

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

1231

2007 HOUSE NATURAL RESOURCES

HB 1231

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1231

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: 1347

Committee Clerk Signature



Minutes:

**Chairman Porter** opened the hearing on HB 1231.

**Representative William Kretschmar**, from District 28, appeared on behalf of HB 1231 as a sponsor. The situation has come up where there is an operating wind farm and under the law as written there is a problem that does not allow you to divorce the resource from the land.

There are rental payments received periodically for these wind towers to the landowners.

There is a situation that one of the owners of land with wind towers is negotiating a sale of his land to a prospective buyer. The owner wishes to retain the wind tower rentals. He does not want to sell the wind tower payments to the new buyer. They felt that they would need some clarification in the statute in order to make this sale. The language on lines 9 thru 11 was put there to do this. He would urge the committee for a do pass.

**Chairman Porter** asked that in the current situation, because you can't sever off that wind payment, couldn't you negotiate a price to reflect that?

**Representative Kretschmar** said the parties indicated that the current law did not allow them to do this. They want to clarify the law so that this sale and future sales can go through.

**Representative Meyer** asked that because the wind can't be severed, will this piece of legislation allow that to happen.

**Representative Kretschmar** said that this relates to the rental payments made by the power company to the land owner. This is just the payments for this right.

**Chairman Porter** asked that the right is not severed, just the money.

**Representative Kelsh** asked that if another sale came along and wanted to negotiate the sale of the land, the new owner would retain those wind rights.

**Representative Kretschmar** indicated that he thought so.

**Representative Brandenburg** of District 28 came forward as another sponsor of HB 1229.

He said he wanted to echo what Representative Kretschmar had said.

**Representative Solberg** asked that if this bill only affected one landowner.

**Representative Brandenburg** said that this could affect a lot of landowners in the future. In the case of contract for deed, this would allow a tool for the seller and the buyer to be able to sell this property on a contract for deed. At the completion of the contract for deed, the wind towers would become the property of the buyer.

**Chairman Porter** asked for further testimony in support of HB 1231.

**Chairman Porter** asked for opposition to HB 1231.

**Ms. Mary Mitchell** representing the Dakota Resource Council came forward in opposition of HB 1231. Please see attached written testimony listed as Item #1.

**Representative Keiser** asked Ms. Mitchell that shouldn't someone buying the land knows that these wind towers were there and as a farmer, wouldn't they know they would have to work around these. You would think the price of the land would reflect this.

**Ms. Mitchell** said she was sure that they would. She thought that as time goes on, and the property is sold again, what would happen then.

**Representative Nottestad** said that there would be willing buyers and willing sellers in this set of circumstances and if you say there would be a sale in the future, there is nothing in this bill

stating that other wind towers couldn't be constructed on this property. If they were, the profits from this would go to the current owner and not the previous owner.

**Ms. Mitchell** said that this is true, but in many cases, it is limited where you can place these wind turbines so it may be that those places have already been used up.

**Representative Nottestad** said that you again have to go back to the willing buyers and willing sellers in this situation. I think that would have more precedent over what could happen.

**Ms. Mitchell** said that she is concerned about what is going to happen down the road.

**Chairman Porter** asked for further testimony in opposition to HB 1231.

The hearing was closed on HB 1231.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1231

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: 1392

Committee Clerk Signature

*Surety Olmsted*

Minutes:

**Chairman Porter** opened the committee session with HB 1231.

**Representative Meyer** said that when she reads this the only thing that it does is sever the wind from the surface. She feels that there is a mess with the oil now and she is not sure we should start messing with the wind.

**Representative Solberg** said that it severs the payments that the land owner gets for having the towers located on his property.

**Chairman Porter** said the way he reads this bill it has nothing to do with the wind energy rights. It has everything to do with the money. The rights stay with the property owner and the money can be severed to someone else. The contract doesn't have to be transferred at the time of the sale.

**Representative Solberg** asked if this is at the request of one land owner. Are we trying to appease one land owner here?

**Representative Damschen** said he thinks that this is something that will probably come up again. I think this is something that will happen again so we may actually be avoiding problems in the future by passing this bill.

**Representative Kelsh** thought they made a good point when asking if this could be negotiated in the sale price of the land.

**Chairman Porter** said there may be tax ramifications to the seller that are not factored into this. Short of that, he is not sure why you want to split this up.

**Representative Clark** thinks that this could be done. He made reference to bonds and this is done in the financial industry all the time.

**Representative DeKrey** said he thought all that they were trying to do is help a buyer and seller by a piece of land. When they went to register this, someone pointed to a statute and said they couldn't do that. They are not trying to sever wind rights. They are just trying to quantify a land deal that was agreed to. They need this bill to do this. He said he could see situations like this coming up a lot. He thinks there is some value to this.

**Representative Drovdal** asked about current tax on wind mills.

**Representative Charging** said that she had asked the intern to look into this. She thinks there are a lot of dollars involved in the wind industry. She thought it might be worth some detail.

**Representative Hanson** asked if this would apply to pipelines and power lines too. Do they get paid from the owner?

**Chairman Porter** said it wouldn't apply because it is strictly written as wind energy so it wouldn't apply to anything else.

**Representative Hanson** asked if they could come in and do the same thing if they wanted to.

**Chairman Porter** said technically yes.

**Representative Nottestad** said that looking at the bill he was going to support it because there is going to be a time for this for many reasons. At this particular time it is about

payments. There may come a time when an estate is involved and there may some children involved. There would be reasons to split this up.

**Representative Keiser** said they needed to look at 2 issues. The first issue would be to ask what is the right of the property owner and do they have the right to do what they want with their property. If that includes severing it, they should have that right. You also have to look at the long term potential. He can imagine a situation where a farmer wants to retire and none of his children want to farm that land. He wants to sell the farm, but it gets expensive with the wind. He has a farmer next door that wants to buy the land. We could potentially be creating a barrier for a farmer, especially a young farmer. If we are going to allow mineral right owners to do this, what is the difference if you have revenue above the ground versus below the ground?

**Representative Meyer** said that now you are talking about severing the wind. We have heard all morning about the property rights of the surface owners and you are going to run into the same problem if you allow this.

**Representative Keiser** said he did not disagree with her but he thought they should have the right to do this is they want to.

**Representative DeKrey** said he would make a motion for do pass. There was a second by **Representative Keiser**.

**Representative Damschen** said that he understood this particular piece of legislation to only pertain to the rights of the revenue, and not severing the rights.

**Representative Keiser** asked that in the case of oil and coal; do you want the oil and coal or do you want the revenues from the production. The revenue is what we are severing.

**Representative Damschen** said he would want the revenue. He thought this was an issue about the ownership of the rights and this bill speaks to the revenue part.



**Representative Kelsh** made reference to legislation from last year with the same sponsors and after extensive negotiations with some farm organizations and wind developers, they all came to an agreement on that piece of legislation. Do we want to do the opposite of what they decided?

**Chairman Porter** asked for the clerk to call the roll. Let the record show that there were 9 yes, 5 no, with no one absent. **Representative Clark** will carry this bill to the floor.

Date: 1-18-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1231

House Natural Resources Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By DeKrey Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Porter	✓		Rep. Hanson	<del>✓</del>	✓
Vice-Chairman - Rep Damschen	✓		Rep. Hunskor		✓
Rep. Charging	✓		Rep. Kelsh		✓
Rep. Clark	✓		Rep. Meyer		✓
Rep. DeKrey	✓		Rep. Solberg		✓
Rep. Drovdal	✓				
Rep. Hofstad	✓				
Rep. Keiser	✓				
Rep. Nottestad	✓				

Total Yes 9 No 5

Absent \_\_\_\_\_

Floor Assignment Clark

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

**REPORT OF STANDING COMMITTEE**

**HB 1231: Natural Resources Committee (Rep. Porter, Chairman) recommends DO PASS**  
(9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1231 was placed on the  
Eleventh order on the calendar.

2007 SENATE NATURAL RESOURCES

HB 1231

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1231

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 23, 2007

Recorder Job Number: # 3777, 3778

Committee Clerk Signature

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Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the hearing on HB 1231 relating to wind energy payments.

All members of the committee were present.

**Representative William Kretschmar** of District 28 cosponsor of HB 1231 introduced the bill stating that there is a wind tower farm with 30 towers within the district. The issue arose on behalf of a constituent who wants to sell his property to another but as the seller wishes to retain the right to receive the rental payment from the wind towers. This is satisfactory with all the parties involved. Under the current law there is some question as to the whether that can be accomplished and HB 1231 would make clear that the seller of the land cannot retain the wind rights but could retain the money from the wind tower rentals. He is sure this issue will arise in the future for different area of the state.

**Senator Herbert Urlacher** stated mineral rights can be sold but that wind right/easements may not be sold by statute.

**Senator Lyson** questioned if under the law if this can be included in a purchase contract.

**Representative Kretschmar** answered that is the purpose of HB 1231 is to eliminate any question of the law.

**Senator Lyson** asked for opposing testimony.

**Mary Mitchell** representing the Dakota Resource Council testified in opposition to HB 1231

(See attachment #1).

**Senator Lyson** asked for further explanation to the organization's opposition.

**Mary Mitchell** further stated that the bill states it is not severing of the wind rights but does by allowing the selling the property and the wind payments it is the same thing as severing the wind rights.

**Senator Lyson** stated it is not the wind rights that is being retained but the payments from the wind tower for rental is being retained and that is different.

**Mary Mitchell** stated the wind easements are in affect the rights to wind.

**Senator Joel Heitkamp** commented that there is a right to the wind that is overhead and should go with whoever has the parcel of land. Now there is a tower and the land underneath it is to be sold but the owner wants to retain the payment from the tower. He asked if there is not a difference between the payment on the tower and the actual wind right.

**Mary Mitchell** stated that if that property has been developed to its fullest extent that would be the full potential of that property.

**Senator Heitkamp** continued the bill is not needed because in the century code, it has to be defined in order to make the land purchase deal. It is a structure that is being talked about.

**Senator Lyson** asked for further testimony on HB 1231.

**Senator Lyson** closed the hearing on HB 1231.

**# 3337**

**Senator Lyson** opened discussion on HB 1231.

**Senator Lyson** stated he wishes to take the bill to the Attorney General's office to ask if the bill is necessary.

**Senator Constance Triplett** commented that title attorneys are very conservative and the clarification would be good.

**Senator Heitkamp** stated he understood the concerns of the Dakota Resource Council as they are protecting what is already in the statute, but this bill is probably not necessary.

**Senator Lyson** decided he would visit with the AG's office.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1231

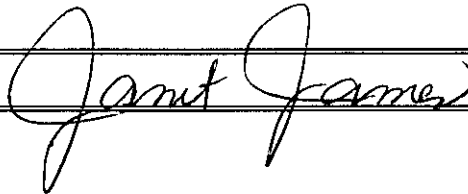
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: # 4765

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened committee work on HB 1231.

All members of the committee were present.

**Senator Lyson** explained the essence of the bill and that it was not a problem as it probably clears up some problems.

**Senator Joel Heitkamp**: does not know if this is included in code.

**Senator Lyson**: it doesn't seem to be necessary but it won't hurt anything.

**Senator Heitkamp**: the whole point of the bill is to allow this to happen and it is something I would like to see happen.

**Senator Lyson**: the thing I was worried about was, that we weren't trying to get around the law - and that you can't sell the wind ....

**Senator Joel Heitkamp** made a motion for a Do Pass of HB 1231.

**Senator Ben Tollefson** second the motion.

A roll call vote for a Do Pass of HB 1231 was taken indicating 7 Yeas, 0 Nays and 0 absent or not voting.

**Senator Constance Triplett** will carry HB 1231.





**REPORT OF STANDING COMMITTEE (410)**  
March 9, 2007 1:11 p.m.

**Module No: SR-45-4878**  
**Carrier: Triplett**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1231: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO PASS**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1231 was placed on the  
Fourteenth order on the calendar.

2007 TESTIMONY

HB 1231

Item # 1



"Watchdogs of the Prairie"  
Organizing North Dakotans Since 1978

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House Bill 1231 Testimony  
January 18, 2007

Chairman Porter and Members of the House Natural Resources Committee,

My name is Mary Mitchell and I represent Dakota Resource Council.

Dakota Resource Council has long been an advocate of wind energy, but we stand in opposition to House Bill 1231.

The language in this bill is contradictory. Lines 6-9 state that the wind resource cannot be severed, however, it seem that lines 9-10 do just that.

If the surface and wind ownership cannot be severed, then how is it possible for one party to own the surface while another receives payments from an existing project?

The situation that would be created if a seller is allowed to retain payments would be similar to the split estate situation we have with oil and gas wherein one party owns the mineral rights and another the surface rights. We are all familiar with the problems this situation continues to cause.

We respectfully ask that the Committee recommend this bill not be passed.

*Dakota Resource Council forms citizen groups dedicated to protecting North Dakota's families and its air, water, land and natural resources.*



"Watchdogs of the Prairie"  
*Organizing North Dakotans Since 1978*

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House Bill 1231 Testimony  
February 23, 2007

Chairman Lyson and Members of the Senate Natural Resources Committee,

My name is Mary Mitchell and I represent Dakota Resource Council. Dakota Resource Council forms citizen partnerships dedicated to protecting North Dakota's families and its air, water, land and economy.

Dakota Resource Council has long been an advocate of wind energy, but we stand in opposition to House Bill 1231.

The language in this bill is contradictory. Lines 6-9 state that the wind resource cannot be severed, however, it seems that lines 9-10 do just that.

If the surface and wind ownership cannot be severed, then how is it possible for one party to own the surface while another receives payments from an existing project?

The situation that would be created if a seller is allowed to retain payments would be similar to the split estate situation we have with oil and gas wherein one party owns the mineral rights and another the surface rights. We are all familiar with the problems this situation continues to cause.

We respectfully ask for a "do not pass" recommendation on this bill.

*Dakota Resource Council forms citizen groups dedicated to protecting North Dakota's families and its air, water, land and natural resources.*