



PO Box 1856
Bismarck, ND 58502
701-258-8864
1-800-981-5132
www.usnd.org

House Bill 1512 Testimony in Opposition

House Energy and Natural Resources Committee, Representative Porter, Chair

February 2, 2023

Chairman Porter, members of the committee, I am Carlee McLeod, president of the Utility Shareholders of North Dakota, here on behalf of USND utility members, including ALLETE, Montana-Dakota Utilities, Otter Tail Power, and Xcel Energy. We ask you to oppose HB 1512.

This bill is problematic for a variety of reasons. First, it interjects county jurisdiction into state jurisdiction. If a county wants to create additional requirements for zoning, it has that ability. If a refinement is desired, that refinement should occur in the chapter of code defining county powers or at the county level. Second, there are significant constitutional issues with landowner restrictions placed in sections 3 and 4 of the bill.

An unlawful, unconstitutional taking of property occurs if the owner cannot use her land in a lawful manner because of a condition placed upon it by someone else. There are limited instances where eminent domain can be used, but it cannot be used without paying just compensation to the landowner. A person is no less of a property owner because she resides somewhere else, and her rights are no less constitutional than other landowners. Further, section 4 protection for a mineral owner over a surface owner runs afoul of the Surface Owner Protection Act (NDCC 38-18) developed to properly balance the rights of each estate owner.

38-18-03. Purpose and interpretation. It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners from the undesirable effects of development, without their consent, of minerals underlying their surface. This chapter is to be interpreted in light of the legislative intent expressed herein. The provisions of this chapter shall be interpreted to benefit surface owners, regardless of how the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct mining operations on the land.

We ask you to oppose this bill and its unnecessary and unconstitutional effects.

Thank you.