

SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY - BACKGROUND MEMORANDUM

Section 2 of House Bill No. 1146 (attached as [Appendix A](#)) provides that 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 assigned this study to the Natural Resources Committee.

Section 1 of House Bill No. 1146 prohibits severance of the right of access for hunting access. This section provides that 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 provides that it does not apply to deeds, instruments, or interests in property recorded before the effective date of the Act. Section 3 provides that the Act is effective through July 31, 2009, and after that date is ineffective. The legislative history for House Bill No. 1146 reflects the concern of the Legislative Assembly with the severance of hunting rights.

SEVERANCE OF HUNTING RIGHTS

Generally, property may be viewed as a bundle of sticks with each stick in the bundle representing a separate property interest. If one owns all the sticks or interests in a piece of property and thus all of the interests in that piece of property, that person is said to own the property in fee simple absolute. The terms "fee simple" and "fee" are synonymous with fee simple absolute, the largest quantum of interest that a landowner can possess. There are two other kinds of fees simple--the fee simple determinable and the fee simple subject to a condition subsequent. These are defeasible fees or determinable fees and also referred to as base or qualified fees. Another type of property interest is the life estate. Life estates are generally measured or operative during a lifetime.

It is clear that the right of fishing and taking game or hunting is an interest in property or one of the sticks that comprises a property interest. This right may be severed from the remaining interests or sticks

comprising a property interest and is transferable. House Bill No. 1146 prohibits the severance of the right of access for hunting access from August 1, 2007, until July 31, 2009. The prohibition will expire unless extended by the Legislative Assembly.

Research has not revealed any other state that has enacted a similar provision prohibiting or restricting the severance of the right of access for hunting access.

COUNTY RECORDER SURVEY

In an attempt to determine the extent of the practice of severing the right of access for hunting access from the surface estate, the Legislative Council staff conducted a survey of the state's county recorders. Twenty-two of the 53 county recorders responded--Adams, Barnes, Burke, Burleigh, Cass, Dickey, Divide, Grant, Kidder, McHenry, McIntosh, McKenzie, McLean, Nelson, Oliver, Ramsey, Renville, Slope, Stark, Towner, Walsh, and Wells Counties. The county recorders of Adams, Barnes, Burke, Dickey, Divide, Grant, McIntosh, McKenzie, Oliver, Ramsey, Slope, Stark, Towner, Walsh, and Wells Counties reported that to the best of their knowledge they had not recorded any documents severing the right of access for hunting access. The remaining counties that responded reported that they had each recorded one or several but not a great number of documents. The county recorders of Cass, Kidder, Towner, Nelson, and Renville Counties were able to locate documents severing the right of access for hunting access from the surface estate by either conveying hunting rights or reserving hunting rights upon the conveyance of property. Copies of these documents are attached as [Appendix B](#).

POSSIBLE STUDY APPROACH

In conducting its study of the severance of hunting access from the surface estate, the committee could solicit testimony from a number of sources. These include the Real Property, Probate and Trust Law Section of the State Bar Association of North Dakota and the Game and Fish Department.

ATTACH:2