

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1090

2005 HOUSE JUDICIARY

HB 1090

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1090

House Judiciary Committee

Conference Committee

Hearing Date 1/10/05

Tape Number	Side A	Side B	Meter #
1		xx	0-8.1

Committee Clerk Signature



Minutes: 14 members present.

**Chairman DeKrey:** We will open the hearing on HB 1090.

**Lynn Helms, Director, Oil & Gas Division:** (see written testimony).

**Representative Koppelman:** Has this been a problem, with people coming forward after the fact, that are not a party to the matter, but have been affected.

**Lynn Helms:** We really haven't had somebody step forward and file an appeal yet at this point. However, just in the last few months, we have had two parties approach us, following the hearing, and ask about that and bring to our attention that our statute doesn't agree with Administrative Practices Act. One was a state agency, who sat at the hearing and didn't say anything, and later on was a little bit dissatisfied with the decision of the Commission and started talking to us about maybe we should petition for reconsideration; maybe we will appeal to district court, having sat in the hearing and not said a word. The other was a party who received proper notice of the action, didn't send written testimony in, didn't appear at the hearing, he was

a private mineral owner and later on began calling the Commission and inquiring about their rights for petition of reconsideration and appeal. That is what brought it to our attention. We probably would have gone on for years, not even thinking of this conflict, but just in the last six months, we've had two parties raise the issue. They were confused by it. We're concerned by it because if we got into a court of law, we believe that 28-32 would be the statute that was ruled on by the judge, but it would be a tough situation for our statute to be in conflict with that.

**Chairman DeKrey:** Basically it is a technical corrections, is what you are doing.

**Lynn Helms:** Yes, however, it has significant impact on persons vs. parties.

**Representative Meyer:** Would there be a chance that a private individual property owner that wouldn't be notified or wouldn't understand that his rights are being taken away if he misses; would that be a consideration ever where he wouldn't get the notice or not happen to read about it in the newspaper.

**Lynn Helms:** I won't say that it doesn't happen, obviously there is always a chance that something like that could happen. Although, our process is all about notice. We require parties that are going to be affected by things such as a location, exception location, that personal notice be mailed to all those parties, by return receipt requested mail. So we are very strict about notice in terms of our hearings, and we do publish in the Bismarck Tribune and local papers. There's always going to be chance that an individual would be a person affected by an order, but not be a party. Our concern is that the Administrative Practices Act already says they have to be party to it, so they may wrongly conclude, that just by being affected by it, they've got case, and go to all the expense of hiring an attorney and putting their case forward and then run smack into the

Administrative Practices Act and find out that they had no case. We need to change one or the other.

**Representative Galvin:** What is the difference between person and party. Isn't the term party also a term for an individual.

**Lynn Helms:** Party can be applied to an individual. The difficulty is that a party as defined by the Administrative Practices Act, means somebody who actually participated in the administrative hearing process. Party doesn't have anything to do with the number of people involved, it has to do with participation. Did you, in fact, send some written testimony, or somehow participate in that hearing process. That's what makes you a party to the case. As opposed to a person, who is just anybody out there who later on can claim he was affected by it. That's really broad.

**Representative Koppelman:** The two examples you gave, the people who approached you recently after the fact, who weren't involved in the action itself, could have been parties had they merely participated, correct. They would have had standing.

**Lynn Helms:** That is absolutely correct and that's addressed in my written testimony. It is very, very easy for a person to become a part. All they have to do is act on the notice they got and send us a letter, and we stamp those things in, it goes into the record at the hearing, it's that easy, just takes a 37 cent stamp makes you a party to the process.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1090. Testimony in opposition to HB 1090. We will close the hearing.

(reopened in the same session)

**Chairman DeKrey:** I will entertain a motion on HB 1090.

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House Judiciary Committee

Bill/Resolution Number HB 1090

Hearing Date 1/10/05

**Representative Maragos:** I move a Do Pass on HB 1090.

**Representative Koppelman:** I second the motion.

**Chairman DeKrey:** Further discussion. The clerk will call the vote

14 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Bernstein

Date: 4/10/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1090

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass*

Motion Made By *Rep. Maragos* Seconded By *Rep. Koppelman*

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Representative Delmore	/	
Representative Maragos	/		Representative Meyer	/	
Representative Bernstein	/		Representative Onstad	/	
Representative Boehning	/		Representative Zaiser	/	
Representative Charging	/				
Representative Galvin	/				
Representative Kingsbury	/				
Representative Klemin	/				
Representative Koppelman	/				
Representative Kretschmar	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment *Rep. Bernstein*

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

**REPORT OF STANDING COMMITTEE (410)**  
January 10, 2005 11:25 a.m.

**Module No: HR-05-0211**  
**Carrier: Bernstein**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1090: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
**(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1090 was placed on the**  
**Eleventh order on the calendar.**



2005 SENATE JUDICIARY

HB 1090

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1090

Senate Judiciary Committee

Conference Committee

Hearing Date February 16, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 615

Committee Clerk Signature

*Maria R. Solberg*

Minutes: Relating to right to ask for reconsideration of and to appeal from industrial commission decisions dealing with oil and g resources.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Lynn Helms**, Director, Oil & Gas Division (meter 67) Gave Testimony - Att. #1.

Our orders have not changed in 50 years. Need to make our statute consistent with the Administrative Practices Act. Sited an example of a cases process and its confusion. The second issue on the bill is "fairness". Should a person lay back in "the weeds" and when it is all over and they do not like the decision but gave no import come out and ask for another administrative hearing.

**Senator Triplett** questioned when a person could get involved on to case? Mr. Helm responded that all they have to do is show up at the hearing and say they have an interest. They do not have

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Senate Judiciary Committee  
Bill/Resolution Number HB 1090  
Hearing Date February 16, 2005

to formally intervene. The notices are in the paper, Internet site and sometimes we even personally mail them a notice. Sited an example of a "well" and the notification process.

**Testimony in Opposition of the Bill:**

none

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

**Senator Triplett** made the motion to Do Pass and **Sen. Trenbeath** seconded the motion all were in favor and motion passes

Carrier: **Senator Syverson**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing



**REPORT OF STANDING COMMITTEE (410)**  
February 16, 2005 1:56 p.m.

**Module No: SR-31-3160**  
**Carrier: Syverson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1090: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS**  
**(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1090 was placed on the**  
**Fourteenth order on the calendar.**

2005 TESTIMONY

HB 1090



## HOUSE BILL NO. 1090

House Judiciary Committee  
January 10, 2005

*gone to  
gone*

### Testimony of Lynn Helms, Director, Oil & Gas Division

Each year the Industrial Commission's Oil & Gas Division holds about 300 administrative hearings on a variety of matters involving the state's regulation of the oil and gas industry. At the typical hearing, a company will appear and present evidence justifying the relief it seeks in its application, or responding to a matter the Commission itself has brought up for hearing.

It is not uncommon for another oil company to appear at these hearings to resist what the applicant seeks, and ask for a somewhat or completely different order. Sometimes mineral owners appear and ask the Commission to do something other than what the companies want. At these hearings the evidence usually includes testimony on land and mineral ownership as well as technical issues involving geology and petroleum engineering.

After the Oil & Gas Division hears a case, it will prepare a recommended order for the Industrial Commission. After the Commission meets and reviews the matter, a Commission order is issued resolving the matter.

Once an order has been issued, under our governing statutes, which are in Chapter 38-08, a request may be made that the Commission reconsider its decision. They also provide that an appeal may be filed with the courts, which will then review the propriety of the Commission's order.

In Chapter 38-08 a specific statute deals with filing reconsideration petitions, Section 38-08-13, and another deals with appeals, Section 38-08-14. There are somewhat similar statutes in the Administrative Agencies Practices Act; Section 28-32-40 provides for agency reconsideration and Section 28-32-42 provides for appeals.

House Bill 1090 has two objectives. First, it seeks to make the reconsideration and appeal statutes in Chapter 38-08 consistent with those in Chapter 28-32. Presently, the Chapter 38-08 statutes state that "[a]ny person adversely affected by an order of the commission" may either seek reconsideration or file an appeal. The statutes in Chapter 28-32 state that a "party" to the administrative case may seek reconsideration and file an appeal. There is a significant difference between a "party" to a case and "any person" affected by a case.

A "party" is a person who has appeared and participated in the hearing, and it is simple to become a "party." All that one needs to do is show up and let the hearing officer know whether you support or oppose the application under consideration to become a party and thereby acquire the right to seek reconsideration or to file an appeal if you don't like the Commission's order in the case.

This bill would make the oil and gas statutes consistent with the other statutes on agency reconsiderations and agency appeals.

The second reason for the bill is fairness. It is unfair to allow someone who didn't even bother to come to the hearing or to participate in it in any way, to sit on the sidelines and then appear and take an interest when the case is over. This would be unfair to the parties that did participate and did take the time and effort to present something to the Commission. It is also unfair to the Commission which is entitled to have all issues on the table and all interested persons before it when it decides a case. Its work should not be second-guessed and delayed by persons who didn't take the opportunity to appear at the hearing and present their side of the issue.