

2013 HOUSE ENERGY AND NATURAL RESOURCES

HB 1355

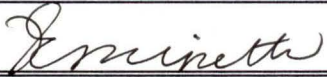
2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1355
January 31, 2013
18057

Conference Committee



Relating to definition of commencement of drilling operations

Minutes:

3 testimony

Rep. Porter: We will open the hearing HB 1355.

Rep. Keiser: I am here to present HB 1355 which is an important issue to the mineral owners in our state. In the contract it clearly states a time in which the oil company has every right to come on to the property as long as they can commence drilling operations. Once the drilling is finished on one well it secures the lease. What is the definition of commencement of drilling operations? When I heard the term I thought you are going to put something into the ground. Since the legislature has not addressed this issue we leave an open question and have than times taken it to court to have the courts addresses it and them define by definition of the court what do we mean by commencement of drilling operations. On page 1 line 8 it says activity must have commencement on the lease hold before the primary term of the lease. The people who own mineral rights cannot find attorney's to represent them because finding one that is not already commented to an oil company is very difficult.

Rep. Porter: Is there anything that precludes this language from being in a contract that is being presented to the mineral owner?

Rep. Keiser: I assume that there is nothing that restricts anybody from putting any language in the contract.

Myron Hanson: From Northwestern Landowners Association; we believe that this bill is necessary as a means of barring some of the more egregious behavior by some of the industry (See testimony 1) for these reasons, we urge a do pass recommendation for HB 1355.

Derrick Braaton: Attorney with Baumstark Braaton Law Partners in Bismarck; Our firm is focused on farmers and ranchers we started receiving a number of calls once the oil boom

was in full force. We represent only mineral owners and surface owners and we have handled several of the cases that were in and are currently in the federal courts. The federal courts decisions on these issues are not binding on the state courts but they are persuasive. The federal courts are not supposed to be making the state laws and so I believe that is what is happening.

Re. Porter: If this law were to pass then this would have retroactive application to the already existing contracts that are signed inside the state of N.D.?

Derrick Braaton: I don't know the answer.

Daryl Dukart: Dunn County Energy Development Organization; we stand in support.

Rep. Porter: Can't this language be inside the contracts that are being signed?

Daryl Dukart: I think we need to set down with the oil producing companies and get a clear of where we all want to be on this.

Rep. Porter: Is it of your opinion that this goes retroactively and changes definitions inside of existing contracts that have been signed?

Daryl Dukart: I can't answer that.

Rep. Keiser: So this language could be in any lease? If this language is the right language to be in a lease and that is the right policy then should it be put into statute?

Daryl Dukart: Yes the second question is a legal question that I have no authority to answer.

Rep. Nathe: If I was a landowner and I want this lease I could out until I find somebody that would put that in the lease?

Daryl Dukart: Yes.

Todd Kranda: I am an attorney from the Kelsch Law Firm in Mandan; I am here as a lobbyist in behalf of the N. D. Petroleum Council. We are here to oppose HB 1355 because we feel it is unnecessary, it is an interference with the existing lease contracts that are already address the commencement of drilling operations. (See testimony 2)

Rep. Hunsakor: Would the folks you represent not be open to any discussion on the definition of the commencement of drilling operation?

Todd Kranda: I think putting this in statute is the problem.

Rep. Anderson: Does the Petroleum Council have a definition of the commencement operations?

Todd Kranda: I think each company will have their own situation as to how they define that. I don't think the Petroleum Council itself will be developing that language and I am not certain that they have.

Rep. Anderson: If there was a description of the commencement of drilling operations wouldn't that speed the process up?

Todd Kranda: Once you define something than you are limited to that.

Rep. Silbernagel: What percentage of the wells we are drilling in N.D. is this an issue?

Todd Kranda: I am not certain.

Rep. Damschen: What is the least action that you are aware of that has constituted commencement of drilling operations?

Todd Kranda: I don't think I have been involved in any of these cases.

Rep. Damschen: Is it likely that everyone would want equal treatment in constituting a commencement?

Todd Kranda: I not am not aware of a case saying that is sufficient.

Rep. Keiser: Do you know if there are any attorney's testifying today that could describe in more detail what the ruling in the federal court was relative to the commencement?

Todd Kranda: I think the attorney following me has more information on this case.

Rep. Keiser: How many contracts is there any definition similar to this?

Todd Kranda: I can't give you figures on that.

Rep. Keiser: If we were to add that this applies only to future leases then would you have a problem with this?

Todd Kranda: Then you may have solved part of the problem.

Rep. Keiser: When we put anything in the statue that may address contract law does that set the floor?

Todd Kranda: I think it sets the stage for ligation.

Rep. Keiser: If I met these could I then ask for additional for time?

Todd Kranda: If you spell this out and other provisions are available.

Rep. Keiser: Do we have a section in the code and contract law?

Todd Kranda: These are contract provisions.

Rep. Hunskor: I understand that you are saying the mineral developer and the mineral owner could square this up when they work with the lease.

Todd Kranda: What you are saying is that we are going to tell you what you are going to have for a provision and there is no negotiating.

Rep. Kelsh: Can you give me an example of a situation where an oil company would not be able to comply with this language?

Todd Kranda: There is always an act of God situation, weather conditions, wet conditions, or permit issues.

John Morrison: I am an attorney from Bismarck practicing in the oil and gas law. I am appearing as a member of the Petroleum Council. (See testimony 3)

Rep. Keiser: What activity occurred on that well site?

John Morrison: The well pad was completely built, tanks were installed, and the mouse hole was dug the rig arrived on location 7 days after the primary term and would have arrived earlier but there was an unavoidable delay on a prior well.

Rep. Keiser: The 3 standards you gave from the Vansickle case they are subjective. This can easily be amended to apply to only the future contracts.

John Morrison: You can do that but I think it would be bad policy.

Rep. Porter: Are you aware of any leases that don't contain some language that says this is what our agreed upon commencement issue is?

John Morrison: Correct most leases aren't going to generally contain define commencement drilling operations.

Blu Hulsey: I am representing Continental Resources we are a member of the N.D. Petroleum Council. We are opposed these issues are becoming less of an issue as leases are held and production increases.

Rep. Hunskor: We indicated that this problem could go away. Share do you feel this is going to go away in the future?

Blu Hulsey: I wouldn't say it will go away but will be less of a problem.

Rep. Hunskor: How is it going to be less of a problem?

Blu Hulsey: I think it is going to be less of an issue because the definition of commencement of drilling to hold leases will not be actable once the leases are held.

Rep. Keiser: Do you suspect that there will be continued development moving out the requirement leases to be signed and developed and drilling activity will extend.

Blu Hulse: I am sure development will continue in the corridor that we are in once the leases are held.

Shane Shulz: QPE Resources; we are a member of the Petroleum Council we are concerned about the leases we are already engaged in. If you have a piece of federal minerals tied into the unit and are waiting on the Federal Government to get PED signed off on it which they are strained that could delay the ability to dig that well.

Rep. Porter: We will close the hearing on HB 1355.

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2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1355
February 8, 2013
18587

Conference Committee



Relating to definition of commencement of drilling operations.

Minutes:

1 Attachment

Rep. Porter: We have HB 1355 in front of us.

Rep. Nathe: This bill deals with the definition of commencement of drilling operations there is a hog house amendment that was purposed by the Petroleum Council what it does is allow parties to negotiate on their own it is perspective for new leases only.

Rep. Porter: We have a motion from Rep. Nathe to move the amendment and a second from Rep. Keiser On the multiple pad setting where we are talking about drilling up to 10 or 12 different bores out of that Mr. Ness will explain this better.

Rep. Nathe: Is he correct on that?

Ron Ness: Yes.

Rep. Porter: All those in favor say I motion carries we have an amended bill

Rep. Nathe: Can I discuss the bill as amended? I have a problem with the state getting involved in writing some of these leases.

Rep. Schmidt: I too have a problem with that because where do you draw the line?

Rep. Porter: We have a motion from Rep. Nathe for a do not pass as amended and a second from Rep Schmidt. Motion failed.

Rep. Porter: We have a motion from Rep. Keiser for a do pass as recommended and a second from Rep. Mock. Motion failed we have a motion from Rep. Keiser and a second from Rep. Anderson for a without committee recommendation. Your yes vote is reaffirming the fact that we couldn't make a decision so it is without recommendation.

Yes 12 No 0 Absent 1 Carrier: Rep. Keiser

Bill back to vote again

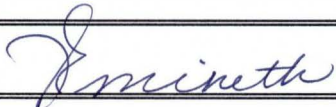
2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

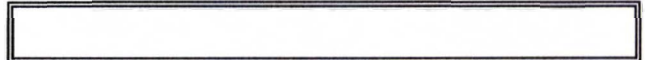
HB 1355
February 8, 2013
18611

Conference Committee



Relating to definition of commencement of drilling operations

Minutes:



Rep Porter: We have HB 1355 in front of us.

Rep. Keiser: I make a motion to move the amendment. It is the function of the committees to make recommendations on legislation when possible Rep. Damschen was not here and regardless how he votes it the deciding vote and I think the committees do have the obligation to send it out with a recommendation.

Rep. Porter: seconded by Rep. Hofstad all those in favor say I; voice vote carries. We have HB 1355 in front of us Rep. Nathe made a motion for a do not pass to HB 1355 as amended seconded by Rep. Schmidt.

Rep. Damschen: What was the amendment?

Rep. Nathe: This would allow parties to negotiate a contract on their own. It would be perspective for new leases only, which would be from August 1, 2013 and forward. It would also provide a 45 day grace period for a single well pad and then provide for a ninety grace period for a muti-purpose pad.

Rep. Damschen: Was there any new light on this?

Rep. Porter: No there was not.

Rep. Nathe: I don't feel the state should get involved in these contracts and the parties can work it out.

Rep. Hunskor: I think the idea of this was to be sure that if any equipment was moved on the site it would not sit there for a long time.

Rep. Damschen: Is this much of an issue with the way things are now as it was when there was a scramble to get things going?

Rep. Silbernagel: As we sit in the subcommittee this was not as big of an issue as we first thought it was.

Rep. Froseth: What has happened is that it isn't that big an issue because most of the leases have been drilled out.

Rep. Porter: There is nothing that stops the two parties from having this language or language that they agree upon or any language in the legal document as long as the two sides sit down and come to those terms.

Rep. Nathe: Some landowners don't see this as a big problem.

Rep. Porter: We will call a vote on a do not pass to HB 1355 as amended.

Yes 7 No 6 Absent 0 Carrier: Rep. Silbernagel

February 11, 2013

4/11/13
Steve

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1355

Page 1, replace lines 7 through 13 with:

- "1. This section applies to an oil and gas lease executed after July 31, 2013. As used in an oil and gas lease, unless otherwise expressly provided in the oil and gas lease, the terms "engaged in drilling or reworking operations" or "commence drilling or reworking operations" mean:
 - a. Well site preparation, staking, and surveying in connection with the drilling of a well on the leased premises or lands pooled must occur before the expiration of the primary term.
 - b. The drill site must be substantially completed and in a condition that a drilling rig can be moved on the location within fifteen days of the expiration of the primary term.
 - c. For one well located on a single well drilling pad, a drilling rig capable of drilling to at least the total vertical depth permitted must be located at the site within forty-five days of the expiration of the primary term.
 - d. For multiple wells located on a drilling pad constructed for two or more wells, a drilling rig capable of drilling to at least the total vertical depth must be located at the site within ninety days of the expiration of the primary term.
2. If the activities required under this section are delayed or interrupted by event of force majeure, the time of such delay or interruption during the force majeure event must be added to the deadlines set forth in this section."

Renumber accordingly

Date: 2-8-2012
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1355

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Nathe Seconded By Rep Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunsakor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep

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

to move the amendment

*Voice Vote
Carried*

Date: 2-8-2013
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1355**

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Nathe Seconded By Rep Schmidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor		✓
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		✓
Rep. Jim Schmidt	✓		Rep. Corey Mock		✓
Rep. Glen Froseth	✓	✓			
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓	✓			
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser		✓			

Total (Yes) 6 No 6

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: *motion fails*
Do not pass as amended

Date: 2-5-2013
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1255

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Keiser Seconded By Rep Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter		✓	Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen			Rep. Scot Kelsh	✓	
Rep. Jim Schmidt		✓	Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad		✓			
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel		✓			
Rep. Mike Nathe		✓			
Rep. Roger Brabandt		✓			
Rep. George Keiser	✓				

Total (Yes) 6 No 6

Absent 1

Floor Assignment _____

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

Do pass as amended

Date: 2-8-2013
 Roll Call Vote #: 4

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1355**

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Keiser Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen			Rep. Scot Kelsh	✓	
Rep. Jim Schmidt	✓		Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep Keiser

If the vote is on an amendment, briefly indicate intent:
for a Without Committee Recommendation

Date: 2-8-2013

Roll Call Vote #: 1

2nd time

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1355**

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep Keiser Seconded By Rep Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunsakor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voice vote
Carrier*

big house more amendment carrier

13.0364.01002

Date: 2-8-13
 Roll Call Vote #: 21 *2nd time*

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1355**

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Nathe Seconded By Rep Schmidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunskor		✓
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh		✓
Rep. Jim Schmidt	✓		Rep. Corey Mock		✓
Rep. Glen Froseth		✓			
Rep. Curt Hofstad	✓				
Rep. Dick Anderson		✓			
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser		✓			

Total (Yes) 7 No 6

Absent 0

Floor Assignment Rep Silbernagel

If the vote is on an amendment, briefly indicate intent:
Do not pass as amended

REPORT OF STANDING COMMITTEE

HB 1355: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1355 was placed on the Sixth order on the calendar.

Page 1, replace lines 7 through 13 with:

- "1. This section applies to an oil and gas lease executed after July 31, 2013. As used in an oil and gas lease, unless otherwise expressly provided in the oil and gas lease, the terms "engaged in drilling or reworking operations" or "commence drilling or reworking operations" mean:
 - a. Well site preparation, staking, and surveying in connection with the drilling of a well on the leased premises or lands pooled must occur before the expiration of the primary term.
 - b. The drill site must be substantially completed and in a condition that a drilling rig can be moved on the location within fifteen days of the expiration of the primary term.
 - c. For one well located on a single well drilling pad, a drilling rig capable of drilling to at least the total vertical depth permitted must be located at the site within forty-five days of the expiration of the primary term.
 - d. For multiple wells located on a drilling pad constructed for two or more wells, a drilling rig capable of drilling to at least the total vertical depth must be located at the site within ninety days of the expiration of the primary term.
2. If the activities required under this section are delayed or interrupted by event of force majeure, the time of such delay or interruption during the force majeure event must be added to the deadlines set forth in this section."

Renumber accordingly

2013 SENATE NATURAL RESOURCES


HB 1355

2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1355
March 28, 2013
Job Number 20639

Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to definition of commencement of drilling operations

Minutes:

attachments

Roll call was taken and all committee members were present.

Chairman Lyson opened the hearing for HB 1355.

Representative George Keiser, District 47, introduced the bill. He mentioned that the House amended the bill. Section one was developed by one of the attorneys in the leasing side of the oil industry, not that they support it. On line 7 on page 1 it states that it applies only to oil and gas leases executed after July 1, 2013. A court case concerning "the commencement of drilling" issue has gone to the federal level. The state has not defined the commencement of drilling. The court said "lacking a definition of the commencement of drilling, we will find that drilling had commenced". Leases generally do not define it. Page 2, subsection 2 covers that acts of God will be factored in to the time they have to commence drilling.

Senator Triplett asked if there is a definition in code elsewhere for force majeure.

Rep. Keiser said it is in code, but he doesn't know where.

Senator Laffen asked if commencement of drilling means all four of those listed on page one of the bill.

Rep. Keiser said it did.

Myron Hanson, representing the Northwest Landowners, presented attachment #1. (Ends at 09:45)

Senator Hogue asked how often a lease holder does something like just bringing in a road grader shortly before the lease is up to be able to continue to hold the lease.

Mr. Hanson said he doesn't know how often it happens. The two parties whose cases he referred to in his testimony could not be here to testify because both of them are presently in litigation.

Opposition:

Ron Ness, ND Petroleum Council, spoke in opposition. He mentioned this was a contentious issue on the House side. The language tries to define continuous good faith drilling operations. The Petroleum Council takes the position that these are contractual agreements and the legislature should not be engaging in the discussion between private parties and their ability to contract on what commencement of drilling means. If it is put in statute today and technology evolves it may change drastically. He gave a number of examples of changes that have come due to changes in technology. The courts are there to help resolve contractual disputes. The details should not go into laws because the laws can then easily become outdated. He read the definition of force majeure. (14:35)

Mr. Ness spoke of all the steps that go into drilling a well. (17:08 to 18:12)

Senator Burckhard asked what the length of a typical lease is.

Mr. Ness: typical is either 3 or 5 years.

Senator Hogue asked if Mr. Ness knows how often it happens that a primary lease holder does not get a well drilled within the time specified on the lease.

Mr. Ness was not sure how often it happens.

Senator Hogue asked whether the two terms in question, force majeure and commencement of drilling, are in most lease agreements.

Mr. Ness was not sure.

Senator Hogue asked if the ND Petroleum Council drafts variations of lease agreements.

Mr. Ness said the variations to the lease are generally done by the parties to the contract.

Senator Triplett asked why the primary leaseholder couldn't be expected to be drilling by the end of the lease or let someone else have that right. She feels it is wrong to keep extending the end date.

Mr. Ness said there are so many things that can happen: winter weather, road restrictions, or a rig getting stuck in a hole to mention a few. The last thing you want to do is force these companies to do this irresponsibly.

Senator Triplett feels the companies should consider all of those possibilities before they sign a lease. Those are just conditions of doing business.

Mr. Ness said the parties of the contracts have decreased the contracts from 5 years to 3 years because of supply and demand. Both parties have agreed to a shorter time but in any building project things can happen to cause delays.

Senator Murphy asked the difference between the terms top lease and primary lease. He also asked if the term force majeure could cover snow storms, etc. and use it favorably for the industry.

Mr. Ness said the language was put in there to try to address the things that can happen, but counties can easily extend their road restrictions.

Mr. Burckhard asked if the wells in the Bakken that are not yet drilled already have leases signed.

(27:20 to 28:00) Mr. Ness explained.

Senator Hogue asked if the market driving the lease term from 5 years down to 3 years has made the 3 years lease pretty much the standard now.

Mr. Ness feels the 3 year lease is pretty standard now in the Bakken. He is not sure of the other areas.

Other opposition: None

Neutral:

Frank Bavendick, an independent oil and gas operator in Bismarck, has been in the oil and oil business for over 60 years. He feels this bill further clouds the issues it was meant to clarify. (30:00 to 34:00) He felt the definition used to be very clear until the value of oil increased and greed stepped in. He mentioned the difficulty of going to court against an oil company that has very deep pockets to pay legal expenses. The best oil and gas attorneys in the state are tied up by the oil companies. He doesn't feel the courts are the best avenue.

(34:50 to 44:30) Mr. Bavendick addressed the language in the bill and the vagueness of the terms used: preparation, commence, substantially completed, etc. He also feels if someone is going to be an operator in ND, he should know how long the permitting process takes and plan accordingly. In fact operators should be aware of all the federal and state laws and even the county road restrictions. He feels it would clarify the issue to state in the contract that "you must have a well producing oil and gas prior to the expiration of the primary term of the lease" in order to hold that lease, but that might be overkill. Another idea was that the lease could say you must have a rig on with the bit turning to the right.

(44:35 to 47:20) Mr. Bavendick cited a court case in which a mineral owner fought an oil company for years. He feels most mineral owners cannot do that. He also cited a case of an oil company commencing drilling operations 5 days late.

Senator Hogue asked if the market has driven the lease term from 5 years down to 3 years.

Mr. Bavendick said most leases are shorter now than they used to be.

Senator Hogue asked what operators do when the state legislature redefines terms. Do the operators adopt those definitions?

Mr. Bavendick said he feels the legislature does not need to define the terms.

There was further discussion about what the oil and gas lease verbiage should be. (Ends at 57:47)

Daryl Dukart, representing Dunn County Energy Development, spoke in a neutral position with a positive twist. He explained formation leases and said formation leases are part of what is coming in the future. (59:30 to 1:02:22)

Kristy Schlosser Carlson, representing ND Farmers Union, spoke in a neutral position. She submitted testimony #2. They feel it makes sense to put the definitions in statute to provide some clarity and protection and certainty.

Chairman Lyson closed the hearing for HB 1355.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1355
April 4, 2013
Job Number 20883

Conference Committee

Veronica Sparling

Explanation or reason for introduction of bill/resolution:

Relating to definition of commencement of drilling operations

Minutes:

No attachments

Chairman Lyson opened the discussion for HB 1355.

Senator Triplett commented that she feels this bill addresses a problem that has more or less worked itself out. It was a bigger issue when the oil companies were racing to get their leases held. By last May most of phase one was completed.

Senator Laffen mentioned that he is a co-sponsor on the bill, but he understands it differently now. Now that he has more information, he feels this should just be an agreement between parties.

Senator Burckhard: Do Not Pass
Senator Triplett: Second

Senator Triplett mentioned that the bill would need a lot of work to consider a Do Pass, so she is comfortable with a Do Not Pass.

Roll Call Vote: 7, 0, 0

Carrier: Senator Laffen

Date: 4-4-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1355

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Burckhard Seconded By Triplett

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓		Senator Triplett	✓	
Senator Burckhard	✓		Senator Murphy	✓	
Senator Hogue	✓				
Senator Laffen	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Laffen

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

REPORT OF STANDING COMMITTEE

HB 1355, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)
recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1355 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1355

Mr. Chairman, members of the committee:

Myron Hanson, Northwest Landowners Association:

We support HB 1355

We believe that this bill is necessary as a means of barring some of the more egregious behavior by some members of the industry.

Behavior such as simply parking equipment on site or unloading some pipe is not consistent with what we would consider on going work.

Behavior such as building a location well in advance and then doing nothing with this site for months after the expiration of the primary lease should not allow the company to maintain this lease.

Behavior such as sending a grader to a site the day before the expiration of the primary lease in violation of North Dakota's one call regulation which require a 72 hour notice before doing any work is not a sufficient enough effort to deprive a person of their interest in this property.

In the extreme a company could even consider applying for the permit as commencement of operations.

We do not feel that this bill would unduly deprive the industry of any opportunity to recover their leased minerals. We feel that this bill would level the playing by requiring the industry to make a commitment to completion in timely manner by establishing a time line for the accomplishment of specific goals. This seems to be a much simpler approach then trying to define every last action that can extend the lease.

Because of the industry rather proud claims, which I think are probably justified, about the efficiencies of the process they have develop to complete one these wells in 20 days, we don't see this timeline as being that heavy a burden.

1.

We are not attempting to bar the industry from recovering these minerals, but it just seems to be a better approach to this problem to establish some sort of guidelines that are simple, concise and spell out what is required. Having no clear rule and having to rely on differing court opinions, of which there have been none in North Dakota State courts, seems to be a haphazard approach

For these reasons, we urge a do pass recommendation for HB 1355.

**Testimony in Opposition to
HOUSE BILL NO. 1355
House Natural Resources Committee
January 31, 2013**

Chairman Porter, House Natural Resources Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council to oppose HB 1355.

As you may know, the North Dakota Petroleum Council represents more than 400 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota and has been representing the industry since 1952.

The North Dakota Petroleum Council is opposed to HB 1355 because it is unnecessary and a potential interference with not only existing lease contracts that already address the commencement of drilling operations but also with the rights of private landowners to negotiate their own private contracts without the State telling the parties what is or is not available to be negotiated between two parties within the negotiation process. Not all situations are the same in order to universally apply the same standard or definition for what constitutes the commencement of drilling operations.

2

The determination of what constitutes commencement of drilling operations is something that the parties themselves can decide on and they can also establish their own provision or description of drilling operations within the negotiated lease provisions. Each individual lease situation may require a different or slightly different accommodation and a one size definition does not fit all possible lease situations.

Creating a separate definition such as is being proposed in HB 1355 will unnecessarily create more litigation. In addition, there are already contracts that exist with a definition and the status of those existing contracts are being jeopardized and may create additional litigation if this bill passes.

In conclusion, HB 1355 is simply not needed and could actually create more confusion than it attempt to clear up resulting in additional unnecessary litigation. Accordingly, I would urge a **DO NOT PASS** recommendation for **HB 1355** and I would be happy to try to answer any questions.

TESTIMONY OF JOHN W. MORRISON
HOUSE BILL NO. 1355

My name is John Morrison and I am an attorney from Bismarck practicing in the area of oil and gas law. I represent a number of clients on oil and gas matters, but am appearing today as a member of the North Dakota Petroleum Council.

This bill addresses what is known as a “drilling operations” clause in an oil and gas lease. Most leases have primary terms for a stated number of years and then continue “and as long thereafter as oil and gas is produced.” However, most leases also provide that if no oil or gas is being produced at the end of the primary term, the lease continues if lessee “is then engaged in drilling or reworking operations.” In my thirty-plus years of practicing oil and gas law, I know of two cases that have been litigated over the meaning of this clause. One was Jack Murphy v. Amoco Production Company, in the early 1980’s. The other was Anderson v. Hess, which was litigated several years ago.

Initially, House Bill No. 1355 on its face appears to be intended to apply to existing oil and gas leases. Article I, Section 18 of the North Dakota Constitution says, in part, that “no law impairing the obligation of contracts shall ever be passed.” Article I, Section 10 of the United States Constitution also prohibits any state from passing any law impairing the obligations of contracts. If House Bill No. 1355 is intended to change the terms of existing oil and gas leases, it impairs those contracts and is unconstitutional. In State ex rel Cleveringa v. Klein, 249 N.W.119 (ND1933), the North Dakota Supreme Court struck down a statute which attempted to modify the redemption period under existing mortgages. In attempting to modify the primary term of existing oil and gas leases, this bill is equally unconstitutional.

If this bill is intended to apply only prospectively – meaning only to new leases taken after the effective date of the statute - it still takes away the right of parties to contract. Many oil and gas leases contain explicit provisions relating to drilling operations. Some leases provide that drilling operations require a rig capable of drilling to total depth on the location at the expiration of the primary term. Will this bill now give the oil companies under those leases more time than the parties agreed to when the lease was signed? Other leases explicitly provide that operations include “drilling or any act preparatory to drilling (such as obtaining permits, surveying a drill site, staking a drill site, building roads, clearing a drill site, or hauling equipment or supplies). Will this bill give oil companies under those leases less time than the parties agreed to when the lease was signed?

Even if this bill was reworked to apply only to leases that are silent as to the meaning of drilling operations, it raises as many questions as it answers. What does “activity must have commenced on the leasehold” mean? Does using a scraper to clear the topsoil constitute the commencement of activity? Or is putting a stake in the ground the commencement of activity? What does “the well location must be completed and capable of accepting a drilling rig” mean? Do the mouse hole and rat hole need to be dug? What is a rig “capable of completing the well to its permitted depth” mean? Does “depth” mean vertical depth – in other words, 9,000 to 10,000 feet for Bakken wells? Or does it mean measured depth – to the end of the lateral, or 20,000 feet for most Bakken wells. Some companies use one rig to drill the vertical well and then another rig to drill the lateral. Will those companies be required to have both rigs sitting on location within thirty days of the expiration of the primary term? What happens if a rig is on the way to the location but is prevented from getting there by a massive snow storm or a flood? Most leases have force majeure clauses which would apply if this was a lease term. Will those force majeure clauses apply to this new obligation which is imposed by law and not the contract?

I recognize that this has been a contentious issue with mineral owners. There have also been concerns among the industry. Many companies would prefer to have black and white rules that make the termination of a lease clear. In many cases, there are top leases, and there has also been uncertainty as to whether top leases have become effective or whether existing leases have been maintained. In my experience, both mineral owners and oil companies have sometimes taken extreme positions. Some mineral owners have claimed that nothing short of a rig on location will continue a lease. Some oil companies have claimed that getting a permit and then moving a rig on 6 months later is enough. In my experience, neither one of these positions would prevail in court. But if there are disputes over the meaning of contracts, under our legal system the courts are where those disputes should be resolved. Mineral owners already have a powerful weapon – under Section 47-16-37, if a mineral owner sues a lessee for a release and wins, the mineral owner can recover damages and attorney's fees. Passing a law that injects more uncertainty into the process benefits neither the mineral owners nor the oil companies.

I respectfully urge you to give this bill a do not pass recommendation.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1355 + 1333

Page 1, line 1, replace "a" with "two"

Page 1, line 1, replace "section" with "sections"

Page 1, line 2, after "operations" insert "and resolution of title disputes"

Page 1, after line 13, insert:

"SECTION 2. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Resolution of title disputes.

If the mineral owner and mineral developer disagree over the mineral owner's ownership interest in a spacing unit, the mineral developer shall furnish the mineral owner with a description of the conflict and the proposed resolution or that portion of the title opinion that concerns the disputed interest."

Re-number accordingly

#1

Mr. Chairman, members of the committee:

For the record, Myron Hanson, representing the Northwest Landowners.

We stand in support of HB 1355.

This bill had its genesis at the end of the last session. At that time an amendment was proposed to the bill relating to exploration damages and crop losses. That amendment failed, but the issue remained.

Behavior by some companies in an attempt to retain lease holding goes beyond what could be termed good faith continuous operation. It was felt that certain levels of behavior must be specified for the continuation of a lease.

Bringing a road grader on site hours before the expiration of a lease and moving a little dirt or semi-completing a location does not constitute good faith continuous efforts.

This bill is the result of a number of hard discussions. It establishes a time line for the completion of certain tasks. It requires a level of effort and investment on the part of the lease holder that makes a stronger case for the timely completion of the steps to hold a lease. If these requirements are not met, then the farmer or rancher owning those minerals has the opportunity to participate in renewing that lease.

These companies do not own these minerals. They have leased the right to develop them. Some of the more egregious methods that have been employed to try and hold these leases should be prohibited.

We urge the committee to give a do pass to HB 1355

#2



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Senate Natural Resources
North Dakota Farmers Union
Testimony on House Bills 1348, 1352, 1355
March 29, 2013

Mr. Chairman and Members of the Committee, my name is Kristi Schlosser Carlson, and I represent the 40,000 members of the North Dakota Farmers Union and the Policy and Action developed democratically by our grassroots membership. In that policy, we establish our foundational belief that family farmers and ranchers are stewards of the land. We strive for a balance among protecting the due process of landowners; producing food, fiber, and fuel; valuing natural resources; and meeting energy needs.

We recognize that balance is a difficult one to strike. But those who bear the burden of energizing our state and nation deserve respect and consideration. Many of the bills the committee hears today appear to attempt to find that balance. We support these efforts.

Our policy specifically enumerates that 1,320 feet is the appropriate distance between homes and wells, supporting the original HB 1348. Despite it being amended in the other House, we do, however, support today's bill because it provides additional recourse and accommodation for landowners than is available under current law.

We do not believe that enumerating protections and standards in statute or rule interferes with the negotiation process in a "willing seller – willing buyer" relationship. HB 1355 regarding the definition of "commencement of drilling operations" clarifies statute and prevents unwarranted litigation. It would be difficult to imagine that a landowner would believe that, among the more commonly negotiated terms (location, compensation, construction, etc.), he/she should have to define this term. Therefore, such a definition would be a reasonable statutory protection, and not one that would jeopardize meaningful negotiation of a contract. Additionally, in HB 1348, the negotiation process remains in place – a homeowner can waive that requirement or the commission can grant an exception.

Finally, NDFU supports using the North Dakota mediation service in these processes as articulated in HB 1352; it's been an accepted and welcome process by all parties.

Thank you.

