

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
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ROLL NUMBER

DESCRIPTION

1276

2005 HOUSE NATURAL RESOURCES

HB 1276

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276  
House Natural Resources Committee

Conference Committee

Hearing Date: January 27, 2005

Tape Number	Side A	Side B	Meter #
1	x		1200-End
2		x	0-1080

Committee Clerk Signature *Karen Bonnet*

**Chr. Nelson:** Opened hearing on HB 1276. Read bill aloud.

**Rep. DeKrey:** Introduced Ladd Erickson, the main author of the bill.

**Ladd Erickson, McLean County State's Attorney:** (Written testimony attached)

**Chr. Nelson:** Are there any questions of Mr. Erickson?

**Rep. DeKrey:** You were describing these out-of-state corporations. How would you ever regulate that if they're dealing one on one with a landowner with verbal agreements?

**Erickson:** Putting things on paper and how it actually works in enforcement provisions are sometimes two different matters. The provisions in this bill require that if people are holding themselves, or companies put on their website, "Here is a service we offer in ND," you could call them. Check Cabela's, Gander Mountain, Orvis, USA Outfitters, you will see the offer and know what they're doing.

**DeKrey:** It would be illegal for them to advertise that service unless they were using a ND licensed guide or outfitter.

**Erickson:** That's correct.

**Chr. Nelson:** When you try a case under current statute, are you able to get convictions, or are your biggest frustration the fact that the penalty is subsequent to the conviction?

**Erickson:** The conviction isn't a problem in cases that are brought in to me. We've video taped evidence from undercover. Example of Missouri Valley Outfitters, a situation with 60-70 different violations. I got all four counties involved, and handled all the four-county violations in one case and resolved it. It was an outlaw situation, with egregious abuse. The guy pleaded not guilty. On the day of trial, he had \$3500 in fines to pay. The judge asked when him when he could pay the violations and he said he could pay it by the end of November because I have clients coming in. I called the department and asked whether they had given him an outfitters license again. Under current law, they had to because they have to wait for conviction, then start the administrative process. Some guys are cutting this so they can guide for at least another year and sometimes two years. These are not the kind of people we need out there. That was a frustration for me. I think the department needs to have the ability that when they come across clear and convincing evidence of these outlawing operations that they have the ability to do a suspension. There's a handful of operators in the state that have really caused a lot of bills to come in here, and a lot of anguish. We need those guys moved out.

**Chr. Nelson:** Walking through that process (you've just described), what will be the result if this bill passes?

**Erickson:** On page 5, line 16-18, the current law states "if convicted of violating a state or federal criminal opportunity hunting, fishing or trapping." Additional language I'm proposing for the committee to consider is you don't have to wait for the conviction. The director, under this proposal, would have the ability when they find clear and convincing evidence that a

violation has occurred, to start the license suspension process. That would be the typical procedures, generally the 30-day window to start a hearing, or 60 days out, they would use the typical administrative law rules that we have in statute. The rapid suspension, which I thought was an important provision, is on the first page, Line 23 and ends at Line 7, page two. What that provision does is if the director finds clear and convincing evidence of an intentional violation," can articulate what fact pattern the department should be using. It's might idea that this would be used in a reserved way. It's not something intended for use one extra mallard or pheasant. Most game laws are strict liability, you did it, whether you intended to or not you can be prosecuted. I thought for this case, the department would have to prove this guy intended it, and the kind of cases I see this being applied to is the outfitter from Devil's Lake shooting limits of mallards or ducks, then outfitter would come along with a 4-wheelers and take the limit away so they weren't sitting there with them in possession. He did that repeated times during the day. Those are the kind of guys that I want the department to be able to take immediate action, give a ten day notice, set up a hearing and get rid of him. I can think of many similar examples for the department to get rid guys who are causing a headache (for enforcement).

**Chr. Erickson:** My concern is that it is a subjective test and it isn't held to the highest standard of law when the director has the ability to pull a license. The due process aspect is important if that is proven to not be a willful example of violation, when would that person get his license back?

**Erickson:** The administrative rules law would make a decision within the ten day limit.

**Chr. Nelson:** o.k.

**Erickson:** You will notice in some areas where the department would have the administrative right to take the license immediately. There are some provisions, like the DUI law, where you can take the driver's license, and give a temporary permit. I thought this was the best approach for these reasons. There are many times where clients are coming in unaware. They planned their vacation over the internet, didn't realize it was an outlaw deal. If you take that license away, you might have people in transit, you need to give people a window to make other arrangements for vacation. What would happen, in a case this year where the outfitter was 42 ducks over the limit, way over the limit...there are two ways for the committee to go. You could give the department the ability to immediately suspend. I thought it was better that the department provide the outfitter notice of a hearing before any license is taken away because of the client situation.

**Rep. DeKrey:** Talking about the director's powers, can that be his designee?

**Erickson:** Yes.

**Rep. Charging:** Isn't it one's right no matter who they are that you're innocent until proven guilty?

**Erickson:** I have no disagreement with that, there is nothing that changes that in this bill.

**Rep. Charging:** By immediately taking action...

**Erickson:** We're talking about administrative action. Whenever you have a license or regulatory scheme you need administrative process. My argument is you need to have it as effective as possible. You're talking about a *criminal* conviction, these (violations) don't apply to that. That's not changed here. What the chairman is asking about is the administrative process on the license.

They are presumed innocent, they go into the hearing. The administrative law judge with the burden of government to prove by clear, convincing evidence that the violation occurred.

**Rep. Nottestad:** The bill is in three parts. The third part is tied to the Pharmacy protection bill, and we both know there is a bill up that would change that. Now, if that should happen, would it affect only the third part of the bill or is written in such a way that it could affect all three parts?

**Erickson:** It won't affect anything. I used the *concept* from the Pharmacy Law. If the Pharmacy Law goes away, it won't affect this. One of your areas of immediate concern is the corporate farming law. You'll notice that I put in a provision because of those type of concerns. See page 3, Lines 24-25, "This section does not authorize any accurate transaction prohibited by another state law." The reason that's in there is there was some original thinking of putting some tie-ins to the Corporate Farming Law. But that is the subject to independent debate and different committees every session. I didn't think you wanted the hunting regulations tied into something you're not involved in. The Pharmacy Law won't affect this. You're setting the same concept here (as in that law) and the concept as it addresses this area.

**Keiser:** You want to stop the travel agents from acting as guides. Let's examine it from another perspective. What if I'm a farmer and I'm trying to make my living and I have a lot of game. I see the marketing opportunity and go to Cabela's or someone and inform them that I have this available. I don't need to be licensed. If they can send me some hunters, I'll feed them, they'll hunt & get their license, and I'll be their guide. Would this bill prevent that?

**Erickson:** No. When I say we're trying to prevent travel agents, we're trying to prevent outfitters from hiding under the guise of travel agents and giving themselves an advantage. I don't believe that the facts in those cases will show that they are travel agents, though they're

claiming it. One of the problems with the definitions is "primary purpose." Those big corporations have a big advantage over local outfitters. There is nothing preventing you from advertising your service on Cabela's website. That is not affected by this bill. What I'm talking about is a situation where you have a corporation that is owner/controller/vertically integrated from top to bottom in the industry, from a call center in Texas, with leased land in ND, the profits stay in Texas, the cost of the lease and hunters come here. That type of scheme is a bad thing, including for the local outfitter. It's a real unfair situation and that's what I'm trying to prevent, not an advertisement on Cabela's website.

**Rep. Keiser:** I understand that. But what if I'm the farmer and I don't have marketing expertise and don't want to do it? I just want someone else to send me customers. So I find these guys and don't care what they call themselves. If they can send me people, that's what I want. Their primary purpose, like timeshares, is finding hunting and trying to make contacts with farmers. would that be illegal?

**Erickson:** Marketing your business will not be precluded from this bill, that's not the intent. If there is a concern that the language doesn't address that issue, I can work on it some more. I think the farmer or outfitter should have the ability to advertise on the internet or hire advertising people for their business.

**Chr. Nelson:** Further questions for Mr. Erickson?

**Rep. Charging:** On page 2, line 14-15, would all that be a new addition on this portion of what you have written in the first paragraph or is it already covered in regard to federal and state lands? This is all new language. With the final addition, I don't like "regardless of whether the land is posted against hunting or trespass."



**Erickson:** The department has currently in administrative code by policy you cannot outfit and guide on land of the Game & Fish. Rather than scattering these throughout the code, it's more organized to say "these are the lands where you can't guide on," or "these are the conditions...." Rather than listing department land, private land in another, this is a combination. The addition of the language which says that you do not guide or outfit on state land. There are some concerns about school lands and I think they are legitimate concerns because some of those are not properly marked. One of the motivations of that provision is, if the state agency allows the guiding, that's fine. An example of Camp Grafton, south. They allow hunting, but not outfitting but have had problems with people outfitting on that land. It's not necessarily a guide violation now but that land owner does not want commercial enterprises on their land. Because their policy does not preclude it, this would create a violation if we catch an outfitter out there. They're keeping that land open for family hunters, or whatever. This provision is intended to address if the state agency does not allow outfitting and guiding. That is another option to include and would be another violation if a person is caught there. The concern raised by Mr. Blanchfield, that I think is legitimate, is that some school lands are not properly marked. We're working on that language to insure there isn't any innocent conduct that would get them on school lands. I still think now that under the law you can guide on school lands. I don't think there is a policy in the department as far as I know. The written permission of private lands is the main debate in this area of policy question. If the word "written" come out of there, the concept of posted or unposted land, those are subject things I think we're going to continue to debate in this bill. I understand your concerns, I've worked with outfitters on those. Trying to get to a situation where you have an industry up front is in the long term interest of the industry, where

the landowner knows what's going on. When they give permission and later find out that they're making money, that is a sore spot with my neighbors. I think it is something that needs to be looked at.

**Chr. Nelson:** Further questions?

**Rep. Drovdal:** Referring to the question that Rep. Charging asked. I'm still feeling uncomfortable with, not with the fact that Game & Fish has the ability to make a decision on everything presented to them, but with the fact that we're penalizing that person and he's guilty if we do. We're penalizing that person before he really sits in front of our legal system and is convicted. I'm uncomfortable whether that is following the values that we have in this country.

**Erickson:** You're concerns are legitimate. You have that situation now in the law. You have the ability to deny a license, for example, if you don't feel this guy is qualified. That is all administrative. In any kind of regulatory scheme there is, lawyers, the Bar Association, the doctors, pharmacies, you have to have an Administrative Process. There is no way to do that judicially. What you try to do is create the fairest system possible. It's a necessary evil in the law. Your argument is, "I don't know if we should do any administrative action until there has been a conviction in district court." You can't function under any administrative system that way. The agencies need it and hope they exercise common sense. The reason I came in here is, I know the administrative process is necessary, *it's there now*. I think if you have it, it should be effective, the agencies should have the highest standards possible if they are going to use it. I do think it's important that they *have* it. If the argument is we shouldn't take any action against an outfitter until there is a criminal conviction, that process would not work. It's not the current law, and you would have situations that might not be criminal, such as you have unqualified

people that want an outfitter license. They don't meet the criteria, or didn't get their insurance policy. That's not necessarily a crime, but that's something the department needs an administrative process to deny and the person can argue in an administrative hearing process. It's separate from criminal process. I understand your concerns and tried to address some of that in the bill.

**Chr. Nelson:** Further questions of Mr. Erickson? Your office has been more aggressive in prosecution than many others in the state. Do you prosecute many trespass violations in your county and if so, is it working well?

**Erickson:** Yes, I think I have 8 (cases). Some are charged with trespass, not hunting on posted land because the hunters were on the road, out of their car and the road was posted, Private. I think the system is very effective. There are some huge problems with changing it that don't get debated. In hunting on posted land, strict liability works because we sign it. If you take away the sign, you've got to put a mental state in there. If you put a mental state in there you will have more complications. From a prosecution, enforcement perspective, we don't have 58 people cited for hunting on posted lands in this past year. To me, that is an amazing statistic when you think of the hundreds of dollars and millions of man days of hunters hunting in the field. There's an underreport, where the farmer just kicks them off, and people you don't catch. But those things won't be improved by changing that law. I'm mindful of the ideological problems, but from an enforcement and effective point of view, there isn't a better system. The other problem with this is the main "slob" stuff that I deal with, is *local*. Local guys cause more problems for their neighbors than anybody. I'll deal with a guy from Minnesota or Bismarck that trespass hunts, but I'm going to deal a number of times where a local kid shot another guys horse or a

local landowner fenced over or ..... someone else's land. It happens many more times than I deal with an out-of-area guy. That debate doesn't necessarily get brought forward. The current law is a very effective law. Yes, I am aggressive on it. I have a uniform system. If you are caught trespassing on land you lose your hunting privileges. It's effective.

**Chr. Nelson:** Further questions?

**Rep. Charging:** In all the years that you've been practicing, how many cases have you prosecuted or have come before you as direct relation to guides?

**Erickson:** I did three in Morton Co. And one in McLean. I've been in McLean County for two years. I don't have that many guides there. I don't know how many total I've done across the state. When I did the 15 undercover cases, I think they had 14 cases brought into criminal court of those.

**Rep. Charging:** How many years have you been practicing?

**Erickson:** I've been a State's Attorney since 1993.

**Rep. Charging:** So it's a relatively low number?

**Erickson:** Yes.

**Chr. Nelson:** I appreciate your testimony, Mr. Erickson. I will appoint a subcommittee to continue to work on this.

**Erickson:** My phone number is on my testimony and I will assist the committee as you work on the bill.

**Chr. Nelson:** You will be called upon to that. I will take further testimony in support of HB 1276.

**Curtis Blohm, ND Outdoor Heritage Coalition:** Supports bill (Written testimony attached)

**Chr. Nelson:** Any questions for Mr. Blohm? In your testimony, you state, "written permission gives landowners a peace of mind...". Does that carry over to a landowner's right to post as well?

**Blohm:** I'm merely on board with the organization and I'm not privy to what they have previously testified on.

**Chr. Nelson:** Thank you. Is there further testimony in favor of HB 1276?

**Mike Donahue, ND Wildlife Federation & United Sportsmen of ND: Supports HB 1276.**

**(Written testimony attached.)**

**Chr. Nelson:** Questions of Mr. Donahue? You know when the subcommittee meets?

**Donahue:** Yes, I would like to ask if we could pick up the rest of this when the subcommittee meets?

**Chr. Nelson:** I will make that accommodation for you.

**Donahue:** Thank you.

**Harold Neameyer, Cass County Wildlife Club: Supports HB 1276. (Written testimony attached.)**

**Chr. Nelson:** Any questions? Thank you, Harold. Is there further testimony in favor on HB 1276?

**Keith Groven, sportsmen, landowner, & farmer:** I support this bill and would like to speak specifically to the written permission provision in this bill. In recent years, we've not posted our land. This last year we had abuse by some guy guiding on our land without our knowledge and without our permission. The permission in this bill would mitigate that so all sportsmen could enjoy our land as we wanted them to for no charge.

**Chr. Nelson:** Questions for Mr. Groven? Did you report the violations to the States' Attorney last year on your farm?

**Groven:** No.

**Chr. Nelson:** If there are no further questions, is there further testimony in favor of HB 1276?

**Kyle Blanchfield, ND Professional Guides and Outfitters Assoc: (Written testimony attached)** Urges do pass with the amendments.

**Chr. Nelson:** Questions of Mr. Blanchfield?

**Rep. Nottestad:** Regarding the school land problem cited, do you have a legal description or can you get a list from the State Land Department a list of state land by township or section if you are serious about keeping off this land?

**Blanchfield:** If they didn't ban hunting on school land, it wouldn't matter. It would be fair game. But if they were to, which political pressure may create, then absolutely. I would ask you to look at it from our angle. You said there were 100,000 acres out there and I'm sure it is categorized. Pastures are easier to recognize. In my area, fence rows are torn out, it's hard to identify. I'm pretty good at reading a map, but I don't want to lose my outfitters license for three years because of error.

**Nottestad:** If you know of these specific areas in your community you would need to instruct your guides to be careful of.

**Blanchfield:** Absolutely.

**Chr. Nelson:** Further questions of Mr. Blanchfield?

**Rep. Charging:** When a bill specifically ties to the profession of guides and outfitters, does each area of guiding/operating ...(can't understand speaker)

**Blanchfield:** Ignorance is never an excuse. My point is lets not make criminals out of people who aren't.

**Charging:** How many ND guides/outfitters are members of your organization?

**Blanchfield:** We have about 135 paid members. There are about 320 licensed guides and outfitters in the state.

**Chr. Nelson:** Further questions? Seeing none, thank you, Kyle. Further testimony in support of HB 1276?

**David Munsch:** Support the bill. Game belongs to the majority. When money is figured on wildlife it makes it a commodity. The Game & Fish spends more time with legal stuff than tending to wildlife. Keep it to the majority of the people.

**Chr. Nelson:** Are there questions of Mr. Munsch? Further testimony in favor? Opposing testimony?

**Orlan Mertz, outfitter/farmer from Sheridan Co.:** Some of you representatives have ...and this worries you. How would you like to have a business and know that the director of the commodity thinks that you have violated this law and can shut you down for what he deems is a violation without due process. Most laws were written for the bad guys. Most outfitters & guides are farmers trying to make extra money so we can stay there. Had a recent meeting with state and federal people about a small part of tagging birds after shooting them. We spent an hour going over those rules. Rules are growing and it's hard to keep up with them. Regarding written permission, we can't get that for our land, we have to post it all. There is a big state push for agri-tourism. Governor, tourism, Congress are pushing for it. But all the laws are saying you better not do this. It's becoming prohibitive to hunt due to all the laws.

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House Natural Resources Committee

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**Chr. Nelson:** Questions for Mr. Mertz? Seeing none, thank you for your testimony. I'm going to appoint a subcommittee of Rep. Porter, Norland, and Hunsakor to work out the details of the bill and report back with recommendations for the full committee. Is there further opposition to HB 1276? Seeing none, close the hearing on HB 1276.



2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

House Natural Resources Committee

Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
3	x		1650-End
3		x	0-480

Committee Clerk Signature

*Karen Bonnet*

Minutes:

**Chr. Nelson:** Let's take up HB 1276. There are some amendments. I'm going to break from tradition; Rep. Porter has been working with Kyle Blanchfield and Ladd Erickson on this bill and he's ill this afternoon. We may need to use both of these gentlemen as resources to explain the amended version. Would one of you explain the amendment, 50401.0202. That is the amendment that both of you agreed to, correct?

**Ladd Erickson:** That's correct, Mr. Chairman. I did note that the Legislative Council did make a clerical error from the way I sent it to them. On Page 1, line 12, they wrote, after "or", insert "otherwise". In the bill that should be right after the word "leases" is the way I sent it to them. It should say "or otherwise" right after "leases," because the second amendment says "...leases or otherwise provides compensation for the use of land." The "or" (that the LC entered) should be deleted.

**Chr. Nelson:** O.K. Then, on Line 24, replacing “intentional” with “substantial,” is that defined, Ladd, in the amendment?

**Ladd Erickson:** Substantial is not defined in the ND Century Code, at least in the criminal section. It’s defined by the dictionary where the courts would go if it’s not defined by the legislature. The dictionary definition of substantial is, “large, ample, or important.” The intent of this provision was that in those large, egregious violations, that the Game & Fish has police power to take quicker action on the license. The word “intentional” was a little vague. There were concerns by some of the Guide and Outfitters. I think “substantial” fits the intent of that provision better now. I don’t think it (will) create confusion when the courts look at the dictionary, as in 50 birds over the limit as ‘substantial.’ We wanted to make sure the intent was there because, technically you could have an intentional violation of a game law that really is just an extra duck or something. That’s not what we’re talking about here. I think substantial is a better word there.

**Chr. Nelson:** O.K. The next change is on Page 2, Line 30. Would you explain that one.

**Erickson:** The theme of this bill is to create and support local business. One of the problems with the current system is that if you’re a farmer or rancher that leases and farms as a primary occupation but does a secondary job of outfitting and guiding on their own land, you’re exempt from the regulations. But there are some people in the state that want to expand after doing that a few years. They’re not allowed to under the law now because the technical reading of “for” is that they must have been guiding “for” an outfitter. The only way you can get a guide license is you work for an outfitter for two years to get an outfitters license for yourself. So these guys who do it (guide) on their own land can never expand, get a license, if they are going to go off their

land to make an operation (to outfit). It's a catch-22 for them. They're actually doing outfitting but won't ever qualify for a license. The intent of the amendment is to allow a rancher or farmer an exempt person after they have done it a couple of years and be able to expand off their land.

**Chr. Nelson:** O.K. The next change is on Pg. 3, starting at Line 15, what are we doing there?

**Erickson:** The concerns primarily raised by Cannonball Co., a subchapter S corporation, weren't a direct target of this language. The target is the investor-owned corporation. The Cannonball Co. is owned by (people) who aren't actually physically involved in the outfitting or guiding. There may be a farmer with stock in the company and if they have the current language, they do not have enough licensed outfitters as owners of the business to get them over the 50% rule. What this would do is create an easier time for subchapter S corporations like Cannonball Co. to get some of their owners ( I think they need a couple) that would get guide licenses. They would then qualify as a Subchapter S. So it was to work with local, small subchapter S's but still have the corporate language in there.

**Chr. Nelson:** O.K. Rep. Nottestad.

**Rep. Nottestad:** There is a question here. You're talking about a singular license and putting a plural pronouns in. Do you want it that way?

**Erickson:** Where are you at?

**Nottestad:** You are talking about "outfitters" license, and the original bill said "outfitter." You changed to plural. Wouldn't it be "a guide, license, or an outfitter license" as the original bill is written?

**Erickson:** It should be plural, licensed "outfitters and guides," because there may be more than one.

**Nottestad:** Then what you have here is "outfitters" plural, and "license." You still have a singular license.

**Erickson:** That should be right because the corporation is trying to get an outfitter license as a business. They are going to try to become an outfitter. Any business entity can get a license, so that outfitter can get a license as an outfitter, but that business has to be owned by licensed outfitters, so I think it's right.

**Chr. Nelson:** O.K., let's move on. On Line 26, add "or hunting outfitter?" (see attached copy).

**Erickson:** That amendment goes along with the next one below that. Under the current law, you must have hunted at least three years in part, anywhere in the United States. That's causing some problems because some people who haven't hunted in ND come here and offer an outfitting service (in ND). They are a "quickie" deal, not really established outfitters here. The intention of that chain is that you would have had to have hunted for three years in this state before you become qualified, which is something residents shouldn't have a problem with. The purpose of the bill in this section was to make sure that people know our local laws/norms before they become a professional hunter in the state. Concerns were raised by some of Mr. Blanchfield's folks about not being able to get employees. Concerns have been raised. For example, a retired schoolteacher from South Dakota, a cousin, might come up and help out in October during the outfitting business and may not have hunted here for three years. This would give the Department disgression when you look at the second amendment. If an outfitter has a legitimate hardship finding employees, and the (retired teacher) is otherwise qualified, it allows the Chairman of the (Game & Fish) Department to waive that requirement.

**Chr. Nelson:** Then, (would you explain) page 4, Line 15...

**Erickson:** That provision was put in because some of the larger, out-of-state companies or corporations that are conducting outfitting here are doing their bookings in (other states.)

There's one in Texas, Maryland, and some in Minnesota. You pay them and they book you, and keep all the business records out of state and there has been a couple problems where records that were paying locally were different. After the outfitter found out from out-of-state that the Game & Fish was looking, they opened the records and sent them in. It creates an enforcement problem. The provision that was there before the amendment was that if you outfit in ND, you will operate the same way as the local guys, keeping your records here and available for the Game & Fish so there is equal treatment. The new amendment was so that during normal business hours the game warden can show up and look at it. It's not meant to create night time searches, etc.

**Chr. Nelson:** It's brought up as a practical matter?

**Erickson:** Yes.

**Chr. Nelson:** Then on Page 5, Line 29, is the next change. After "violates," insert "a criminal provision of."

**Erickson:** That amendment should be looked at in combination with the following amendment. The purpose of the new language is that the old language isn't being effective. If the outfitter is sending guides out with a wink and a nod and they are running into repeated problems with that business...typically, businesses are responsible for their conduct. The intent of the original bill was, is to have the outfitter have a stake in hiring good people and making sure things are running lawfully. There was concern raised by the Outfitters about this provision. We worked

through it. We're trying to eliminate the pattern-of- misconduct type of outfitters. The new language with the two amendments in this area (Page 5, Line 29), "the criminal provision of" and "two or more independent violations" would mean in the law is that if the guide gets charged with a guiding violation in one year, that would be a violation that doesn't count against the outfitter unless he was there was evidence that he was involved. If it happens again the next year, with *another* guide, the outfitter would not be responsible. However, after that, if there is another problem that the Game & Fish has to get involved in, now you are talking about a "pattern of conduct" with that operation. The outfitter's license could now be (in question) because he is not properly managing his people.

**Chr. Nelson:** O.K. Then on Line 16, same page, we delete "associated with."

**Erickson:** That is anti-straw language. It's generally used in (things like) contract ordinances where you have a person who is prohibited from owning or operating a pawnshop but they have their mother get the license for them. They still run the business in principle. There are situations where an outfitter is suspended but the business continues to operate. The license is (owned) by a straw person. The intent of this language before and after the amendment would be to prevent the straw person from circumventing the regulations. If the person gets suspended from outfitting, you have to get him out of (the business) and have it a completely new party. It's too much of a repeated problem. I think there is one out there who has been suspended twice but his business hasn't changed. So the words "associate with" came along with some of that language. If Mr. Blanchfield had raised some legitimate concerns about making it too broad, such as if you suspend an outfitter but I decide to go to a softball game with him, I'm associating

with him. That is an extreme example, but that was the problem. The words "associated with" doesn't help the law there so we asked the committee to take that out.

**Chr. Nelson:** Let's vote on the amendments separately.

**Rep. Charging:** (Unintelligible)

**Chr. Nelson:** We need to vote on the amendment in a separate motion.

**Rep. DeKrey:** I'll move these amendments.

**Rep. Kelsh:** Second.

**Chr. Nelson:** **Rep. DeKrey moves the amendments 50401.0202, second by Rep. Kelsh.** Is there any committee discussion? Seeing none, we'll try a voice vote on the amendment. All those in favor, signify by saying aye. Opposed, same sign. **Motion carried. (Unanimous)**

As I understand these proposed amendments, Rep. Porter came to me with this so I may not be correct, that was the set of amendments where Mr. Erickson and Mr. Blanchfield were in agreement. On this next set of amendments, they don't necessarily agree on the particular options. In a sense of fairness, Mr. Erickson, would you explain the options that you forwarded?

**Erickson:** This is the land use provision that would be in the new bill, when you are prohibited, what type of lands you are prohibited on. We've come a long way. In the original bill, you had to have written permission for any unposted land. That caused a lot of concern with the waterfowl outfitters because of the range they use. The other outfitters apparently didn't have a problem with it. Committee, that is the set of amendments with four options. Does everybody have that? Mr. Chairman, the first policy change that came out of the bill in our discussions, was the word "written permission for private land." That was substituted for the last sentence in all four options which is "if the landowner did not grant the permission in writing, there is a

presumption that the permission did not exist." How that would work in operation would be, there is no technical requirement that an outfitter get a signed (permission) from a landowner to do guiding and outfitting on their land. This language is meant to encourage guides and outfitters to get into a relationship with the landowner in July or August, long before the season. If a conflict develops, where a landowner says he gave permission and that he "just wanted to hunt with his brother, and the next day there were five (hunters) out there paying \$300 per gun. That makes me mad, I wasn't told the truth." If a conflict arises and the landowner is correct, it doesn't mean the outfitter can't overcome it if the investigation would show that the landowner had allowed him to guide and outfit in the past. The presumption could be overcome. It's meant to create a policy on the part of the legislature to encourage the industry to (create) a better relationship with landowners so everybody is up front about what is happening on the land. Technically, it's not a requirement that you get it in writing. That option was there. The posted land option we agree on. That's in all four options. If you go to a landowner that has posted land, it's a requirement on the part of the outfitter to inform the landowner that they are conducting guiding and outfitting and would like permission to hunt on their land as such. So the landowner realizes it's separate from a recreational hunter, it's a pay operation. There is a duty in all four options on the part of the guide and outfitter to inform the landowner about it. The differences that come up is on unposted land. Mr. Blanchfield has an argument about that. I believe that it's the best policy that the landowner is still informed if there is a commercial operation going on on his unposted land. I don't know how much good quality hunting land isn't posted anymore in ND, but I think it's the best policy that the landowner is told, even if they don't post their land. You can do that long before the season. That would be as laid out in the



options; I did notes on the bottom of them. The other question came up like this on state land. If all state lands are separate from Game & Fish lands, Game & Fish is already out. The problem with that is that the Game & Fish land is properly marked. You will know where it is, based on its signage. One of the problems in this area is that not all school lands are readily identifiable. Some are cookie-cuttered into other sections based on terrain. One of the things we did is put in a mental state for the state lands. The first option to consider, for example, would prohibit outfitting and guiding on all state lands. The only way that would be a violation is that the government would have to prove the outfitter or guide *knew* they were guiding on state lands. If it was an inadvertent cross over on an imaginary plot or survey line, they would have the evidence to charge that. But if they had kicked the guy off that a couple of times that would be a different ballgame. Then you could prove he knew he was in the wrong spot. That would be an option the committee could consider making all state land off limits to commercial operations. The second option, which is option two, would prohibit guiding on any state lands if the appropriate state agency does not allow it. For example, the Industrial Commission hasn't taken any position on whether you should be able to guide and outfit, so it's legal. If they vote to make it policy that you can guide on school lands, then that would work here. The practical example now is the National Guard's land. It's my understanding that they have a policy of no guiding or outfitting on their property. They allow hunting, but not guiding. That would now make it illegal because the home agency doesn't do it. My concerns about just banning it on state land is this: I haven't vetted the language with every possible state agency that has land, such as Bureau of Parks and Rec. I don't know everybody who has land and I don't what their feelings are on it, and I don't want to put a bill out that affects how they are doing something. Maybe they have a

they have a lease. I was concerned about doing the state land idea without contacting them. In policy, I would agree with doing it, but procedure is a concern.

**Chr. Nelson:** Rep. Hanson has a question.

**Rep. Hanson:** How about being listed as state school land? That would eliminate the research stations and others.

**Erickson:** That could be possible. I did talk to the Land Department, though. They don't have a position on the bill. If you want to limit it to state school lands and not other types of state lands, that could be done here.

**Hanson:** We do have a bill in appropriations, now, to post state school lands.

**Erickson:** I'm aware of that. Mr. Chairman, the other option here is basically if you go one way on state lands then you have option one. The two issues are what we do with state lands and what we do with unposted private land. They need amendments unless the committee comes up with separate ideas. That's where guides and outfitters and hunters and me reduced it to for the committee.

**Chr. Nelson:** In option three, would you like Mr. Blanchfield to explain the last two options?

**Erickson:** On option three, all state lands are off limits, but unposted private land... Option four is you can guide on state lands and on unposted lands as long as the home agency allows it. I could have put this in amendment format, but it would have been more confusing to read it all together and understand the policy. If you vote one, I think Legislative Council will do that and put it on the bill that way.

**Chr. Nelson:** I don't want to take testimony on the options, but I do want to know if the committee understands all of the options and the implications of them. If I don't see any questions, I would ask for a motion on one of those options.

**Rep. Norland:** I move Option 4.

**Rep. DeKrey:** Second.

**Chr. Nelson:** Option 4 has been moved by Rep. Norland and DeKrey seconds. That option would allow guiding on state lands if that agency permits it and would prevent guiding on unposted land without the landowner's knowledge, so there would be no written permission requirement on unposted land.

**Rep. Norland:** I realize that with waterfowl hunters (there could be a problem.) In certain areas of the state, the harvest takes place at different times. It could be a month between harvesting in the southern part of the state and the northern part of the state. The central part of the state is at least 2-3 weeks ahead of the northern part. When we're chasing waterfowl in the evening to see where they're setting down to feed, we can be running everywhere trying to find out who owns the land, and they might not even be in the state. Most land is posted so you would probably need written permission in 90% of the cases, but it would leave that option open if it wasn't posted for them.

**Rep. Hanson:** Mr. Chairman, before we vote on it we should listen to Kyle (Blanchfield).

**Chr. Nelson:** Kyle, do you have anything to add?

**Kyle Blanchfield:** The point I want to make is one I made earlier. Rep. Norland did a very good job of that. He said if we're covering a huge area I can maybe preplan that and get written permission in advance. The reality is that we're covering a big area and we've heard the same

argument about posted land. You heard the same arguments from the sports people that we have. Those are legitimate issues. From an outfitters' standpoint, being an outfitter for 18 years, and trying to divest myself of lease land, and having the least amount that I need, this will actually encourage me to lease more because I cannot go out and not have a place to hunt the next morning because I wasn't able to track down the landowner.

**Rep. DeKrey:** I picked Option 4 for the same reason that I like our present posting laws. I don't want to be bothered; it's my busy time of year and I don't want to be called in the morning, or stopped in the afternoon. I just want to be left alone.

**Blanchfield:** Not only do I have to call and bug you, I have to come to your house and get you to sign a piece of paper.

**Rep. Hanson:** Do you have one of these forms in front of you? On Option 3, in the note, if we removed "without the landowner's knowledge of the commercial activity," that would simply prohibit it on state land but allow it on unposted private lands.

**Blanchfield:** I understand where you are going. As far as the public hunting lands issue, we've always been a real advocate that guides and outfitters do not need to be on public hunting (unintelligible). We've always been with you on that. I don't want to lose my outfitters license because I was on (the wrong land.) I don't want to make someone a criminal.

**Hanson:** How about if you get it posted?

**Blanchfield:** If you get it posted then I wouldn't have one bit of problem with it, especially state school lands.

**Chr. Nelson:** We do have a motion and a second on Option 4. Is there anymore committee discussion on that option?

**Hanson:** I move a substitute motion and have state school lands in four.

**Chr. Nelson:** Where would you have state school lands?

**Hanson:** Put "school" right after "state," right in the note.

**Chr. Nelson:** That wouldn't be in the amendment, though. That just explains the issue. I don't know where that would fit.

**Rep. DeKrey:** Could we ask the game and fish a question? How particular are you on enforcement of guides and outfitters on where they're hunting?

**Roger Rostvet, ND Game & Fish Department:** Right now, we basically look at the Game and Fish lands, not at the school lands.

**Chr. Nelson:** It's legal to hunt/guide on state school lands now.

**Rep. Hanson:** Roger, you can't guide on the Forest Service land now or BLM. Do you enforce that or is that federal?

**Rostvet:** There are state provisions regulating federal land. There are federal lands that do have permits on them.

**Hanson:** You can't guide on federal lands with the exception of the Logging Camp Ranch. That's not marked, either. So guides and outfitters could get on it by mistake.

**Rostvet:** Yes.

**Rep. Keiser:** One quick question of Roger. This Option 4 requires you proving a mental state. Do you like that? How do you prosecute?

**Rostvet:** It's a high level of responsibility for the government to prove any state of mind. You have to have told them to get off the land before. (Otherwise) you have to prove the state of mind.

**Rep. Norland:** Question.

**Chr. Nelson:** Question has been called on **Option 4. We'll try a voice vote on that option.**

All those in favor signify by saying aye. Opposed. **Motion carried - unanimously.** What is the committee's wishes.

**Rep. DeKrey:** Move do pass as amended.

**Chr. Nelson:** Rep. DeKrey has moved do pass as amended on HB 1276. Is there a second?

**Rep. Norland:** Second.

**Chr. Nelson:** There are two sets of amendments, 50401.0202 and the proposal option 4 as offered by Ladd Erickson. Any committee discussion?

**Rep. Charging:** These guys (guides and outfitters) are drug through heck and back. In most parts of the country guiding is an admirable profession. In Canada, it's handed down through generations, Montana and Colorado allow it. I think this bill will help that image.

**Chr. Nelson:** I appreciate the work that both of you have done (Erickson & Blanchfield). The reason we get to a position like this when citizens of the state work together on common goals. This is the outcome. With that, I will ask for a roll call vote on:

**Do Pass As Amended - Vote: 13-Ayes; 0-Nays; 1-Absent; CARRIER: Porter**

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/12/2005

Bill/Resolution No.: HB 1276

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

No fiscal impact is anticipated if this bill is passed.

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: Paul T. Schadewald  
 Phone Number: 328-6328

Agency: ND Game and Fish Department  
 Date Prepared: 01/12/2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1276

Page 1, line 12, after "or" insert "otherwise"

Page 1, line 13, after "land" insert "and which receives compensation from a third party for use of that land"

Page 1, line 24, replace "an intentional" with "a substantial"

Page 2, line 30, after "license" insert "unless that individual provides proof to the department that the individual has been exempt under subsection 4 of section 20.1-03-36.1 and has been conducting outfitter or guide service as an exempt individual for at least two years"

Page 3, line 15, after "outfitters" insert "or guides"

Page 3, line 17, remove "a" and replace "outfitter" with "outfitters or guides"

Page 3, line 26, after "guide" insert "or hunting outfitter"

Page 3, line 28, after the period insert "The department may waive this requirement if the applicant proves that the applicant has legally hunted for parts of at least three years in other states and an outfitter employing that individual would suffer an undue hardship without that individual."

Page 4, line 17, after "warden" insert "during normal business hours"

Page 5, line 29, after "violates" insert "a criminal provision of"

Page 6, line 3, replace "any other violation" with "more than two independent violations"

Page 6, line 16, remove "associate with"

Renumber accordingly



50401.0202  
Title.

Prepared by the Legislative Council staff for  
Representative Porter  
February 9, 2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1276

Page 1, line 12, after "or" insert "otherwise"

Page 1, line 13, after "land" insert "and which receives compensation from a third party for use of that land"

Page 1, line 24, replace "an intentional" with "a substantial"

Page 2, replace lines 8 through 15 v

Page 2, line 30, after "license" insert "unless  
that the individual has been exempt  
been conducting outfitter or guide se

A person may not act as a hunting guide or hunt by the state unless the appropriate state agency on private land enrolled by the department for purp pays in lieu of taxes, on federal lands without be appropriate federal agency, or on private lands p informing and obtaining permission from the la land. If the landowner did not grant the permis permission did not exist."

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Page 6, line 16, remove "associate with"

Renumber accordingly

Date: 2/10/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1276 - ~~Voice Vote~~

House NATURAL RESOURCES Committee

Check here for Conference Committee

Legislative Council Amendment Number :

Action Taken : Move amendments 50401.0202 + Option 4 of Ladd Erickson's proposal.

Motion Made By : DeKrey Seconded By : Kelsch

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	Absent		Rep. Bob Hunsakor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	✓	
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	✓				
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 13 No 0

Absent Porter

Floor Assignment n/a

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

Unanimous - Voice Vote on Amendment, Opt 4 & 50401.0202

February 9, 2005

VR  
2/10/05

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1276

Page 1, line 12, after "or" insert "otherwise"

Page 1, line 13, after "land" insert "and which receives compensation from a third party for use of that land"

Page 1, line 24, replace "an intentional" with "a substantial"

Page 2, replace lines 9 through 15 with "outfitter on land the person knows is owned by the state unless the appropriate state agency permits or authorizes the guiding or outfitting, on private land enrolled by the department for purposes of hunting, on land in which the department pays in lieu of taxes, on federal lands without being authorized or permitted as required by the appropriate federal agency, or on private lands posted against hunting or trespassing without first informing and obtaining permission from the landowner to conduct guiding or outfitting on the land. If the landowner did not grant the permission in writing, there is a presumption that the permission did not exist."

Page 2, line 30, after "license" insert "unless that individual provides proof to the department that the individual has been exempt under subsection 4 of section 20.1-03-36.1 and has been conducting outfitter or guide service as an exempt individual for at least two years"

Page 3, line 15, after "outfitters" insert "or guides"

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Page 5, line 29, after "violates" insert "a criminal provision of"

Page 6, line 3, replace "any other violation" with "more than two independent violations"

Page 6, line 5, remove the underscore under the underscored period

Page 6, line 16, remove "associate with,"

Renumber accordingly

2/10  
took bill remaining  
to LC 6 pm  
2/10 hold for  
amend

Date: 2/10/05  
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1276 - licensing guides/outfitters

House NATURAL RESOURCES Committee

Check here for Conference Committee

Legislative Council Amendment Number : 50401.0203 Title. 0300

Action Taken : No Pass as Amended (Opt. 4 + 50401.0202)

Motion Made By : DeKrey Seconded By : Norland

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	Abs		Rep. Bob Hunsakor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	✓	
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	✓				
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Porter

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

**REPORT OF STANDING COMMITTEE**

HB 1276: Natural Resources Committee (Rep. Nelson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1276 was placed on the Sixth order on the calendar.

Page 1, line 12, after "or" insert "otherwise"

Page 1, line 13, after "land" insert "and which receives compensation from a third party for use of that land"

Page 1, line 24, replace "an intentional" with "a substantial"

Page 2, replace lines 9 through 15 with "outfitter on land the person knows is owned by the state unless the appropriate state agency permits or authorizes the guiding or outfitting, on private land enrolled by the department for purposes of hunting, on land in which the department pays in lieu of taxes, on federal lands without being authorized or permitted as required by the appropriate federal agency, or on private lands posted against hunting or trespassing without first informing and obtaining permission from the landowner to conduct guiding or outfitting on the land. If the landowner did not grant the permission in writing, there is a presumption that the permission did not exist."

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Page 6, line 5, remove the underscore under the underscored period

Page 6, line 16, remove "associate with."

Renumber accordingly

2005 SENATE NATURAL RESOURCES

HB 1276

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

Senate Natural Resources Committee

Conference Committee

Hearing Date March 10, 2005

Tape Number	Side A	Side B	Meter #
1		X	34.1 - end
2	X		0.0 - 11.4

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the hearing of HB 1276 relating to the powers of the game and fish director and guiding on prohibited lands; relating to licensing and qualifications of guides and outfitters: and to provide a penalty.

All members of the committee were present.

**Representative Todd Porter** of District 34 cosponsor of HB 1276 introduced the bill stating that last session passed an interim bill regarding guiding and outfitting. This defined outfitters and guides and who is the actual business owner and who is the employee. HB 1276 will further tweak that resolution. The house natural resources committee further amended the bill so that on Page 2, that the director can determine if by evidence that a violation has occurred so that the outfitter's license can immediately be suspended. A definition of "prohibited lands" has also be included. On Page 3, #6, addresses the issue of large corporations leasing and buying land in

North Dakota. The provisions of this section puts under the outfitting laws, these large corporations that buy or lease land and then pass out maps for hunters to hunt on this land. This will close the loophole of legitimizing guiding and outfitting in North Dakota. Perhaps more tweaking is needed in this section. The bill further describes the ramifications of an outfitter if one of their employees commit a hunting crime and does not report that crime then the outfitter is also held liable.

**Senator Joel Heitkamp** asked about on Page 2 regarding prohibited lands and the closing of some the loopholes. He questioned if that has always been the perception that guides and outfitters are not allowed on some lands contained in the bill.

**Representative Todd Porter** answered that there was written small pieces in several bills in the past sessions that listed lands not available for hunting. There have been public lands missing in that process and HB 1276 compiles a complete list of all lands owned or leased by North Dakota.

Discussion was held about the problem of guides leaving hunters on PLOTS land adjacent to their leased land before hunting on the leased land.

**Ladd Erickson**, McLean County State's Attorney testified in support of HB 1276 (see attached testimony).

**Mike Donahue** representing the United Sportsmen of North Dakota and the North Dakota Wildlife Federation left message the groups would like to be on record as being in support of HB 1276.

**Senator Lyson** asked for a walk through of Section 6 on Page 3.

**Tape #2 Side A, 0.0 - 11.4**



**Ladd Erickson** wanted to make the committee aware of the concerns of Pat Candrian of the Cannonball Company that did not get addressed in the house hearing of the bill. The law states that a corporation invested from outside of the state cannot lease land in the state and move the hunting profits out. At most they would be a minority share holder in a North Dakota business that the North Dakota business would control guiding and outfitting policies of that business. The idea is local control over the local business governed by the North Dakota pharmacy law.

**Senator Lyson** asked how could you control the money that is being invested by the out of state company.

**Ladd Erickson** stated that the out of state could not invest more than 49% in the North Dakota hunting company. Therefore, why would a out of state company want to invest in a company where they have no control or say in the business. There are other provisions in the bill that will require all out of state arranged and booked travel package information be readily accessible in North Dakota. The booking business must be run out North Dakota.

Senator Lyson asked what it is that the Cannonball Company is concerned about.

**Ladd Erickson** stated the company is a Subchapter S corporation and have investors that are not landowners or licensed outfitters or guides. In the original bill, the majority membership needed to be licensed outfitter. In the house it was added to be guides or outfitters in good standing. They still have concerns because of their structure and that they have nonguide and nonoutfitters invested in the company and want the requirement for the majority to be trained guides and outfitters changed. They would like to see the change that would make the majority of stock be invested by either licensed outfitters and guides or landowners that contributed land for the business.

**Kyle Blanchfield** (6.2) representing the North Dakota Professional Guides and Outfitters

Association testified in support of HB 1276 stating he is proud that a lot of the language contained in the bill as it is from work done during the interim and his written testimony is the bill itself. Does the group like all the language in the bill - no, but can they live with - yes. This bill will further the professionalism of the industry of guides and outfitters.

**Senator Lyson** asked how many member were in the association.

**Kyle Blanchfield** stated that there is 132 North Dakota members and that not all the guides and outfitters are members of the association.

Written testimony in support of HB 1276 from **Harold Neameyer** representing the Cass County Wildlife Club was distributed to the committee.

Written testimony in support of HB 1276 from **Curtis Blohm** representing the North Dakota Outdoor Heritage Coalition was distributed to the committee.

**Roger Rostvet**, (9.6) Deputy Director of the North Dakota State Game and Fish Department testified in support of HB 1276 (See attached testimony).

**Senator Lyson** asked for opposing testimony and hearing non closed the hearing on HB 1276.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

Senate Natural Resources Committee

Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1	X		44.6 - 50.2

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the committee work on HB 1276,

All members of the committee were present except **Senator Ben Tollefson**.

**Senator Lyson** stated he was handed an amendment the would clarify the group in the Mott, North Dakota area that is a corporation for hunting that would leave them in the loop.

**Senator Rich Wardner** made a motion to adopt amendment 4300.

**Senator Joel Heitkamp** second the motion.

**Senator Heitkamp** commented that the amendment makes sure is still legal for that group to continue what they are doing and does not exempt them from any qualification.

**Senator Lyson** questioned if that was the case. and Senator Wardner confirmed this on Line 22.

**Senator Layton Freborg** commented that he would like to see the Legislative Council draft the amendment before it is official.

Page 2

Senate Natural Resources Committee

Bill/Resolution Number HB 1276

Hearing Date 3-11-05

**Senator Wardner** withdrew his motion to adopt the amendment.

**Senator Heitkamp** withdrew his second motion.

HB 1276 will be considered after Legislative Council's draft is complete.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

Senate Natural Resources Committee

Conference Committee

Hearing Date March 17, 2005

Tape Number	Side A	Side B	Meter #
1	X		10.2 - 16.8

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the committee work on HB 1276 relating to the powers of the game and fish director and guiding on prohibited land; relating to licensing and qualifications of guides and outfitters: and to provide a penalty.

All members of the committee were present.

**Senator Lyson** stated the amendment that was proposed by Ladd Erickson, McLean County State's Attorney, was given to the committee intern for revision.

**Jeff Ubben**, intern for the Senate Natural Resources Committee, stated he made the necessary grammatical changes and the revised amendment was distributed to the committee.

**Senator Rich Wardner** made a motion to adopt the amend as proposed by Ladd Erickson.

**Senator John Traynor** second the motion.

**Senator Wardner** stated the amendment was to help out the Cannonball Company of Mott, North Dakota, otherwise they would not be in compliance under the bill. They do have an entity that is involved in their organization and the way the bill is written it would take them out of compliance. This Company is a responsible organization and this amendment will help them out.

**Senator Lyson** asked if the Scheels Sporting Goods Store, that is part of the Cannonball Company is allowed, won't the Gander Mountain Chain also have the same rights.

**Senator Wardner** answered that they would if they were organized like the Cannonball Company.

Some of the members did not realize that the Scheels Store was part of the Cannonball Company.

Roll call vote #2 for adoption of the proposed amendment was taken by voice vote indicating 7

YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

**Senator Wardner** made a motion for a Do Pass as Amended of HB 1276.

**Senator Traynor** second the motion.

Roll call vote #2 for a Do Pass as Amended of HB 1276 was taken indicating a 7 YEAS, 0

NAYS AND 0 ABSENT OR NOT VOTING.

**Senator Wardner** will carry HB 1276.

Date: 3-11-03  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1276

Senate Senate Natural Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *adopt Amend 4300*

Motion Made By *Wardner* Seconded By *Heitkamp*

Senators	Yes	No	Senators	Yes	No
Senator Stanley Lyson, Chairman			Senator Joel Heitkamp		
Senator Ben Tollefson, Vice Chair			Senator Michael Every		
Senator Layton Freborg					
Senator Rich Wardner					
Senator John Traynor					

*Withdrawn*

Total (Yes) No

Absent

Floor Assignment

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

PROPOSED AMENDMENTS TO HB 1276

Page 3, line 17, after "association" insert ", and the applicant must be actively and regularly employed in and responsible for the management, supervision, and operation of the outfitting business."

Page 3, line 20, remove "or guides"

Page 3, line 21, after "standing" insert "or landowners who own agricultural land and that land is used for the outfitting business"

Page 3, line 22, remove "or guides", after "standing" replace ", actively and regularly employed in and responsible for the management, supervision, and operation of the outfitting business" with "or landowners who own agricultural land and that land is used for the outfitting business"



Date: 3-17  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1276

Senate Senate Natural Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *to adopt Amendment*

Motion Made By *Wardner* Seconded By *Traynor*

**Senators**  
Senator Stanley Lyson, Chairman  
Senator Ben Tollefson, Vice Chair  
Senator Layton Freborg  
Senator Rich Wardner  
Senator John Traynor

Yes No

**Senators**  
Senator Joel Heitkamp  
Senator Michael Every

Yes No

*(11/11/11)*

Total (Yes)

*7*

No

*0*

Absent

*0*

Floor Assignment

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

Date: 3-17  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1276

Senate Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended.

Motion Made By Wardner Seconded By Traynor

Senators	Yes	No	Senators	Yes	No
Senator Stanley Lyson, Chairman	✓		Senator Joel Heitkamp	✓	
Senator Ben Tollefson, Vice Chair	✓		Senator Michael Every	✓	
Senator Layton Freborg	✓				
Senator Rich Wardner	✓				
Senator John Traynor	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Wardner

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

**REPORT OF STANDING COMMITTEE**

HB 1276, 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 1276 was placed on the Sixth order on the calendar.

Page 3, line 17, after "association" insert ", and the applicant must be actively and regularly employed in and responsible for the management, supervision, and operation of the outfitting business"

Page 3, line 20, remove "or guides"

Page 3, line 21, after "standing" insert "or landowners who own agricultural land used for the outfitting business"

Page 3, line 22, remove "or guides" and replace ", actively and regularly" with "or by landowners who own agricultural land used for the outfitting business"

Page 3, remove line 23

Page 3, line 24, remove "the outfitting business"

Renumber accordingly

**2005 TESTIMONY**

HB 1276

Office of  
McLean County State's  
Attorney



**McLean County**  
STATE OF NORTH DAKOTA

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(701) 462-8541  
Fax (701) 462-8212  
lerickson@state.nd.us

Mr. Chairman and Members of the Committee:

My name is Ladd Erickson and I am the McLean County State's Attorney. I am here to support HB 1276. This Bill addresses three categories of policy. First, landowner rights as that issue relates to commercial operations occurring on private land in our State. The proposal in this Bill would require hunting guides and outfitters to inform landowners that they are in the business of commercial hunting before that activity takes place on that landowner's property. Under the current law, a guide or outfitter can ask a landowner for permission to "hunt" without the landowner having any knowledge that the "hunter" is actually a person who is profiting off that land. In other words, there is currently no duty in the law upon the guide or outfitter to be up front with the landowner and they have a short-term economic interest in not fully disclosing the fact that they are profiting from that land. I believe that this situation continues to have landowners taken advantage of, is causing frustration between landowners, outfitters, and sportsmen, and in the long term is very detrimental to all parties involved in hunting issues and policy.

The second policy category in this Bill deals with a number of criminal and administrative provisions that are proposed to address systemic problems with current law when

it comes to problem outfitter operations. There are a number of cases from enforcement efforts and prosecutions that can show repeated criminal conduct that our laws are not adequately addressing.

You will note that nothing in any of these proposals takes place without full due process. District judges or administrative law judges, independent from the Game and Fish Department, make the adjudications. For example, under the proposal for an expedited outfitter and guide license suspension process beginning on page 1, line 23 of the Bill you will note that this statute could only be used if the evidence established an "intentional" violation of a game law, and the director would have to have evidence that meets the highest standard in administrative law, or "clear and convincing" evidence before action could be taken. The intent is that the department not take action against a commercial license when they find, for example, a guide or client has inadvertently shot a hen pheasant or an extra hen mallard by mistake. The purpose of this section is for a case in which an egress violation of a game law is discovered - multiple birds over a limit, killing a species out of season, deliberate trespass hunting, etc. Guides and outfitters who are intentionally violating our game laws need to be rapidly removed from the industry, they are detrimental to game management, a drag on enforcement, a black-eye for honest guides and outfitters, and not the kind of people we want nonresidents to have to deal with in our State.

The final policy issue in this Bill deals with investor owned corporations and their ability under the current law to thwart the same regulations that our local outfitters operate under, and their ability to place themselves at a competitive advantage over local commercial operations. The core of the language the committee has before you is based on N.D.C.C. § 43-15-35(5) which protects our State's pharmacies from predatory corporate practices. This language has

been challenged and ultimately was approved by the U.S. Supreme Court in North Dakota State Bd. of Pharmacy v. Snyder's Drug Store, 414 U.S. 156 (1973). Under the current law, corporations can claim that they are just "travel agents" and don't need an outfitter license, and then they can hire exempted people, such as landowners, to guide the hunters. This completely misreads the intent of the current law, has the effect of large investor-owned corporations making the profits off our hunting to the detriment of local communities and our hunting heritage, and there is difficulty identifying a person who is accountable for violations of our laws.

I submit to the committee that the last thing our State needs is large unaccountable out-of-state corporations controlling our hunting lands, policies, and industry, and removing many of the hunting profits from rural North Dakota. Many other States have failed to set policy in this area and have lost significant portions of their family hunting heritage, control of game management, and made it very difficult for a small outfitter to survive under the conditions and mass resources of investor- owned corporation.

This Bill is intended to create a level playing field in the outfitter industry and protect our hunting heritage and economy. I ask that you support HB 1276 and would be happy to answer any questions. Thank you.

**House Bill 1276**

**Reference: Provides for revisions for hunting guides and outfitters.**

**House Natural Resources Committee**

**Hearing Date: January 27, 2005**

**Good Morning, Mr. Chairman and Committee members. My name is Curtis Blohm. I appear before you today representing the North Dakota Outdoor Heritage Coalition. This coalition was founded out of the need for representation before the legislative committee by North Dakota citizens concerned for the preservation of our unique outdoor recreational heritage.**

**The ND Outdoor Heritage Coalition supports this bill in its present form. This bill defines further who is an outfitter and who is exempt. It allows the Director of Game & Fish to move quickly to suspend an outfitters license due to violations rather than allowing the current process to drag out indefinitely as has been the case in past incidents. The written permission requirement set forth in this bill gives landowners peace of mind that property beyond their sight is being used in a manner approved of by the landowner and not used for a business practice in which the landowner has no control or knowledge. Further, it would help limit potential liability to the landowner. The provisions of outfitter ownership protect established outfitters of good standing and reputation from fly by night businesses operating under shell entities. An outfitters character and reputation are valued business assets and should be protected and preserved as indicated in this bill. The stipulation of detailed record keeping by the outfitter is basic to sound business practices.**

**Thank You.**



## MISSION STATEMENT NORTH DAKOTA OUTDOOR HERITAGE COALITION

The North Dakota Outdoor Heritage Coalition was founded out of the need to have representation of North Dakota citizens concerned with the preservation of their unique recreational heritage. Its members believe and support the following:

- a. The necessity of preserving and fostering the underlying principals of the Public Trust Doctrine and in preserving high quality outdoor recreational opportunities.
- b. The belief that North Dakota's fish and wildlife resources must be kept as publicly held resources, owned and managed by the State of North Dakota for the long-term benefit and enjoyment of its citizens.
- c. To work to create and maintain a fair distribution of our outdoor recreational opportunities, giving preference to our resident sportsmen.
- d. To seek to minimize the affect of commercial operations on our publicly held resources and recreational opportunities by limiting the number of commercial operations and the amount of land under their control.
- e. We support programs that open private land to access for outdoor recreation especially those that are community-based because of the associated economic benefit.
- f. We support the increased acquisition of public use lands for outdoor recreation such as the PLOTS program.
- g. Be an advocate for restrictions on the use of North Dakota's resources which serve to guarantee that all participants have satisfying quality outdoor experiences well into the future.

The North Dakota Outdoor Heritage Coalition believes that the State's fish and wildlife resources must be kept a publicly held resource, owned and managed by the State, for the long-term benefit and enjoyment of its citizens.

# North Dakota Wildlife Federation

Abundant wildlife and wildlife habitat, and access to wildlife recreational opportunities

By: Mike Donahue



1/27/2005

For: House Natural Resources Committee

Ref: HB1276

The North Dakota Wildlife Federation and United Sportsmen of North Dakota support this bill.

We believe the intent of this bill is fairly satisfactory for all concerned.

We realize there will be a few amendments to create more precision in the language. Along that line we have met several times with the writer and with an Outfitter Guide Association representative to discuss possibilities.

We ask for the committee's support.

Thank you,  
Mike Donahue  
Lobbyist #275



PO Box 1091 • Bismarck, North Dakota 58502 • E-mail: [ndwf@ndwf.org](mailto:ndwf@ndwf.org) • Fax: 701-223-4645  
Office Manager: 701-222-2557 • 1-888-827-2557 • Web: [www.ndwf.org](http://www.ndwf.org)



Cass County  
**WILDLIFE CLUB**  
Box 336  
Casselton, ND 58012

By: Harold Neameyer



**TESTIMONY OF HAROLD NEAMEYER**  
**CASS COUNTY WILDLIFE CLUB**  
PRESENTED TO THE HOUSE NATURAL RESOURCE COMMITTEE

ON

**HB 1276**

JANUARY 27, 2005

Mr. Chairman and Members of the Committee:

The Club supports the passage of this bill. We believe that these updated license qualifications, restrictions and penalties will improve the image of N.D. Guides and Outfitters.

The Club is in full support of the outfitters needing authorization from State and Federal agencies before guiding on these lands, as well as written permission to use non-posted lands.



## *North Dakota Professional Guides and Outfitters Association*

January 26, 2005  
House Natural Resource Committee

The NDPGOA urges the House Natural Resource Committee to consider a DO PASS WITH AMMENDMENTS on House Bill 1276.

Last session our organization helped establish many of the current standards and requirements in licensing and managing outfitters and guides. We understand HB 1276 includes many improvements with the addition of new language. Our organization would ask this committee to consider our proposed amendments and concerns.

- Page 1, line 12 and 13. Provides compensation for the use of land. Better definition.
- Page 2, line 11, 12, 13. Strike out: *on any other state-owned land unless the appropriate state agency authorizes or permits the specific guiding or outfitting activity*. Our reason for this is for the guide or outfitter that unintentionally enters unmarked state land. Our state has over 700,000 acres of state school land, of which little, if any is identified by signs or markings. We are in complete agreement with the original language that bars guides and outfitters from Plots land, and other land managed by ND Game and Fish Dept. We also understand that outfitters and guides can not conduct guiding or outfitting on Federal lands with out special use permits.
- Page 2 line 13, 14, 15. We would ask for the committee to strike out: *or on private lands without first obtaining written permission from the landowner to conduct guiding or outfitting on the land regardless of whether the land is posted against hunting or trespass*, and replace with: *or on private land that is posted without first obtaining permission and while obtaining permission the outfitter or guide must inform the individual that he or she is an outfitter or guide conducting guiding on said land*. Unposted land is open to hunting under current law, why should outfitters or guides be discriminated?
- Page 5 line 24. Strike out *unlicensed* and replace with *unauthorized*
- Page 5 line 25, 26, 27. Strike out: *This subsection applies to outfitters regardless of whether the person who performed the service is otherwise exempt under subsection 4 of section 20.1-03-36.1*.
- Page 5, Section 2. We are concerned that this may take the original intent of the amendment too far. We understand that the outfitter is ultimately responsible for the guides employed by them. If the outfitter is unaware of the violation, and was not involved in such violation, should the outfitter be punished to the extent of losing the outfitter license? We think this is extreme and unfair.
- Page 6, line 24, 25. Acceptable if prohibited lands are defined as land managed by Game and Fish, Plots, etc. as in original legislation.

Office of  
McLean County State's  
Attorney



**McLean County**  
STATE OF NORTH DAKOTA

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Fax (701) 462-8212  
lerrickson@state.nd.us

Mr. Chairman and Members of the Committee:

My name is Ladd Erickson and I am the McLean County State's Attorney. I am here to support HB 1276. This Bill addresses three categories of policy. First, landowner rights as that issue relates to commercial operations occurring on private land in our State. The proposal in this Bill would require hunting guides and outfitters to inform landowners that they are in the business of commercial hunting before that activity takes place on that landowner's posted property. Under the current law, a guide or outfitter can ask a landowner for permission to "hunt" without the landowner having any knowledge that the "hunter" is actually a person who is profiting off that land. In other words, there is currently no duty in the law upon the guide or outfitter to be up front with the landowner and they have a short-term economic interest in not fully disclosing the fact that they are profiting from that land. I believe that this situation continues to have landowners taken advantage of, is causing frustration between landowners, outfitters, and sportsmen, and in the long term is very detrimental to all parties involved in hunting issues and policy.

The second policy category in this Bill deals with a number of criminal and administrative provisions that are proposed to address systemic problems with current law when

it comes to problem outfitter operations. There are a number of cases from enforcement efforts and prosecutions that can show repeated criminal conduct that our laws are not adequately addressing.

You will note that nothing in any of these proposals takes place without full due process. District judges or administrative law judges, independent from the Game and Fish Department, make the adjudications. For example, under the proposal for an expedited outfitter and guide license suspension process beginning on page 1, line 23 of the Bill you will note that this statute could only be used if the evidence established a "substantial" violation of a game law, and the director would have to have evidence that meets the highest standard in administrative law, or "clear and convincing" evidence before action could be taken. The intent is that the department not take action against a commercial license when they find, for example, a guide or client has inadvertently shot a hen pheasant or an extra hen mallard by mistake. The purpose of this section is for a case in which an egress violation of a game law is discovered - multiple birds over a limit, killing a species out of season, deliberate trespass hunting, etc. Guides and outfitters who are intentionally and substantially violating our game laws need to be rapidly removed from the industry, they are detrimental to game management, a drag on enforcement, a black-eye for honest guides and outfitters, and not the kind of people we want nonresidents to have to deal with in our State.

The final policy issue in this Bill deals with investor-owned corporations and their ability under the current law to thwart the same regulations that our local outfitters operate under, and their ability to place themselves at a competitive advantage over local commercial operations. The core of the language the committee has before you is based on N.D.C.C. § 43-15-35(5)

which protects our State's pharmacies from predatory corporate practices. This language has been challenged and ultimately was approved by the U.S. Supreme Court in *North Dakota State Bd. of Pharmacy v. Snyder's Drug Store*, 414 U.S. 156 (1973). Under the current law, corporations can claim that they are just "travel agents" and don't need an outfitter license, and then they can hire exempted people, such as landowners, to guide the hunters. This completely misreads the intent of the current law, has the effect of large investor-owned corporations making the profits off our hunting to the detriment of local communities and our hunting heritage, and there is difficulty identifying a person who is accountable for violations of our laws.

I submit to the committee that the last thing our State needs is large unaccountable out-of-state corporations controlling our hunting lands, policies, and industry, and removing many of the hunting profits from rural North Dakota. Many other States have failed to set policy in this area and have lost significant portions of their family hunting heritage, control of game management, and made it very difficult for a small outfitter to survive under the conditions and mass resources of investor-owned corporation.

This Bill is intended to create a level playing field in the outfitter industry and protect our hunting heritage and economy. I ask that you support HB 1276 and would be happy to answer any questions. Thank you.

By: Ladd Erickson  
Re: HB 1276  
2/10/05

**Prohibited lands for guiding optional amendments for page 2, lines 8-15.**

**Option 1**

"A person may not act as a hunting guide or hunting outfitter on land the person knows is owned by the state, private land enrolled by the department for purposes of hunting, on land in which the department pays in lieu of taxes, on federal lands without being authorized or permitted as required by the appropriate federal agency, or on private lands without first informing and obtaining permission from the landowner to conduct guiding or outfitting on the land regardless of whether the land is posted against hunting or trespassing. If the landowner did not grant the permission in writing there is a presumption that the permission did not exist."

**Note: Prohibits hunting guiding on all state land requires permission on all private land.**

**Option 2.**

A person may not act as a hunting guide or hunting outfitter on land the person knows is owned by the state unless the appropriate state agency permits or authorizes the guiding or outfitting, private land enrolled by the department for purposes of hunting, on land in which the department pays in lieu of taxes, on federal lands without being authorized or permitted as required by the appropriate federal agency, or on private lands without first informing and obtaining permission from the landowner to conduct guiding or outfitting on the land regardless of whether the land is posted against hunting or trespassing. If the landowner did not grant the permission in writing there is a presumption that the permission did not exist."

**Note: This would permit outfitting on state lands if the administering agency permits it, but not on unposted private land.**

**Option 3.**

"A person may not act as a hunting guide or hunting outfitter on land the person knows is owned by the state, private land enrolled by the department for purposes of hunting, on land in which the department pays in lieu of taxes, on federal lands without being authorized or permitted as required by the appropriate federal agency, or on private lands posted against hunting or trespassing without first informing and obtaining permission from the landowner to conduct guiding or outfitting on the land. If the landowner did not grant the permission in writing there is a presumption that the permission did not exist."

**Note: This would prohibit guiding on all state lands, but allow it on unposted private land without the landowners knowledge of the commercial activity.**

**Option 4.**

A person may not act as a hunting guide or hunting outfitter on land the person knows is owned by the state unless the appropriate state agency permits or authorizes the guiding or outfitting, private land enrolled by the department for purposes of hunting, on land in which the department pays in lieu of taxes, on federal lands without being authorized or permitted as required by the appropriate federal agency, or on private lands posted against hunting or trespassing without first informing and obtaining permission from the landowner to conduct guiding or outfitting on the land. If the landowner did not grant the permission in writing there is a presumption that the permission did not exist."

**Note: This option would allow guiding on state lands if the state agency allowed it and would permit guiding on unposted private land without the landowners knowledge of the commercial activity.**





**Cass County  
WILDLIFE CLUB**

Box 336  
Casselton, ND 58012




**TESTIMONY OF HAROLD NEAMEYER  
CASS COUNTY WILDLIFE CLUB  
PRESENTED TO THE SENATE NATURAL RESOURCE COMMITTEE**

ON

**HB 1276**

MARCH 10, 2005

Mr. Chairman and Members of the Committee:



The Club supports the passage of this bill. We believe that these updated license qualifications, restrictions and penalties will improve the image of N.D. Guides and Outfitters.

The Club is in full support of the outfitters needing authorization from State and Federal agencies before guiding on these lands.



**House Bill 1276**

**Reference: Provides for revisions for hunting guides and outfitters.**

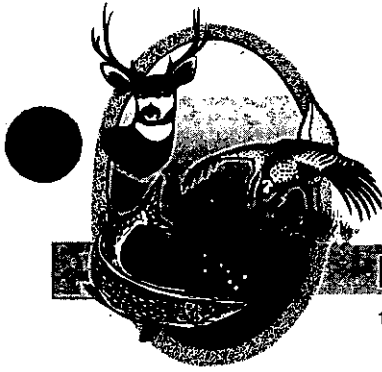
**Senate Natural Resources Committee**

**Hearing Date: March 10, 2005**

**Good Morning, Mr. Chairman and Committee members. My name is Curtis Blohm. I appear before you today representing the North Dakota Outdoor Heritage Coalition. This coalition was founded out of the need for representation before the legislative committee by North Dakota citizens concerned for the preservation of our unique outdoor recreational heritage.**

**The NDOHC supports this bill in its present form. This bill defines further who is an outfitter and who is exempt. It allows the Director of Game & Fish to move quickly to suspend an outfitters license due to violations rather than allowing the current process to drag out indefinitely as has been the case in past incidents. The written permission requirement set forth in this bill gives landowners peace of mind that property beyond their sight is being used in a manner approved of by the landowner and not used for a business practice in which the landowner has no control or knowledge. Further, it would help limit potential liability to the landowner. The provisions of outfitter ownership protect established outfitters of good standing and reputation from businesses operating under shell entities. An outfitters character and reputation are valued business assets and should be protected and preserved as indicated in this bill. The stipulation of detailed record keeping by the outfitter is basic to sound business practices.**

**We ask that the Committee vote a "DO PASS" recommendation on this legislation. Thank You.**



"VARIETY IN HUNTING AND FISHING"

**NORTH DAKOTA GAME AND FISH DEPARTMENT**

100 NORTH BISMARCK EXPRESSWAY BISMARCK, NORTH DAKOTA 58501-5095 PHONE 701-328-6300 FAX 701-328-6352

**NORTH DAKOTA GAME AND FISH DEPARTMENT TESTIMONY  
HB 1276  
SENATE NATURAL RESOURCES COMMITTEE  
MARCH 10, 2005**

The department is in support of this bill. We view it as improving on the guide and outfitter law passed last session.

It cleans up the language dealing with administrative options and timeliness in dealing with violations, while maintaining due process, and better defines what a licensed outfitting operation is.

Additionally it gives a landowner/operator that is doing business under the exemption from licensing, credit for that time if he wishes to become licensed.

4300

6. If an application is for a business association, the applicant must be an agent of the association to be held personally responsible for the conduct of the licensed outfitter's operations, in addition to the association, *and the applicant must be actively and regularly employed in and responsible for the management, supervision, and operation of the outfitting business.* The department may only issue an outfitter license to a business applicant if the applicant is qualified to conduct the business of outfitting. A corporation or association may qualify for an outfitter license if a majority of stock is owned by licensed outfitters ~~or guides~~ in good standing *or landowners who own agricultural land and that land is used for the outfitting business,* or if a limited liability company, the majority membership interest is owned by licensed outfitters ~~or guides~~ in good standing *or landowners who own agricultural land and that land is used for the outfitting business.* If a business entity owns, is a leaseholder in land, or provides compensation for the use of land, and directly or indirectly receives remuneration from hunting on that land, the business entity must be licensed under this title unless exempt under subsection 4 of section 20.1-03-36.1. A business entity may not conduct business operations through a subsidiary, contractor, or an agent that would permit the business entity to avoid this chapter. This section does not authorize any act or transaction prohibited by any other law of this state.