Then the question comes to mind if we are going to separate that right of access then there is going to be a determination if that access is only going to be for hunting or is that does that cross over to access for other purposes. If you don't have right of access, what do you have left besides the right to pay the taxes of course.

Mr. Trenbeath said access doesn't bother him so much because that is a matter of contract but I don't know that diminishes that access for the purposes and uses that you reserve yourself. I suggest that if the legislature was to do this and it would become a common practice there would become a whole new body of law that would develop around what could and couldn't be done.

Senator Tollefson said this would be surface right correct? It would have to be surface rights as opposed to mineral rights and would have to be totally apart from that. This would be surface rights in my mind.

Mr. Trenbeath agreed. That would be my initial reaction to it anyway.

Senator Urlacher said you can still collect for damages to the surface and who will pay for those. We have situations in sales where they right agreements with the new owners that he may live in a home on the property for a time and you can relate that to hunting as well. The original seller can write an agreement.

Mr. Trenbeath said the question is not necessarily the right to occupy or use but is it an interesting the property that is descendible. Can you leave the right to live in that house to your kids which you probably can not?

Senator Urlacher asked if he could write something into this.

Mr. Trenbeath said he would like to suggest something unofficially. He has seen in his short tenure in government and his somewhat longer tenure in the practice of law questions that ought not to be solved in the course of a few weeks or months but ought to be solved perhaps in the course of a longer period of time with many more avenues of input. I understand the cloud that hangs over the term "study resolutions" but if one needs to be studied, I suggest that this might be the one.

Senator Urlacher said he knows that there are situations happening now. He was wondering if they could incorporate that into this bill.

Mr. Trenbeath said he would suppose speculatively speaking that if you were to phrase something because this contemplates the severance of the right to hunt from the fee that you could word that as such so that any hunting interests severed could not exceed so many years or something like that.

Representative Hanson asked what the difference in this bill is and the law that we have now have where an individual can not sell his property to a non profit.

Chairman Damschen said you could not sell to a non profit without a certain process.

Representative Hanson said he thought it could only be for three years.

Mr. Trenbeath said what you are talking about now is a policy decision and I don't know if that policy decision has ever been decided as being contrary to the constitution or if there has been a lawsuit based on it.

Representative Hanson said there is a lawsuit pending on this.

Mr. Trenbeath said that gives him the perfect excuse to not talk about it.

Chairman Damschen said we are addressing permanent severance here. Is that different from a lease or temporary agreement?

Mr. Trenbeath said in his own mind, only as a matter of degree. I suppose there are interests now that you can lease that you cannot sever. It seems to me that if you can deal with the right of real property you would also have the right to deal with it on a permanent basis. What you are getting here now is two lawyers and two law students in this room and if the four of us got into a discussion about the interest in real property it would be very interesting and fairly heated amongst the four of us and the rest of you would go to sleep because it is not a simple concept. Ownership of property is equated to a bundle of sticks. No one has all the sticks because the government always has the right to take it away from you. The ability of government or others to take those sticks away from you without giving you compensation becomes a subject of discussion such as this.

Senator Triplett said she thought she heard that he was suggesting the possibility of a study resolution on this. We did discuss that in the senate and Farm Credit was pretty concerned that they did not want two more years to go by without doing something. What would you think if we were to pass something like this and add a study resolution to this so that if somehow in two years we screw up we can back out of it? In the meantime we could add a moratorium to it.

Mr. Trenbeath said that is the word he was thinking of too.

Senator Triplett said that we could do a moratorium the next two years while we do the study.

Mr. Trenbeath said it certainly gets you into a different shade of gray.

Representative Hofstad said as we go down this road he is not so sure that it is so urgent that we go down a road that we might regret. You had asked the question there being a difference between severing those rights versus leasing. I am wondering if there are some implications as we sell that land for taxes. I am thinking of the example that someone might

sell their land to an institution or a college or something. There certainly must be some tax implications that would differentiate between the severing of that estate.

Mr. Trenbeath said there are those implications as far as property taxes are concerned. If you recognize it as a right in real estate, it can be severed, sold separately or leased separately, then it can be sold separately. I think it has to be valued as a property right for tax purposes and whoever hold that would be liable for the taxes on the property.

Representative Hofstad said he was speaking specifically of income tax.

Mr. Trenbeath said how do you establish the basis or the portion of the basis that is attributable to the hunting right.

Senator Urlacher said on purchase agreements you can write just about anything. I am not sure how this fits in here but you think about people retaining those rights under a purchase agreement. Could you not retain those rights? It reserves the right of the seller of the land.

Mr. Trenbeath said he thought he was on to something. Sometimes we find answers to these questions by looking at the absurd and the absurd portions are the 180 degrees of what you are saying. If you sell the ground and deed it to someone and then reserve for your lifetime the hunting rights then you just go around the bush the other way.

Senator Triplett said but then you are just reserving those rights for the lifetime and when you are gone it goes back to the surface owner.

Chairman Damschen said he thinks one of the keys here is that we are talking about a right that is retained by the seller but not necessarily restricting the rights of any other generation of future landowners.

Senator Tollefson said he has always been concerned about the clear title of any property. This would be a cloud on that title if it were severed but even though it was held only for the

lifetime of the original owner that cloud would be there until that original owner passed away.

Then what would happen?

Mr. Trenbeath said he would not necessarily call it a cloud, but it would be an exception to clear title.

Senator Tollefson said that would be affecting value if you ever wanted to resell it.

Mr. Trenbeath said it certainly would be a possibility and other things that come to mind when drafting documents.

Senator Urlacher said maybe this should only be until the buyer sells it.

Senator Triplett said that would be more of an easement, right?

Chairman Damschen said he did see a lot of problem but he didn't feel they were really in so much disagreement as they were struggling for solid ground.

Mr. Trenbeath said that he thought he just quantified this entire discussion. This is going to take a lot more work before you can even draw lines between positions that there might be.

Chairman Damschen said he sees potential problems either way. If it is severed and I see a lot of problems for the taxation part of it and determining ownership and clear title and then the other way I see that we may be violating property rights ownership rights.

Senator Triplett said she would like to float the idea of a motion of a moratorium on severing hunting rights for two years and a mandatory study. Would that get a second?

Senator Urlacher said he thought it would.

Senator Triplett said it was a motion. She said she didn't have the wording right.

Representative Hofstad asked if it would be better if we said severing hunting rights or do we want to quantify it as just hunting rights or do we want to expand that to other surface rights.

Senator Triplett said she was not aware of anything else going on out there.

Chairman Damschen said his thinking on that is that we would probably want to word it that we are severing or put a moratorium on the severance of access rights because of the hunting rights being guaranteed in the constitution and to avoid any misunderstanding or misinterpretation and maybe we will want to say a moratorium on any permanent severance of any access rights.

Senator Urlacher said then we are getting into pipelines and electrical lines.

Senator Triplett asked if they could prevail upon Mr. Trenbeath to help them right this wording.

Mr. Trenbeath said he didn't mind sitting down and trying to craft some language and then getting the Legislative Council to put it in the proper form.

Senator Tollefson said even eminent domain would enter in here.

Senator Triplett said she didn't think there was anything they could do to interfere with the government's right to exercise eminent domain.

Chairman Damschen said then the intent of our motion is to have a two year moratorium for the severance of access of hunting and a study.

Senator Triplett said yes.

Chairman Damschen said that moratorium might encourage a study.

Representative Hofstad said as we draft that we must make sure that we craft this in such a way that we don't exclude the leasing or the right for access for anyone that wants to use that.

Mr. Trenbeath said that severance usually refers to descendible ownership.

Chairman Damschen asked about fee hunting.

Mr. Trenbeath said that in a sense is an easement.

Senator Triplett said it is temporary not permanent. She said that she would like to hold her motion until we have the language because people may be uncomfortable with the language until they understand the motion.

Chairman Damschen said they would recess until they get that language from Mr. Trenbeath. He said he would try to schedule it for Tuesday of next week.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

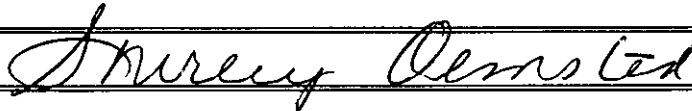
House Natural Resources Conference Committee

☒ Check here for Conference Committee

Hearing Date: April 10, 2007

Recorder Job Number: 5857

Committee Clerk Signature



Minutes:

Chairman Damschen opened the conference committee on HB 1146 and asked the clerk to call the roll. Those present included Representatives Damschen, Hofstad, and Hanson and Senators Urlacher, Tollefson and Triplett. He apologized for the late start as we were in a committee meeting. He said that he thought there was a proposed amendment out there. He asked Senator Triplett if she had brought the amendment or if she had worked with Mr. Trenbeath of the Attorney General's Office.

Senator Triplett said she didn't now where this came from actually.

Chairman Damschen said it came from him.

Senator Triplett said when she went to talk to Tom Trenbeath at the Attorney General's Office and I opened up the file and I wasn't sure where it came from. I didn't remember seeing it but he and I chatted about it and he hadn't seen it before either. He said he thought it really took care of what we were talking about. It is essentially a moratorium and then to say that we are studying it so we spent about four minutes with it and we were done. See proposed amendment marked as Item #1.

Chairman Damschen said actually he had some anticipation that this was where this was going and he didn't want to stifle any discussion by proposing it and I had this drawn up on

March 27th. I don't know if I like the wording and I was kind of hoping that you guys might come up with better wording.

Senator Triplett said he seemed to think that it took care of what we had talked about last time and I agreed.

Chairman Damschen said it does change the language to hunting access and does it say the Legislative Council shall consider studying. I might prefer that it says shall study. What are the thoughts of the committee? I don't think we want this to be an elective issue. I want to know that it will be studied.

Senator Tollefson said the Legislative Council will determine that anyway. You can shall and they still will consider it.

Chairman Damschen said that is going to be up to the committee but it does put a moratorium on until July 31, of 2009.

Senator Urlacher said this will not touch on land owner's right will it.

Chairman Damschen said he didn't think so. Tom Trenbeath told us last time that there is some gray areas as to whether a lease is implying there is property to negotiate and he did say that clouds the issue as far as severance but he also said towards the end of his discussion that prohibiting severance wouldn't really under current law mean banning a lease.

Senator Triplett said she would agree with that.

Representative Hofstad said he heard him say that too and he too has that same concern that we make sure that we don't impede anybody's right to lease this land. I am a little confused that at the end of this section we carve out the private lands habitat under section 20.1 if indeed we are not concerned about somebody leasing lands to a private outfitter or to whomever and why do we specifically exempt title 20.1. Can someone answer that?

Senator Triplett said that was added in the senate and was not part of the original bill. It was added at the request of Game and Fish. I didn't think it was necessary for the reason that we were talking about this and I don't think they would have been prohibited by this anyway. They were a little nervous about that and asked for it and it seemed like a giveaway to them as we really didn't think it really applied so we did add it. I can see your point as it kind of muddies the question as someone reading it may think that we were trying to affect easements or whatever.

Representative Hofstad said he had those same concerns probably that Game and Fish does that the outfitters that are leasing that land from private landowners or for those private landowners that have entered into some kind of an arrangement with God only knows who as it could be someone from Minnesota or whatever. I think it is very important as we go down this road that we do not impede those rights because it is a very important industry in our state. I think we need to make sure that it doesn't happen because we have in essence created a moratorium and we need to make sure that it doesn't go down that road. If Game and Fish is concerned I think that we on behalf of private landowners ought to have that same concern so whether legislative intent is good enough or however we go down that road, it is my concern and it is my only concern that I have with this.

Chairman Damschen said his concern as we talk about this is that by putting it in there are we conceding that we or are we indicating something different than our intent.

Senator Tollefson said he thinks the title of the paragraph is really very clear. The severance of the right is not talking about the right to lease. The severance of the right from the land is the issue is here. I don't fee as though at least in my mind that a leasing of property for hunting privileges is a whole different issue.

Representative Hanson asked what the definition of severance is.

Chairman Damschen said he wished he had asked Tom Trenbeath that last week.

Senator Triplett said she thought the best analogy is the mineral rights notion where the mineral rights when they are severed from the surface estate are just cut off or are a completely different ownership and the landowner then has no rights and no way of getting those rights back unless he goes out and purchases them back. They are permanently and forever segregated from the surface and that is what we are talking about here and to say that we do not want the hunting access thing permanently and completely and forever segregated from the other part of the surface right of ownership and use and possession of the land.

Representative Hanson said that is why I don't think the leasing has any part of this.

Chairman Damschen said he agrees and if you own land and have a lease agreement to someone to farm it they certainly haven't severed that right. You have only temporarily for some consideration allowed them to farm that land.

Representative Hofstad said but it could be interpreted, that 99 years to me is awful permanent and under a lease agreement we in North Dakota we could lease land for 99 years.

Chairman Damschen said for you and me at least it is permanent.

Representative Hofstad said again he thinks we have an extraordinarily important issue here from a landowner and from someone that is involved in agriculture this is a very important issue but we have talked about so many issues that come to the table I just want to be cautious as we go down this road.

Senator Triplett asked if he would be more comfortable if we took out the last half of that line that says this section does not apply to deeds, instruments, or interests in property recorded before the effective date of this Act and end it there. We could just put a period there and get rid of the PLOTS piece which is relating to easements.

Representative Hofstad said that would make him more comfortable.

Chairman Damschen said that would just grandfather in the existing ones.

Senator Triplett said we really didn't think we had the legal right to undo existing arrangements.

Representative Hofstad said he would be more comfortable if we deleted that.

Senator Triplett said if a motion is appropriate I would move this amendment .0203 with the deletion of that.

Representative Hanson seconded the motion.

Chairman Damschen said he thought we had a motion on the table last time. He was not sure if that motion was proper. He is not the expert on conference committees and do we need a motion for the Senate to recede their amendment and further amend.

The clerk asked if the Senate was receding.

Senator Triplett said first of all do we have a motion on the table.

Chairman Damschen said yes we had a motion on the table

Senator Triplett said which is what?

Chairman Damschen said he thought it was rather broadly worded to put the moratorium on and to do the study. I don't know if you want to withdraw that.

Senator Triplett said she would withdraw too. Can someone who knows how to make the motion appropriately please do so.

Representative Hofstad said the motion would be for the Senate to recede from their amendment and further amend and then we need to amend the amendment. He said he would make that motion.

Senator Triplett seconded the motion.

Chairman Damschen said we have a motion and a second. Is there any more discussion?

He asked if before they voted on that were they going to change and adopt the amendment as amended or do we have to have to have another motion after we adopt this amendment.

Senator Triplett said I think we could say that we want to do .0203.

Chairman Damschen said he would think so too. He asked the clerk to call the roll. Let the record show 6 yes, 0 no with all present.

Senator Triplett said all that we have done so far is approve the amendment. We will need a second motion and all we have done so far is to recede from our amendment.

Chairman Damschen said he was sorry. I guess I was confused myself.

Senator Triplett said we would adopt amendment .0203 and delete the portion that does not apply that says "and does not apply to the private lands habitat and access improvement program under title 20.1."

Representative Hofstad seconded the motion.

Chairman Damschen asked for discussion. Hearing none, he asked the clerk to call the roll. Let the record show 6 yes, 0 no with all present. The motion carried. Chairman Damschen will carry it to the house and Senator Triplett will carry it to the Senate.

The conference committee was adjourned.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number HB 1146, as (re)engrossed):

Date: 3-29-07

Your Conference Committee Not Resources

all
For the Senate:

YES / NO

attend
For the House:

YES / NO

☒ Sen Urlacher	☐	☐	☒ Rep Damschen	☐	☐
☒ Sen Tolleson	☐	☐	☒ Rep Hoystad	☐	☐
☒ Sen Triplett	☐	☐	☒ Rep Hanson	☐	☐

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate) House) amendments on (S/H) page(s) 1079--

____, and place _____ on the Seventh order.

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

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

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

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT YES NO ABSENT

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number HB 1146, as (re)engrossed):

Date: 4-5-07

Your Conference Committee Not Resources

2:30 Pm

For the Senate:

YES / NO

For the House:

YES / NO

✓	Don Uelacher			✓	Rep Damschen		
✓	Don Tollefson			✓	Rep Hofstad		
✓	Don Triplett			✓	Rep Hanson		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1079--

_____, and place _____ on the Seventh order.

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

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

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

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT **YES** **NO** **ABSENT**

Revised 4/1/05

Vote 1

REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

Bill Number 1146 (, as (re)engrossed):Date: 4-10-07Your Conference Committee Natural Resources

For the Senate:

YES / NO

For the House:

YES / NO

<u>Sen Urlacher</u>	☒	☐	<u>Rep Rasmussen</u>	☒	☐
<u>Sen Triplett</u>	☒	☐	<u>Rep Hofstad</u>	☒	☐
<u>Sen Triplett</u>	☒	☐	<u>Rep Hanson</u>	☒	☐

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from)the (Senate/House) amendments on (SJ/HJ) page(s) 1029 --

____, and place _____ on the Seventh order.

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

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

((Re)Engrossed) 1146 was placed on the Seventh order of business on the calendar.DATE: 4-10-07CARRIER: Rasmussen + Triplett

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: HofstadSECONDED BY: TriplettVOTE COUNT 6 YES 0 NO 0 ABSENT

Revised 4/1/05

PROPOSED AMENDMENTS ENGROSSED TO HOUSE BILL NO. 1146

That the Senate recede from its amendments as printed on pages 868 and 869 of the Senate Journal and page 1079 of the House Journal and that Engrossed House Bill No. 1146 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to severance of the right of access for hunting access from the surface estate; to provide for a legislative council study; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Severance of the right of access for hunting access prohibited. The right of access to land to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded before the effective date of this Act, and does not apply to the private lands habitat and access improvement program under title 20.1.

SECTION 2. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY. The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting access from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2009, and after that date is ineffective."

Renumber accordingly

Conference Committee Amendments to Engrossed HB 1146 (70387.0204) - 04/11/2007

That the Senate recede from its amendments as printed on page 1079 of the House Journal and pages 868 and 869 of the Senate Journal and that Engrossed House Bill No. 1146 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to severance of the right of access for hunting access from the surface estate; to provide for a legislative council study; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Severance of the right of access for hunting access prohibited. The right of access to land to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded before the effective date of this Act.

SECTION 2. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY. The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting access from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2009, and after that date is ineffective."

Renumber accordingly

Vote #2

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number HB 1146 (, as (re)engrossed):

Date: 4-10-07

Your Conference Committee Not Resoured

attended

For the Senate:

YES / NO

attended

For the House:

YES / NO

☒ Sen Uelacher	☒	☒ Rep Damschen	☒
☒ Sen Tollefson	☒	☒ Rep Hofstad	☒
☒ Sen Triplett	☒	☒ Rep Hanson	☒

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SI/HJ) page(s) 1079--

____, and place _____ on the Seventh order.

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

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

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

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Triplett

SECONDED BY: Hofstad

VOTE COUNT 6 YES 0 NO 0 ABSENT

Revised 4/1/05

TO accept amendment. 0203
minus portion of last line

REPORT OF CONFERENCE COMMITTEE

HB 1146, as engrossed: Your conference committee (Sens. Uriacher, Tollefson, Triplett and Reps. Damschen, Hofstad, Hanson) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1079, adopt amendments as follows, and place HB 1146 on the Seventh order:

That the Senate recede from its amendments as printed on page 1079 of the House Journal and pages 868 and 869 of the Senate Journal and that Engrossed House Bill No. 1146 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to severance of the right of access for hunting access from the surface estate; to provide for a legislative council study; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

Severance of the right of access for hunting access prohibited. The right of access to land to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded before the effective date of this Act.

SECTION 2. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY. The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting access from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2009, and after that date is ineffective."

Renumber accordingly

Engrossed HB 1146 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1146



Cass County
WILDLIFE CLUB

Box 336
Casselton, ND 58012



TESTIMONY OF FOSTER HAGER
CASS COUNTY WILDLIFE CLUB
PRESENTED TO THE HOUSE NATURAL RESOURCES COMMITTEE
ON

HB 1146
February 1, 2007

Mr. Chairman and Members of the Committee:

My name is Foster Hager representing the Cass County Wildlife Club. We support
HB 1146.

Too many people are buying land, then reselling the land and trying to keep the
hunting rights.

Hunting rights should stay with the owner and not the seller.

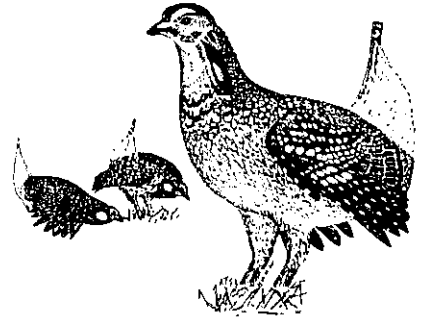




North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



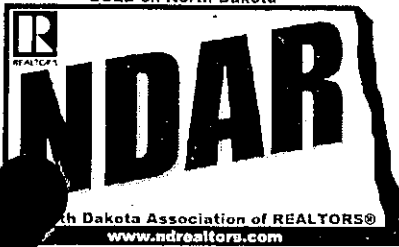
**TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO THE SENATE NATURAL RESOURCES COMMITTEE
ON HB 1146, MARCH 1, 2007**

CHAIRMAN LYSON AND MEMBERS OF THE COMMITTEE:

Bill Pfeifer
I am ~~Mike McEnroe~~ speaking on behalf of the North Dakota Chapter of The Wildlife Society, an organization of 300 professional natural resource managers, biologists, and educators. The Chapter supports HB 1146, to provide legislative council study of the severance of hunting access from the surface estate.

We would recommend that HB 1146 be amended to include studying of various surface rights, such as wind energy, view shed rights, development rights from the surface estate. In testimony heard on HB 1146 in the House Natural Resources Committee hearing, speakers indicated that severing various surface rights from the surface estate, may affect both appraised value of the property and the amount of money that may be loaned against the property. This is a much bigger issue than just hunting access. The Chapter believes that a broader study would have much more value to State Legislature than a more narrowly focused study on severing only hunting access from the property.

Thank you for the opportunity to comment on HB 1146.



North Dakota Association of REALTORS®

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Attachment #1

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March 15, 2007

Testimony on 1146

To: Senate Natural Resources Committee
From: Claus Lembke, Executive Vice President
ND Association of REALTORS®

Mr. Chairman and Members of the Senate Natural Resources committee, my name is Claus Lembke and I represent the North Dakota Association of REALTORS®.

We have some concerns about 1146 in its present stage. As we understand it, this Bill now will take away one of the important rights of property ownership.

Our concern is not about fee hunting or hunting in general. We believe that 1146 is a form of taking by the Government. The leasing or even selling of hunting rights is something that is being done by many property owners and it should remain their right to do so. We base these rights on what we refer to as the Bundle of Rights that comes with Real Property. In example: Development Rights -One "Stick" in the Bundle of Property Rights Ownership of real property is frequently compared to owning a "bundle of sticks." Each stick in the bundle represents one of the rights of ownership, such as the right to possess, including the right to minerals below the surface, the right to exclude others from one's property, and, of course, the right to make productive use of one's property, usually understood as the right to develop. Ownership of the entire "bundle" of rights is known as ownership in fee simple absolute. However, because each property "right" is a separate "stick" in the bundle, each such right can be conveyed to another person or entity. One way that a property right may be conveyed separately, without conveying the entire fee simple interest in property, is to grant certain rights in the form of an easement. For example, when a property owner grants to an adjacent property owner the right to use a road that runs across his or her property, it is usually done by the grant of a permanent or temporary easement.

Our Statutes talk about fee simple ownership but make no reference to the Bundle of Rights and neither does our constitution. The Bundle of Rights over time have been defined by the courts. An example of this would be A North Dakota Supreme Court case Sanford vs. Sanford (Civ. No. 9771) (See attachment)

We hope that you would reconsider your amended version of 1146 and revert this bill to a study resolution.



Supreme Court of North Dakota.

Reed E. SANFORD, Plaintiff and Appellee,
v.

Glenda L. SANFORD, Defendant and Appellant.

Civ. No. 9771.

Dec. 19, 1980.

Rehearing Denied Jan. 23, 1981.

The bundle of rights theory of appraisal holds that the ownership of real property may be compared to a bundle of sticks wherein each stick represents a separate right or privilege of ownership. These rights are inherent in ownership of real property and consist of the right to use real property, to sell it, to give it away, to lease it, and the right to refuse to exercise these rights. An owner of real estate who leases real estate transfers the right to use or occupy the property to the tenant and receives rent as compensation for the temporary relinquishment of this interest in the real estate. After the lease is consummated, the owner of the property possesses the rights under the lease and the income it commands, together with the title to the real property which includes the recovery of the use and occupancy of the real property at the expiration of the lease. Thus, the owner of real property who executes a lease on the property divides his bundle of rights into two separate interests commonly referred to as the leased fee estate, and the leasehold estate. The building was built in 1961. Reed's experts determined that the building would have little value at the end of the lease because the warehouse had a typical physical life of forty-five years under the Marshall-Swift Valuation Service. The value of the site rested in the reversionary value of the property to the owner at the end of the lease. Reed's experts determined that the site had a value of \$25,000.00 per acre. The 8.3-acre area on which the warehouse is built was determined to be worth \$207,500.00.