

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1297

2001 HOUSE NATURAL RESOURCES

HB 1297

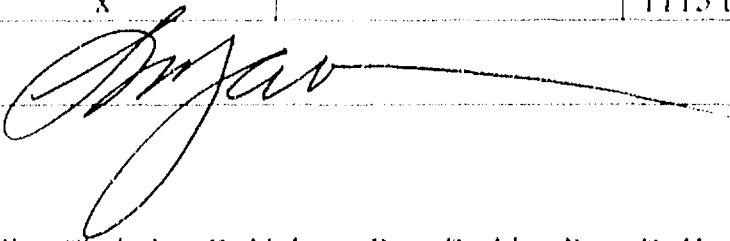
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1297

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 1, 2001

Tape Number	Side A	Side B	Meter #
1	x		4288 to end
		x	1 to 1642
3	x		1115 to 2221
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: I will open the hearing on HB 1297. Anyone here wish to testify in favor of HB 1297?

Rep. Porter: This bill came about as a result of the diesel spill in Mandan. It affects all of ND. This bill mirrors the Federal Innocent Landowners provisions that EPA follows. Currently with the situation in Mandan, property values will start to decline. This measure will allow the current landowners to retain any liability connected with the hazardous spill and allow the owners to retain full value of property. While the measure will not correct the situation it will address future concerns of liability as long as buyers perform the required environmental tests and not contribute to future hazardous spills.

Chairman Rennerfeldt: This bill mirrors Federal Law? How does that enter in?

Rep. Porter: The situation in Mandan, since it is fuel under Mandan, it does not qualify as a super fund hazardous spill. So the Super Fund doesn't come into play, there is other funds though, like the underground storage tank leaking fund that could come into play. Some of the material has been contributed back to previous and other old gas stations. The way this bill comes to play, the Innocent Landowner provision only affects those bills directly related to the Super Funds. This would include spills not related to the Super Fund.

Chairman Rennerfeldt: Questions for Rep. Porter? Rae Ann.

Rae Ann Kelsch - Representative, District 34: I am here to appear in support HB 1297. It is a good thing for Mandan and the state.

Chairman Rennerfeldt: Anyone else here to testify in favor?

Bill Delmore - Kelsch Law Firm: Our firm represents 50 people in two buildings that have some health concerns with this bill, but more importantly we represent 30 downtown landowners. When the legislators were looking at this bill, we were providing technical assistance. What this bill does is codifies the Federal concept of Innocent Landowners Defense. What it means, is if you take certain steps, as outlined, prior to acquiring land, you would be protected from cleanup by a regulatory agency if anything that you didn't know was there, was found at a later time. (Explains his point, with two client stories). If someone takes the steps as outlined in this bill, they would be protected from future liability. One of the good things this would do, if people start to file or make available with deed and other documents, is the next person buys, all they have to do is update it and they get the same protection.

Rep. Keiser: Can you help me understand from the disclosure requirement of the seller and the Realtor. I understand the intention of the bill, I buy property I do everything and so I can't be

held liable. I will however after purchasing the property become aware of a problem, and I decide I want to sell the property, I have an obligation to disclose that information to my Realtor, the Realtor has to disclose that to the buyer, the buyer knows this, he may become liable entering the contract knowing about it?

Delmore: You do have to disclose. It is unclear, regarding some kind of contamination, is that a material defect, or not? That is one reason the Super Fund put this in Federal Law.

Chairman Rennerfeldt: How would this affect lending institutions involved?

Delmore: We have already codified the third party member liability clause which provides protection to the lending institutions if they take certain steps.

Chairman Rennerfeldt: Any further questions from the committee? Anyone else prepared to speak in favor?

Jay Veil - President, First Southwest Bank in Mandan: I am here to speak in favor of HB 1297. (see written testimony).

Chairman Rennerfeldt: Any questions?

Bob Willer - Chairman of Bismarck-Mandan Chamber of Commerce: I am here today in support of HB 1297. (See written testimony).

Rep. Keiser: What would happen from a Realtors code of ethics and a buyers required to disclose on future sales. What happens to that liability. It covers the innocent buyer, but when they become aware, does the liability come back?

Willer: My understanding as a real estate agent, if you are aware of a defect on the property, you have an absolute responsibility to disclose. If the property owner is aware of the defect and fails to disclose to the broker, the broker may still have liability in the fact that you would expect expertise from your brokerage firm to do diligence to see if there was a material defect.

Rep. Keiser: It seems to me, if you follow the scenario, this gets the person off the hook for correcting the exposure immediately, but we are talking about as this bill indicates, the individual finding out about it, after the purchase, at that point there is a liability. If that person that is held innocent doesn't disclose it to the next buyer, don't they become liable again? If they do disclose it, where does the liability go? I understand this, if you buy this property and hold it to perpetuity, you are in great shape. But it seems to me we haven't solved the problem of the liability coming back.

Willer: I am not sure where and when the liability would come back, as I understand the bill, if a buyer of real estate did their due diligence, or a phase one environmental study, and found no hazardous waste, the liability from the previous seller would not be there. If something happens after that purchase, the next buyer of the property in doing their due diligence determine that there was hazardous waste, now you are in that negotiating process again. Either the price of the property or release of future liability is part of the negotiations.

Vice Chair Nelson: As a Realtor would you expect an environmental assessment on each property you sell? How do you look at this to be implemented?

Willer: Part of the process in domestic property is to find out with your client, everything that you can about the property. One of the questions we would ask is, whether or not there has been any previous studies that have been done to determine whether or not there is hazardous waste. If there have been not, no knowledge of it, I don't know if it would be the responsibility of the broker at that point to insist that the study be conducted. However, if I was representing a purchaser, I would be encouraging that study be done.

Chairman Rennerfeldt: How about if the owner doesn't want to tell you and the prospective buyer choose not to do the study? Would he still be covered under this legislation?

Willer: If you do due process, you have no liability.

Tom Keisch - Attorney: If you don't disclose, he may be able to sue you, but you can't take advantage of the defense that you didn't do diligence.

Jim Neubauer - Mandan City Administrator: On behalf of the Board of City Commissioners I am here to urge your support for HB 1297. (see written testimony)

Chairman Rennerfeldt: Any questions of the committee? Anyone else wish to testify in favor?

Francis Schwindt - ND Department of Health: (see written testimony).

Chairman Rennerfeldt: Any questions of the committee? Anyone else wish to testify in favor of this bill?

Clyde Krebs: I own an elevator in Glen Ullin and as you know there are many elevators across the state in the process of purchasing land from the railroads. We are in support of HB 1297. That is our basis.

Chairman Rennerfeldt: Any questions of the committee? Any one else care to testify in favor of HB 1297? Any opposition to 1297. If not I will close the hearing on HB 1297.

### COMMITTEE WORK

Chairman Rennerfeldt: Let's do HB 1297.

(discussion regarding need for amendments)

Rep. DeKrey: I move we amend HB 1297 on page 3, line 16 after release, make that subsection 5 and down on line 22, make subsection 5, subsection 6. Page 2, line 13, after which, cross out consists of and write may include.

Rep. Droydal: I second.

Chairman Rennerfeldt: Any discussion on the amendment? All in favor signify by saying Aye. Opposed? Amendments carry.

Rep. Nottestad: I move a Do Pass as amended on HB 1297.

Rep. Brekke: I second.

Chairman Rennerfeldt: Any further discussion on HB 1297?

Rep. Keiser: I support the bill, but I think it is missing the most important component and so with the bill passed out, I ask you hold it for a day and have Rep. Porter talk to Mr. Kelsch to see whether or not they have any concerns. You have to understand Real Estate law and you have to understand what this bill does. This bill address when you have an exposure to something and you are an innocent person and bought the property, you are not held liable for removal of that material, if you follow the steps. This bill only applies if there is a problem substance found. There are a lot of properties with substances underneath them that are never discovered. So this bill would never apply in those situations. So this assumes that something will be discovered. So the minute it is discovered, let's say Rep. Drovdal bought the property and met all the conditions in this bill and then at some point when he sells, I go to him and say is there any problem. No, I met these things and there is nothing. So my Realtor says, lets drill and I discover now there is a problem. Drovdal is off the hook, the problem is, well, you will have to discount the property to me. I buy the property knowing the problem is there, does it become my responsibility? That is a real question. This bill protects the person who owns the property now, but if they ever find out that there is a problem, they are required by law to disclose it themselves. The Realtor is required to work on your behalf to discover any problems. Where does the liability go... They try to find the original guy. You haven't found him in the first place and I bought the property knowing, am I liable for removal. He didn't know. The amendment that goes here should say, once a person buys the property and doesn't realize it that that person can also not be liable and can sell the property and sell the limitation of liability. If I lived forever I would never be liable to remove



the substance, however, I am not going to live forever. It is going to have to be transferred. What happens to the new person? You offer the limitation of liability for Droydal, but why not for me?  
(More discussion ensued)

Rep. Porter: In that scenario, I talked with Mr. Schwindt and Mr. Delmore also brought up the point that these should be recorded in the deed and transferred forward. But part of this bill is for each person to get in on the limited liability they have to perform the tests. So if each person owns it for a day and decides to sell it tomorrow, the person who buys it does not complete the test, they are not granted the immunity of the person before them. The only way the immunity goes forward is each party must jump through the hoops. If the technology changes and something is found in the future they would have to jump through those hoops anyway to get this liability. The State Health Department currently goes after who they believe to be the responsible party. That is not the case in every state or every situation. They usually go after whomever owns the land. (Cites example) I don't think what Rep. Keiser is bringing up needs to be addressed because each time this thing moves forward the buyer has to jump through the hoops. You can't get away from your liability. But if they jump through the hoops prescribed in this bill they would know about these things. If they did the environmental study and they didn't disclose that there was a hazardous waste there, then I think there would be a couple of people. The individual who did not disclose, the Realtor if they had knowledge and the person who did the study for the new buyer. I think it covers the situation. The Health Department was comfortable with it.

Rep. DeKrey: Call for question.

Chairman Rennefeldt: I have a Do Pass on HB 1297. Call the roll.

**MOTION CARRIES**

**YES, 14      NO, 0**

Page 8

House Natural Resources Committee

Bill/Resolution Number HB 1297

Hearing Date February 1, 2001

**1 ABSENT AND NOT VOTING**

**CARRIED BY REP. DEKREY**

**FISCAL NOTE**  
Requested by Legislative Council  
01/17/2001

Bill/Resolution No.: HB 1297

Amendment to:

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The proposed bill does not have any fiscal impact at this time. If there is a site where a responsible party cannot be found and the federal Superfund program does not apply, there may be a fiscal impact if the State must clean up the site.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathy J. Albin	Agency:	Health Department
Phone Number:	328-2392	Date Prepared:	01/22/2001

10249.0301  
Title.0400

Adopted by the Natural Resources  
Committee

February 1, 2001

VR  
2/2/01

**AMENDMENTS TO HB 1297**

**HOUSE NATURAL RESOURCES**

**02/04/01**

Page 2, line 13, replace "consists of" with "may include"

Page 3, line 16, after the underscored period insert:

"5."

Page 3, line 22, replace "5" with "6"

Renumber accordingly

Date: 02/01/01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1297

House Natural Resources Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO Pass as Amended

Motion Made By Rep Nottestad Seconded By Rep Brekke

Representatives	Yes	No	Representatives	Yes	No
Earl Rennerfeldt - Chairman	✓		Lyle Hanson	✓	
Jon O. Nelson - Vice Chairman	✓		Scot Kelsh	✓	
Curtis E. Brekke	✓		Lonnie B. Winrich	✓	
Duane DeKrey	✓		Dorvan Solberg	✓	
David Droydal	✓				
Pat Galvin	✓				
George Keiser					
Frank Klein	✓				
Darrell D. Nottestad	✓				
Todd Porter	✓				
Dave Weiler	✓				

Total (Yes) 14 No \_\_\_\_\_

Absent 1

Floor Assignment Rep. DeKrey

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

Date: 02/01/01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1297

House Natural Resources Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO Pass as Amended

Motion Made By Rep Nottestad Seconded By Rep Brekke

Representatives	Yes	No	Representatives	Yes	No
Earl Rennerfeldt - Chairman	✓		Lyle Hanson	✓	
Jon O. Nelson - Vice Chairman	✓		Scot Kelsh	✓	
Curtis E. Brekke	✓		Lonnie B. Winrich	✓	
Duane DeKrey	✓		Dorvan Solberg	✓	
David Drovdal	✓				
Pat Galvin	✓				
George Keiser					
Frank Klein	✓				
Darrell D. Nottestad	✓				
Todd Porter	✓				
Dave Weiler	✓				

Total (Yes) 14 No \_\_\_\_\_

Absent 1

Floor Assignment Rep. DeKrey

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

REPORT OF STANDING COMMITTEE (410)  
February 5, 2001 8:51 a.m.

Module No: HR-20-2329  
Carrier: DeKrey  
Insert LC: 10249.0301 Title: .0400

**REPORT OF STANDING COMMITTEE**

HB 1297: Natural Resources Committee (Rep. Rennerfeldt, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1297 was placed on the Sixth order on the calendar.

Page 2, line 13, replace "consists of" with "may include"

Page 3, line 16, after the underscored period insert:

"5."

Page 3, line 22, replace "5" with "6"

Renumber accordingly

2001 SENATE NATURAL RESOURCES

HB 1297



2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1297

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 3-0-01

Tape Number	Side A	Side B	Meter #
1		X	33.4 - end
2	X		Start - 17.0
3-8-01 1	X		14.7 - 34.0
Committee Clerk Signature <i>Janet Jerns</i>			

Minutes:

SENATOR FISCHER opened the hearing on HB 1297.

SENATOR DWIGHT COOK, of District 34, cosponsor, introduced HB 1297, A BILL RELATING TO LIABILITY IF PROPERTY OWNERS FOR HAZARDOUS WASTE ON THEIR PROPERTY. He said the intent of the bill is to protect property owners whose property may or not be contaminated by hazardous waste that has been contributed by third party. This bill will also protect buyers of properties. A landowner may whose property is not contaminated may identify that it is not contaminated and then sell the property and have protection for the new owner. He proposed some amendments (See attached).

SENATOR KELSH asked if the propose of the bill so that the original landowner who is guaranteed does not have hazardous material under his property and later shows up is then not liable.

SENATOR COOK stated that the propose of the bill is that a potential buyer would not assume any liability other than the liability for hazardous waste that they put on the property.

SENATOR CHRISTMANN asked if sown the road 15 years and the purchaser is not liable, who does assume the liability

SENATOR COOK answered that his understanding is that if the original person who put the hazardous waste if not found then it is the responsibility of the landowner.

REPRESENTATIVE TODD PORTER, of District 44 , cosponsor of HB 1297 testified (See attached testimony).

SENATOR FISCHER again asked if undiscovered contamination that is discovered from 3 or 4 owners ago how is that dealt with who would be responsible for the cleanup of this unknown contaminant.

REPRESENTATIVE PORTER explained that non of the amunities of this bill goes into effect unless the purchaser goes through the required "hoops" of completing the environmental studies. If a purchaser of a property wants the protection of this HB 1297, they will have to do the studies that are required by the bill. If something does appear later after the studies have been done, there is the recourse to go back to the company that did the study and they would assume some of the liability . If the company would not be negligible then go back to the responsible party.

BILL DELMORE, an attorney testified in support of HB 1297. He stated the goal of the bill was in essence to put the innocent landowner as it existed in Federal law into State law. It protects someone who does the required Phase I testing. The Legislative Council took all the elements of the Phase I and put into the bill to protect everyone. The amendments remove the more stringent requirements of the bill than are the Federal Government requirements. There are government funds that can help with cleanups. The next buyer would need to an update research after if

Phase I has been completed.

SENATOR CHRISTMANN asked for examples of wastes that might seem harmless.

BILL DELMORE listed fertilizers, pesticides, petroleum additives, printing materials, dry cleaning materials, embalming materials and solvents.

SENATOR EVERY asked how do you determine if the "Federal Super Fund" applies.

BILL DELMORE answered that the use of the "Federal Super Fund" is discretionary of the State Health Department.

DAVE MAC IVER, President of the Bismarck-Mandan Chamber of Commerce testified in support of HB 1297 ( See attached testimony).

TODD STEINWAND, President of Well Fargo Bank of Mandan, testified in support of HB 1297 (See attached testimony also signed by Jay Feil, President of First Southwest Bank of Mandan).

DENNIS BOYD, representing Montana Dakota Utilities Company testified in support the concept of HB 1297. He asked to hold over the bill until someone from their company could review the proposed amendments.

CLYDE KREBS, representing the North Dakota Grain Dealers Association testified in support of HB 1297.

DON LITCHFIELD, representing the Greater North Dakota Association testified in support of HB 1297 containing the proposed amendments of Senator Cook. He also asked to hold over the bill to make sure the amendments comply with Federal regulations.

There was no neutral or opposing testimony of HB 1297.

SENATOR FISCHER closed the hearing on HB 1297.

**MARCH 8, 2001**

SENATOR FISCHER opened discussion on HB 1297.

SENATOR CHRISTMANN made a motion to adopt the land department amendments  
HB 1297.

SENATOR TOLLEFSON second the motion.

SENATOR FISCHER called for a roll vote # 1 of HB 1297. The vote indicated 7 YAYS,  
0 NAYS AND 0 ABSENT OR NOT VOTING.

SENATOR TRAYNOR made a motion to adopt the amendments proposed by Senator Cook.

SENATOR CHRISTMANN second the motion.

SENATOR TOLLEFSON asked if the EPA was involved in the discussion of the bill.

SENATOR FISCHER called for roll vote # 2 of HB 1297. The vote indicated 7 YAYS, 0 NAYS  
AND 0 ABSENT OR NOT VOTING.

SENATOR TRAYNOR made a motion for a "DO PASS as twice AMENDED" of HB 1297.

SENATOR CHRISTMANN second the motion.

SENATOR EVERY has concerns that if this bill passes that in some cases the state could end up  
being responsible for cleanups and felt the question was never answered to his satisfaction.

SENATOR FISCHER called for a roll vote of HB 1297. The vote indicated 6 YAYS, 1 NAYS,  
AND 0 ABSENT OR NOT VOTING.

SENATOR TRAYNOR will carry HB 1297.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1297

Page 2, line 12, after "property" insert a "."

Page 2, remove lines 13 through 31

Page 3, remove lines 1 through 7

Page 3, line 9, after "investigation." remove "However, if the" and remove lines 10 through 16

Renumber accordingly

Date: 3 2 01  
Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1297

Senate NATURAL RESOURCES Committee

☐ Subcommittee on \_\_\_\_\_  
or \_\_\_\_\_

☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken To Adopt Land Disposal

Motion Made By Christman Seconded By Talbot

[illegible]

Total (Yes) 7 No 0

Absent 0

### Floor Assignment

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

**Date:**

Roll Call Vote #: 2

## 2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

**BILL/RESOLUTION NO.** 1247

Senate NATURAL RESOURCES

## Committee

Subcommittee on

☐ Conference Committee

Legislative Council Amendment Number

### Action Taken

**Motion Made By**

## Seconded

By

[illegible]

**Total (Yes)**

No

**Absent**

## Floor Assignment

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

Roll Call Vote #: 3

**BILL/RESOLUTION NO.** 1297

## Committee

☐ Conference Committee

**Legislative Council Amendment Number**

Do Pass. as Juror Amended-

Christmas

[illegible]

1

6

Traynor

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



REPORT OF STANDING COMMITTEE (410)  
March 9, 2001 12:55 p.m.

Module No: SR-41-5226  
Carrier: Traynor  
Insert LC: 10249.0401 Title: .0500

**REPORT OF STANDING COMMITTEE**

HB 1297, as engrossed: Natural Resources Committee (Sen. Fischer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1297 was placed on the Sixth order on the calendar.

Page 1, line 16, after "sale" Insert ", foreclosure"

Page 2, line 12, after "property" Insert an underscored period

Page 2, remove lines 13 through 31

Page 3, remove lines 1 through 7

Page 3, line 9, remove "However, if the"

Page 3, remove lines 10 through 16

Renumber accordingly

2001 TESTIMONY

HB 1297



# CITY OF MANDAN

FEBRUARY 1, 2001

MANDAN CITY HALL -- 205 2nd Ave. N.W.  
MANDAN, NORTH DAKOTA 58554

## CITY DEPARTMENTS

ADMINISTRATION	667 3210
ASSESSING/BUILDING INSPECTION	667 3210
ENGINEER/PLANNING	667 3225
FINANCE	667 3233
FIRE	667 3288
PERSONNEL	667 3217
POLICE	667 3250
PUBLIC WORKS	667 3240
SPECIAL ASSESSMENTS	667 3211
WATER BILLING	667 3219
TAX	667 3223

CHAIRMAN RENNERFELDT AND MEMBERS OF THE HOUSE NATURAL RESOURCES COMMITTEE. MY NAME IS JIM NEUBAUER; I AM THE ADMINISTRATOR FOR THE CITY OF MANDAN. ON BEHALF OF THE BOARD OF CITY COMMISSIONERS, I AM HERE TO URGE YOUR SUPPORT FOR HOUSE BILL 1297.

THIS BILL WILL PROTECT FUTURE PROPERTY OWNERS FROM THE LIABILITY ASSOCIATED WITH PURCHASING PROPERTY THAT CONTAINS ANY EXISTING HAZARDOUS WASTE OR SUBSTANCE, PROVIDED THE PERSON HAD MADE ALL APPROPRIATE INQUIRY INTO PREVIOUS OWNERSHIP AND USES OF THE PROPERTY CONSISTENT WITH CUSTOMARY PRACTICES TO LIMIT SUCH LIABILITY.

WHILE I FEEL THAT THIS BILL, IN ITS PRESENT FORM, MAY NOT PROTECT CURRENT PROPERTY OWNERS IN DOWNTOWN MANDAN, IT OFFERS PROTECTION FOR FUTURE PROPERTY OWNERS FROM THE COSTS ASSOCIATED WITH THE ASSESSMENT, REMOVAL, CORRECTIVE ACTION, OR MONITORING AS A RESULT OF AN ENVIRONMENTAL EMERGENCY.

THANK YOU.

**Testimony By Francis J. Schwindt  
North Dakota Department of Health  
Before the House Natural Resources Committee  
February 1, 2001  
On Proposed Amendments to House Bill No. 1297**

The Department has no objection to this bill. However, I would like to raise a question of applicability. The Department assumes that if a property owner that has followed the steps outlined in the bill and would, therefore, qualify for protection, would not be protected if subsequent actions by that new property owner would liberate or change the nature of a substance to cause contamination. They could then be responsible for subsequent cleanup costs.

In addition the Department would propose the following amendments:

On page 2, line 13, replace "consists of" with "may include".

On page 3, line 16, after "release." insert "5." and make the sentence which follows a separate subsection of the law.

On page 3, line 22, replace "5." with "6."

Renumber accordingly.

The first amendment would modify the list so it isn't all inclusive. The second amendment would more closely align the wording with the innocent landowner defense language in federal statute.

Testimony of Bob Willer, Chairman  
Bismarck-Mandan Chamber of Commerce  
in SUPPORT of HB1297

Chairman Rennerfelt and members of the Natural Resources Committee, my name is Bob Willer, Chairman of the Bismarck-Mandan Chamber of Commerce. We're a business association made up of over one thousand businesses in the Bismarck-Mandan area. I am here today in support of House Bill 1297.

House Bill 1297 is good legislation, not just for property owners and buyers in the city of Mandan, but owners and buyers of property all over North Dakota.

Under current law.. if a property buyer conducts an environmental investigation, finds no hazardous waste, and then buys the property.. they may still be liable for any hazardous waste found on the property at a later date.. even if it was not caused by them.

Under the proposal you are considering, the property buyer will not be liable for hazardous waste found on the property.. as long as they have conducted the appropriate environmental studies.. and those studies have found no hazardous waste on the property.

If the property buyer's environmental investigation DOES turn up hazardous waste.. the buyer would be able to negotiate with the current owner for release of future liability.. or a lower price on the property.

In addition to being the Chairman of the Bismarck-Mandan Chamber, I am also a Real Estate Agent. As such.. I am well aware of the positive implications of this proposed legislation. It will help innocent property buyers remain innocent of hazardous waste events they did not cause, and that piece of mind will help property owners sell property that may otherwise be unmarketable.

Mr. Chairman, members of the committee, I ask for your favorable consideration of House Bill 1297. I will be glad to answer any questions you may have.

January 31, 2001

ND State House Natural Resources Committee

RE: House Bill 1297

To Whom It May Concern:

I am asking for your support of House Bill 1297. This Bill is good for consumers as it helps mitigate one of the primary risks of lenders financing property near downtown Mandan.

As many of you are aware, there is a diesel fuel plume located under the City of Mandan. The size and location of the plume has been identified and is being monitored by the State Health Department. Concern of lenders is that this plume may shift and move under properties that are currently not considered contaminated. This Bill mitigates the lenders concerns that they could be held liable should the plume shift and the lenders become an owner by virtue of foreclosure action. This Bill limits the lender's liability and, therefore, makes it much easier for lenders to provide financing to consumers on properties that are located near the plume.

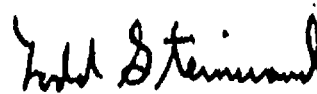
In addition, this Bill is very important in that it will help keep property values at market levels without the concern of some unforeseen shift in the plume causing contamination and thus lowering the value of the property.

I urge you to support House Bill 1297.

Sincerely,



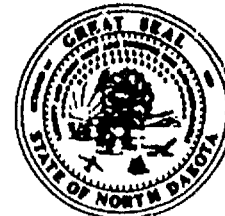
Jay Feil  
President  
First Southwest Bank Mandan



Todd Steinwand  
President  
Wells Fargo Bank Mandan

(701) 328-2800  
(701) 328-3650  
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North Dakota  
**STATE LAND DEPARTMENT**  
1707 N 9th Street  
PO Box 5523  
Bismarck, ND 58506-5523



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**PROPOSED AMENDMENT**  
**Rick Larson, Acting Commissioner**

**Engrossed HB 1297**  
**Senate Natural Resources Committee**

**March 2, 2001**

School trust funds are dedicated by the enabling act and the constitution to producing income for the common schools and 12 other institutions in the state. As part of that responsibility the Board of University and School Lands issues mortgages under North Dakota Century Code Chapter 15-03. Currently there is approximately \$50 million in farm mortgages. This investment in the agricultural economy of the State of North Dakota provides a source of income for the trust funds and is an important source of capital for the farmers and ranchers in the state.

The engrossed HB 1297 relates to the liability of property owners for hazardous waste on their property. As a lender, we are concerned because this bill does not clearly identify the responsibility of the State in the event of a foreclosure. A loan may be 10 years old before being foreclosed and the State would have not control over the actions of the property owner during that time. For example, a distressed borrower could accept payments for tires or other hazardous waste deposited on his property and then allow the State to foreclose. It is not clear in HB1297 if the foreclosure would pass liability to the State for this hazardous waste.

Because of the ambiguity of HB1297 concerning the environmental liability of the State in foreclosing a loan, we propose that the word "foreclosure" should be inserted on page 1, line 16 after the words "tax sale,". Attached is a copy of the proposed amendment.

**PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL 1297**

Page 1, line 16, after "tax sale" insert "foreclosure".



TESTIMONY ON HB 1297

TODD PORTER, STATE REPRESENTATIVE

DISTRICT 34 MANDAN

Good morning, Mr. Chairman and members of the Senate Natural Resources Committee.

For the record, my name is Todd Porter, State Representative from Mandan.

HB 1297 arrives to you after months of talks with the State Health Department, City officials, and local business owners.

Currently in North Dakota you are responsible for your property and everything underneath it regardless of who put it there. There is nothing in our law that would prevent someone from buying this liability or a seller retaining this liability in order to sell their property at top value.

Mandan has a considerable problem with diesel fuel in the downtown area. Business and home owners are concerned that they will not be able to sell their life long investments in real estate in Mandan without taking considerable devaluation in their property due to a diesel spill that most of them had nothing to do with.

What this bill says in Section 1 is an individual/business is not liable for any existing hazardous waste or substance if conditions are met. Those conditions are: (a), (b), (c).

The bill goes on to further explain what needs to be done in order for those conditions in #1 to apply. Section 1 part 2.

The essence of this legislation is that no person who buys property in North Dakota is liable for any contaminants in the ground as long as they comply with the testing required in this bill and did not contribute to a hazardous waste situation while they owned the property.

I will be happy to answer any questions.

Testimony of Dave MacIver, President  
Bismarck-Mandan Chamber of Commerce  
in SUPPORT of HB1297

Chairman Fischer and members of the Natural Resources Committee, my name is Dave MacIver, President of the Bismarck-Mandan Chamber of Commerce. We're a business association made up of over one thousand businesses in the Bismarck-Mandan area. I am here today in support of House Bill 1297.

House Bill 1297 is good legislation, not just for property owners and buyers in the city of Mandan, but owners and buyers of property all over North Dakota.

Under current law.. if a property buyer conducts an environmental investigation, finds no hazardous waste, and then buys the property.. they may still be liable for any hazardous waste found on the property at a later date.. even if it was not caused by them.

Under the proposal you are considering, the property buyer will not be liable for hazardous waste found on the property.. as long as they have conducted the appropriate environmental studies.. and those studies have found no hazardous waste on the property.

If the property buyer's environmental investigation DOES turn up hazardous waste.. the buyer would then be able to negotiate with the current owner either for the release of future liability.. or a lower price on the property.

Mr. Chairman, members of the committee, what this all boils down to is.. innocent property buyers will remain innocent of hazardous waste events they did not cause, and that piece of mind will help property owners sell property that may otherwise be unmarketable.

Mr. Chairman and members of the committee, HB1297 was passed unanimously out the House and today we ask for you favorable consideration as well. I will be glad to answer any questions you may have.

February 28, 2001

ND Senate Natural Resources Committee

RE: House Bill 1297

To Whom It May Concern:

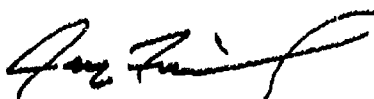
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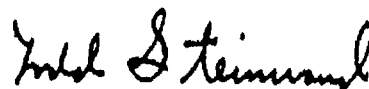
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