

2013 SENATE NATURAL RESOURCES

SB 2357

2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2357
February 8, 2013
18604

☐ Conference Committee

Committee Clerk Signature

Veronica Sparkling

Explanation or reason for introduction of bill/resolution:

Relating to duties of the commissioner of university and school lands and the director of the state historical society

Minutes:

Testimony attached

All committee members were present except Senator Laffen.

Chairman Lyson opened the hearing for SB 2357.

Senator Triplett, District 18, introduced the bill. The second section relates to the duties of the State Historical Society and suggests that the State Historical Society should be responsible for surveying all of the state school trust lands for presence of cultural resources and to maintain an inventory of those. As the oil patch has crept across the state there have been situations where people have felt like there was not time in the process for the historical and archeological work to get done in advance of siting oil wells. There was only time to look at the data bases from archeological work that had been done in the past, but there was not time to do any of the cultural resource work. (02:15 to 06:47)

Senator Murphy questioned the phrase on line 12 "survey all lands described in Section 15-01-02"...are those lands the entire state?

Senator Triplett explained it is the school trust lands, the land that is under the jurisdiction of the State Land Board.

Senator Triplett also explained that the State Historical Society has a statewide comprehensive plan for historic preservation. The last one was done in 2010 for the period 2010 to 2015, and she read from it that surveying is part of what they do. (Ends at 09:30)

Senator Unruh addressed the amount on the fiscal note. The estimated cost of \$250,000 per biennium seems very conservative.

Senator Triplett responded that it is just a start and deferred the question to Fern Swenson.

Senator Marcellais, District 9, spoke in favor of the bill. See attachment # 1. (Ends at 12:55)

Merl Paveruud, Director of the State Historical Society, stood in support of the bill. As we go forward we need to get "ahead of the ball". We need to locate the "hot spots" and find out what is there and then assist the land department when they request information about cultural resources on these properties. It is a great opportunity. Only about 3% of the school lands have been surveyed. (Ends at 15:00)

There was discussion about what would be considered hot spots. (Ends at 16:10)

Fern Swenson, Director of the Archeology and Historic Preservation Division at the State Historical Society of ND, spoke in favor of the bill. See attachment #2. (Ends at 19:10)
About 67,000 sites have been recorded across the state. Those include archeological, historical, and standing structures. In addition they manage reports from almost 14,000 surveys that have been conducted. Ms. Swenson addressed how they arrived at the dollar figure in the bill. (Ends at 20:50)

Senator Unruh questioned whether they would be doing just surveys or would they also be doing excavations if they found something of significance. Ms. Swenson said this funding would be used primarily for surveys. She said the National Park Service has guidelines that they have to follow to determine what is significant. It would have to be significant for an event, for a person, for architectural purposes, or the information potential for the site. (Ends at 22:50)

There was discussion about what determines if an artifact is "cultural", and Ms. Swenson gave a brief overview of how a survey is done. (Ends at 24:00)

Terry Clouthier, with the Standing Rock Sioux Tribe Tribal Historic Preservation Office, spoke in favor of the bill. See attachment #3.

Rob Sand, who lives in the Killdeer Mountains, spoke in favor of the bill. He was involved in Section 36 that was opposed and then approved for drilling. He made reference to the battlefield in the area. He felt they lacked information. He feels it is important to get a survey of state lands. He read from the Killdeer Mountain Alliance. See attachment #4. (Ends at 28:57)

Tom Isern, Founding Director of the Center for Heritage Renewal at NDSU and Professor of History, spoke in favor of the bill. He feels "you have to skate where the puck is going to be, not where it is". He made a point that this is hard work and people burn out on it. He would like to get NDSU students involved. See attachment #5. (Ends at 35:50)

Senator Murphy asked if Mr. Isern would be willing to help with this project. Mr. Isern said he would be willing because there is, conservatively speaking, 10 million dollars of this work being done already and that money is not necessarily staying in our state. We need to train our young people so we can start to repatriate some of this development money.

Dr. Richard Rothaus, an archeological contractor, spoke in favor of the bill. He said the cost of surveys and excavations is very high. The amount in the bill should have another zero after it. The cost is especially high if you are doing the surveying and excavating where development is imminent and regulations and conflict has kicked in. If it is done before any

of that has happened, it is much more economical. He also mentioned that although the oil patch is what everyone knows about, there is a lot of work going on in the Red River Valley. He stated that he does do work for the State Historical Society but they do not pay as well. (Ends at 41:30)

There was discussion about changing the amount on the bill, but Dr. Rothaus said there just are not enough feet on the ground to get the work done. (Ends at 42:12)

Kimball Banks, an archeologist from Bismarck and a manager of a cultural resource management firm, spoke in favor of the bill. He used to be an archeologist in the federal sector. He feels this bill is a very effective management tool in accelerating the ability to get projects done.

Opposition: None

Senator Triplett mentioned that Lance Gaebe from the State Trust Lands Department was present and she asked if he would address the committee. Lance Gaebe, the Commissioner of University and School Lands, who works for the Land Board, spoke in support of the bill. They do contact the State Historical Society before land is leased or before there is activity done on the surface, so better information is always helpful. These lands are managed for the permanent trust, for the continuous benefit of educational funding so he wanted to add a caveat to his support for the bill. The funding for the inventory would be public in nature and not be from the trust to pay for that evaluation.

Chairman Lyson closed the hearing for SB 2357.

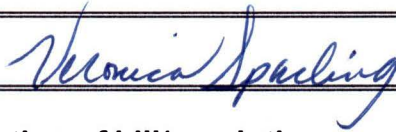
2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2357
February 8, 2013
18609

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to duties of the commissioner of university and school lands and the director of the state historical society

Minutes:

No attachments

Chairman Lyson opened the discussion for SB 2357.

Senator Triplett: Do Pass and Rerefer to Appropriations.

Senator Murphy: Second

Senator Triplett reminded the committee that there was no opposition to the bill during the hearing. She feels it is a very modest start, but when asking the State Historical Society to gear up on a new program it is best to start off slowly. She had asked Fern Swenson to set the amount for the fiscal note. She also explained that when the State Historical Society is contacted for information and have such incomplete information to offer, the lack of information can be misleading. It leads people to believe it has all been surveyed when actually only a few small parts of it have been surveyed. Fern Swenson said they only have information on about 3% of state lands and most of that they have gotten from other people. They have never been given resources to do this work. We do need to get ahead of it. (Ends at 03:30)

Senator Unruh asked whether we need a separate section of code when the State Historical Society already has a directive to look for these artifacts. Maybe they just need the funds.

Senator Triplett said there is general authority to do things like that but they haven't had the resources. She feels if it is approved they will just work it into their budget and they wouldn't come back year after year for more money. She feels they need a little push. She cited a 1988 attorney general's opinion which talks about the balance between state lands and the State Historical Society. She gave a history of who has had the authority to do this type of work. (Ends at 09:20)

Senator Unruh questioned whether the money could be taken from the state lands fund rather than the general fund.

Senator Triplett reminded the committee that Mr. Gaebe's only caveat was to not do that very thing. They are serious about their fiduciary responsibility, so the decisions they make in regard to the oil patch have to be made on the basis of what money will it bring in to the state. Because it is hard to put a dollar value on history, it can easily get overlooked when budgeting. She also feels with horizontal drilling we can now have more flexibility in where to place the wells so as not to disturb historical artifacts.

(10:50 to 20:00) Senator Hogue wanted to amend the bill so it would be clear who would have authority. There was discussion about possibly amending the bill so there would not be confusion over who would have final authority. The wording that caused the concern was in lines 14 and 15 "shall assist". Senator Triplett explained that "assist" in this case means "let them on the land to do the work". After the discussion, Senator Hogue decided he would speak to Mr. Gaebe and see if the idea had merit and if it did he would follow the bill to appropriations if he had to.

Roll Call Vote: Do Pass and Rerefer to Appropriations, 6, 0, 1

Carrier: Senator Triplett

FISCAL NOTE
Requested by Legislative Council
02/05/2013

Revised
 Bill/Resolution No.: SB 2315

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$2,173,000		\$0
Expenditures			\$0	\$0	\$0	\$0
Appropriations			\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$296,000	
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2315 eliminates any exemption from gross production tax and royalties for wells not capped, and connected to a gas gathering line, or equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2315 eliminates any exemption from gross production tax and royalties for wells not capped, connected to a gas gathering line, or equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well.

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.*

In November 2012 there were 579 nonexempt wells flaring with no gas sales, indicating they are wells not capped, connected to a gas gathering line, or equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well. In November the gas flared from those wells totaled 887,804 MCF or 29,593 MCF per day. Assuming approval of all exemption applications, 29,593 MCF per day would be required to pay gross production tax that would not be required under current law. This volume is expected to remain relatively constant through 2017. The current gross production tax on natural gas is \$0.1143 per MCF. This equates to revenue of \$2,469,000 for the 2013-15 biennium. This additional revenue is expected to be distributed to producing counties, the legacy fund, and the strategic investment and improvements fund.

- 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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/05/2013

Date: 2-8-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2357

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 Triplett Seconded By Murphy

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

Total (Yes) 6 No 0

Absent 1

Floor Assignment Triplett

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

REPORT OF STANDING COMMITTEE

SB 2357: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2357 was rereferred to the **Appropriations Committee**.

2013 SENATE APPROPRIATIONS

SB 2357

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee

Harvest Room, State Capitol

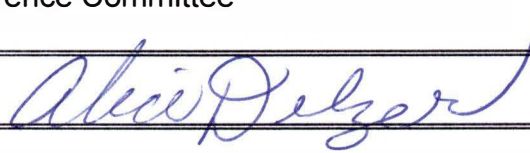
SB 2357

02-14-2013

Job # 18969

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to duties of the commissioner of university and school lands & the director of the State Historical Society

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee to order on Thursday, February 14, 2013 in regards to SB 2357 at 11:15 am. All committee members were present. Sheila M. Sandness from Legislative Council and Sheila Peterson from OMB were present.

Merle Paverud, State Historical Society, Director introduce our main testimonial speaker Fern Swenson, we are in favor of this bill because it will give us a chance to get ahead of the issues we are facing. We get a lot of requests for lease clearances on state land. We just don't have a lot of information that we can provide and we usually have a couple of weeks that we have to respond. This will give us a chance to get out there, go to some of the hot spots and get ahead of it and work with the Land Department and hopefully oil and gas and do our best to respond as quickly as we can. Right now we are behind the eight ball and we need some help. This could do it.

Chairman Holmberg if we agree with the concept they should be able to do what's in 2357, we would pass the bill, but the money issue would be resolved later when we have the budget for the center.

Merle Paverud Fern Swenson her division takes care of the requests for review and also has the archeologists that work in this area along with her archeologists who work in this area.

Fern Swenson, Director of the Archaeology & Historic Preservation Division (6.23) at the State Historical Society of ND testified in favor of SB 2357 and provided Testimony attached # 1. (6.34)

Senator Carlisle: So where have you been the last 50 years. We've got a lot of oil exploration and roads to build and all of a sudden were going look at surveying . Wow, I'm just curious?

Fern Swensen We have not had funding prior to this, to dedicate specifically to state lands except on a very small scale. So we have had a few surveys done on state lands using Historic Preservation Fund Grants funding in order to get a handle on blocks of area regarding the potential for cultural resources. So we could do some sort of predictive modeling for those specific areas. But it's really been a problem with not having the funding to conduct these surveys.

Chairman Holmberg Does the Historical Society, were they involved in the revelations regarding the bypass in Minot that there was some cultural issues that needed to be resolved? Was that the Historical Society or someone else? Was it the Feds, who blew the whistle there? I don't mean that negatively, who found out?

Fern Swensen That was the federal highway project and the DOT. The role that our agency would play on that is reviewing the cultural resource report once it was submitted to our office from the Department of Transportation and the federal highway department. Currently we have that report and it's being reviewed now but we have not made our comments on that report yet.

Senator Erbele Cultural resources, what are they? Name the things that we are looking at that fall under that category?

Fern Swensen By cultural resources I mean archeological sites, historic sites, as well as buildings, and structures. So it could be bridges as well as buildings, then its' things underneath the ground.

Senator Erbele Is it graves, native villages, what is it all?

Fern Swensen replied it's all of those things. It is any evidence of human occupation or human use of an area but when we look at sites we look at them and we have certain criteria that we have to use based on the National Park Service guidance to us, so the significance of a particular site we have to review as to whether its' important under an event, whether it's important for a person known, for architecture or the potential to yield important information. So we have guidelines that are followed as we are reviewing the recorded sites in order to determine the significance as well as to just identify where there's evidence of human occupation. But it would include graves, ring sites, earth lodge villages, and cultural materials scattered that could be either prehistoric or historic in nature.

Senator Warner Wouldn't it be strictly on state lands, it doesn't involve any private lands and if you could talk about the role of Federal Government in determining the law? My understanding is if its state or somebody wants to put a highway through a cultural artifacts for instance the Williston bypass, I think one time running through a prehistoric Indian village that is determined by federal law. There is nothing that the state does that affects that is going to neutralize the construction company or immunize the construction company from the damages done there. What you're asking for is allowing for companies to see problems well ahead, by discovering something that they didn't know was there. By using your plan it would allow them to make some corrections well ahead of time so they weren't caught unawares of something that they still would have an obligation to remedy. Is there a question in there?

Fern Swensen replied this relates strictly to state trust lands. When we would be trying to sort through what would be surveyed under this funding, we would not select lands that would be covered under the federal undertakings. We would want to concentrate our efforts because the federal government would find funding to do surveys if it's their projects. So this only relates to state lands not federal undertakings; but it could and does relate to oil development that does not fall under a federal undertaking. Anytime the federal government has a project they have to consider cultural resources. So they contact our office as well in order to find out all of these know about any particular project area. We provide recommendations as to what we know about an area or project and those reports but it's really up to the federal agency to make that decision. They take in to consideration cultural resources as well as other environmental factors.

Lance Gaebe, State Land Commissioner.

Senator Carlisle What is the land department position on this bill with all the lands you oversee?

Lance Gaebe replied we are neutral. We have cooperated with State Historical Society for 20 years and reviewing land that was known in their data bases. What is unknown is what we are trying to find in this bill. We cooperate with those folks in reviewing the lands and trying to prioritize the areas that would be looked at.

Senator Carlisle Do we need a bill, you just said you work with those folks the last 20 years why do we need to codify it? I understand there is a lot of pipes going, a lot of things happening with trust lands now, but you guys do the best you can now, right with working with them?

Lance Gaebe replied we check with Historic Society before our lands are leased for production and then again when there is an application for a right of way pipeline or road and then we ask again. The bottom line for this bill is striving to do enhance the data that is within their data base, but, I would agree that we do cooperate and would certainly cooperate and it wouldn't necessarily be codified. I suspect what this is driving at, is the cost of doing so.

Senator Wanizek: Most of the trust lands are they not leased to private entities, private operators like ranchers, farmers?

Lance Gaebe replied that is correct. All the surface by and large for grazing purposes some for meadows and farming and minerals are also leased for the coal, oil and gas activity to private enterprise.

Senator Wanizek If I have an operator/ rancher that leased a pasture land and through the survey there is a discovery how would it impact him? Could he potentially be asked to vacate or would it impact his operation if he had a lease agreement signed with the state?

Lance Gaebe In terms of a lessee, I can't envision another circumstance that would change because by and large we use it for grazing. So, there is likely not a large impact,

where it could impact for the lessee for oil and gas production if location of a site or a road or right of way might be altered. That isn't an existing rule the Land Board and the fact of the part of the lease it already indicates that is there is a and we try to avoid not impacting the Historical Society or Paleontological resource and if there is somebody discovered during the construction surface disturbance of a lease that they will contact the commissioner and we will work with the Historical Society to see how we can mitigate that impact and try and avoid harming that resource. On the other hand, there is an Attorney General's opinion from 1988 that says that if there is an unavoidable conflict that the trust is dominant and the responsible common schools trust fund or whoever the owner of the land is, does take precedence over avoiding producing in the hills for example.

Senator Wanzek Just reading this language especially where it involves students of higher education to conduct surveys. I am trying to get rid of this image in my head of a bunch of college kids coming out and riling the cattle up in the pasture.

Lance Gaebe replied we always try to coordinate and cooperate with education or other research institutions on wildlife studies, wetland reviews, sometime archeological reviews, and try to coordinate with the lessee so we do it without disturbance. We always with walk in access only; we don't have a driving in like with hunters where we don't permit driving access; hope it will be less disruptive. But whether it's a surface disturbance that involves a well, or a road or just a review we always let the lessee farm or rancher know that this is underway. But all the surface activities that we permit are done by the Department by our professionals on staff, not with the rancher in the context of a road or right of way. We process somewhere in the neighborhood of 400-450 applications annually for surface activity or surface disturbance,

Chairman Holmberg had asked a question so what is being said is that this is a project that the historical society working with you at the present times does, you do go out, you do some work you do some help. The bill itself is the vehicle as I am sensing it is to alert the Legislature that there are costs associated with what they are doing and somehow they would like assistance in covering the costs of things they are already doing but are not receiving compensation for it in their budget. Is that in a nutshell what the bill is? Isn't that what this is?

Merle Paverud: That is what this is its quantity. We just don't have the staff to do this you know we have our regular operations within the office and we go out for some of these things, but there is such quantity, that needs to be surveyed that what we would do is contract that out and have that clearer so that we can put it in our data base and again, it's there when whomever comes to look for it and put it in. One thing Senator Carlisle you asked about why haven't we done this before? We tried, and it is just one of those things. Survey, what's that. We get a little money and we try to go over the spots where we see some development and just in general we've gone up along the Missouri River where housing developments are going and trying to clear some of that and we found some pretty sensitive areas. One of the issues that we always are concerned about is burial areas because that becomes very serious issue. Basically you lose everything and leave. So that is a critical issue that we try to convey to them too. I think they see the benefit of that, plus companies do this survey on federal and tribal lands. State lands are not covered like that.

Many of the oil companies just say we have to do the survey so they go ahead and do it. We also want to point out that the time that you do this is critical. It is pretty hard for us to go out and survey in February when we've got ground cover like this and so we need to have it at a time of the year when we can do something that is meaningful.

Chairman Holmberg (22.20) I am assuming he will go out on a team wherever their going to do this kind of thing.

Merle Paverud replied it just takes time and money and we don't have the staff or money to do it.

Senator Carlisle This is not in governors' budget? **Merle Paverud**: No, this was not put into our budget. **Senator Carlisle**: Was it requested? **Merle Paverud**: No, it was not.

Chairman Holmberg You are responding to a legislative bill? **Merle Paverud**: We were involved with discussion on that prior to it being introduced.

Vice Chairman Bowman: You are going to hire people to come out and do this, are they screened for any of this background so they could find a reason so it couldn't be developed, so we screen these people that do this, so we can get a fair and honest estimate of what the findings are.

Merle Paverud We allow permitted contractors to do that and they provide their application, we review that, and approve it and they have to pay a permit fee. Confidentiality, we do not make them public, permitted contractors can come in and look at our files, again for the purpose of finding out where those items are or where those sites are, but we care very much and don't want something right out there where anybody can go out and talke what they want. It is not the idea for us.

Chairman Holmberg is there a process by which a parcel of land that was declared cultural sensitive is there any kind of appeal or is the report that comes from the contractor gospel?

Fern Swensen (25.02) The report is reviewed by our office as well as the federal agency, so in this case there would not be a federal agency involved. Our staff would be reviewing the reports as well as the state land department would be reviewing those as well.

Chairman Holmberg The owner in this case is the State Land Department. The owner of the land, it isn't a private individual, but he might be farming it or grazing it, but it's not their land.

Chairman Holmberg any other questions.

Senator Marcellais has some testimony that he wants to hand out. Is there a sense on the committee of the direction that this committee should take on this bill?

Chairman Holmberg If we pass the bill and it goes to the House and gets positive review, then we would have to look at the budget, the question is do we want them to have this

authority and again I think they explained it very honestly why the bill is here and what the bill would do.

Senator Richard Marcellais, District 9, Rolette County testified in favor of SB 2357 and provided Testimony attached # 2. This bill would assist with the survey of all lands, create and maintain an inventory of those cultural resources, protect the Native American sacred lands, cemeteries, burial grounds, etc.

What we do when we get that report we send out a tribal preservation historical officer. I heard some questions about the burial grounds, we send out our tribal officer, if its bones, we make accommodations to move them to the cemetery for proper burial. It has happened in the past. We need to do this survey, and find out where all this is. We need to identify these, some are off the reservation. Thank you in support of 2357. (31.25)

Vice Chairman Bowman Let's say that you find some artifacts that would not allow anyone access to that but would it stop horizontal drilling underneath it if you are off that land?

Senator Marcellais replied it all depends on what goes on in the oil and gas lease. Depending on what the verbiage in that lease is, some of the natives want to preserve that culture so they set up the oil and gas lease so that they preserve the culture.

Senator Carlisle The need why we have to codify this, I am assuming you're talking to the Land Department and the commissioner has folks that go out to and work with oil companies, and pipeline people and easement people, and they try to do their best in this. If they'd been working already obviously if something comes up I am sure the commissioner gets notified and then they try to work it out. I understand the surveys are set. I am just looking at, the land department is already trying to do their best practice if you will, with the oil folks, in multiple corridors I guess you will. I am just trying to figure why the bill and that where I am coming from?

Senator Marcellais replied as I mentioned some of these incidents happen on native lands and I think there is a relationship between the land department and also the Tribes. There is another bill that came up in one of our committees that was talking about the National Indian Congress of Indians passed a resolution that they supported this type of survey for historical preservations. Now that is the group nationally of the Tribal Chairmen's. I can get you a copy of that resolution if you want. It was testified in our committee regarding that.

Senator Mathern Do you think this might prevent some conflicts? Sometimes there is options of development and if it was surveyed could it maybe prevent some conflicts?

Senator Marcellais I agree with you. The other thing is it would probably save some costs. When they find this it costs the contractor a lot to provide for the moving of Native American graves or whatever. But I think in the long run, if we did the survey ahead of time, if we knew where those were at up front.

Senate Appropriations Committee

SB 2357

02-14-13

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Chairman Holmberg Anyone else wishing to testify on 2357? Does the committee have any desire to do something? Do you want to wait? We will wait; we will close the hearing on SB 2357.

2013 SENATE STANDING COMMITTEE MINUTES

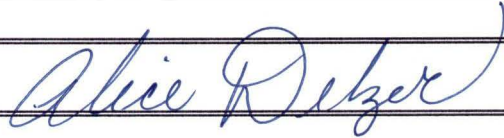
Senate Appropriations Committee

Harvest Room, State Capitol

SB 2357
02-15-2013
Job # 19054

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to the duties of the commissioner of University lands & director of State Historical Society (DO NOT PASS)

Minutes:

Chairman Holmberg called the committee to order. All committee members were present.

Senator Carlisle moved a Do Not Pass on 2357.

Vice Chairman Bowman seconded.

Discussion:

Senator Carlisle stated that the historical society can take college students to do this and explained his concern on why he can't support this. It has some good ideas but the historical society can work this out with their budget themselves.

Senator Warner stated that he resists that logic and thinks that having a broad overview of what's out there is very important to the industrial process as well.

Senator Mathern added that the tribes are taking it upon themselves to rebury some of these people and I think the survey on state lands is not only good for industry but also helps the tribes to move some of those bones to other areas that are set aside as sacred spots.

Roll Call Vote: 9 YES, 4 NO - motion Do Not Pass

Senator Carlisle will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2357

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$250,000	\$0	\$250,000	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 2 requires the Director of the State Historical Society to survey all public lands under the control of the Commissioner of the University and School Lands for cultural resources and to create an inventory. Section 1 requires the Commissioner to assist the State Historical Society.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 will require the State Historical Society of North Dakota to contract with entities to do the cultural resource surveys and to create an inventory. The estimated cost is \$250,000 per biennium. We assume the cost to contract the additional survey work would come from the general fund.

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.*

The measure does not provide for any additional revenues.

- 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.*

Section 2 will require the State Historical Society of North Dakota to contract with entities to do the cultural resource surveys and to create an inventory. The estimated cost is \$250,000 per biennium. We assume the cost to contract the additional survey work would come from the general fund.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The measure does not provide for any additional appropriations.

Name: David Skalsky

Agency: State Historical Society of ND

Telephone: 701-328-3562

Date Prepared: 02/04/2013

Date: 2-15-13Roll Call Vote # 1

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2357Senate Appropriations Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do NOT PassMotion Made By Carlisle Seconded By Bowman

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mathern		✓
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell		✓
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson		✓
Senator Ralph Kilzer	✓		Senator John Warner		✓
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 9 No 4Absent 0Floor Assignment Carlisle

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

REPORT OF STANDING COMMITTEE

SB 2357: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO NOT PASS** (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). SB 2357 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SB 2357

#1

Testimony
Senate Bill 2357 – relating to duties of the commissioner of university
and school lands and the director of the state historical society
Natural Resources Committee
Senator Lyson, Chairman
February 8, 2013

On behalf of the Native American Nations in the State of North Dakota Senate Bill 2357 would create and maintain an inventory of those cultural resources of both on and off the Native American reservations.

After signing treaties with the United States government from the 1850's to the 1870's, North Dakota Native Americans were placed on several reservations. Many tribal members remain on these reservations still today. There are five reservations in North Dakota, two of which occupy land in both South and North Dakota. The Spirit Lake Nation (Devils Lake Sioux) is located at Devils Lake, in east central North Dakota. The Fort Berthold Reservation is home to the Three Affiliated Tribes (Arikara, Hidatsa, and Mandan), and lies in the west-central part of the state along the Missouri River. The Standing Rock Reservation (Standing Rock Sioux) straddles both North and South Dakota and is about forty miles south of Bismarck. The Turtle Mountain Reservation (Chippewa and Metis) is the northernmost reservation, just below Canada in north central North Dakota. The Sisseton Reservation (Sioux) is predominantly in South Dakota, with just the northernmost edge in southeastern North Dakota. Keep in mind that some of the Native American lands maybe off the reservation such as in Pembina, Turtle Mountain Public Domain Lands near Williston.

This bill would assist with the survey of all lands, create and maintain an inventory of those cultural resources, protect the Native American sacred lands, cemeteries, burial grounds, etc.

Thank you very much for the opportunity to appear in support of Senate Bill 2357. I will try an answer any questions the committee may have.

Senate Bill 2357
Natural Resources Committee
February 8, 2013

Mr. Chairman and members of the Committee, my name is Fern Swenson, and I am the director of the Archaeology and Historic Preservation Division at the State Historical Society of North Dakota.

The State Historical Society supports Senate Bill 2357.

The State Historical Society of North Dakota is the sole repository for forms and reports related to recorded cultural resources and the results of investigations for the state. When federal or state projects are undertaken those agencies consult with the State Historic Preservation Office/State Historical Society regarding what is known about the project area. The files we maintain are important resources in making decisions. The spatial data is maintained in a Geographic Information System which is necessary in order to keep pace with the increasing number of projects in North Dakota. We review approximately 5,800 projects annually.

Only 6% of the state has been surveyed for cultural resources, this figure certainly indicates how little land has been examined. Most of these surveys were conducted as a result of federal undertakings (any activity related to a federal permit, on federal property, or as a result of federal funding). Surveys allow for consideration of cultural resources in the overall decision-making process for that project.

The US Forest Service manages over 1.1 million acres across the state. Approximately 41% of their lands have been surveyed and follow-up archaeological test excavations have been conducted to determine significance of archaeological cultural resources. Some federal agencies have surveyed more lands managed by them and others have inventoried less.

Of the State Trust Lands only 3% of the 708,407 acres have been surveyed. Thus, when the State Land Department requests information about known cultural resources on lands they manage, we have very little information to share. This bill would provide a mechanism to begin getting a handle on identifying what resources are on state property managed by the State Land Department. The aim is to gain information in order to make well-informed decisions about cultural resources and their significance.

Thank you.

#3

For the record,

Terry Clouthier, with the Standing Rock Sioux Tribe, we support the efforts to inventory the school lands in order to protect sensitive cultural sites for the benefits of the people of North Dakota and the tribes.

We support the initiative to avoid known cultural and historical sites on school lands and believe that this is the only proper way to accomplish that goal. The Standing Rock Sioux Tribe Tribal Historic Preservation would be willing to assist with these inventories to address tribal cultural sites.

We appreciate the many benefits oil development has brought to our area. We're also concerned about the relentlessness and rapidity of the development, especially when it threatens areas precious to all North Dakotans. We invite everyone who cares about the Killdeer Mountains to join the Killdeer Mountain Alliance:

"The Killdeer Mountain Alliance exists to preserve the cultural, spiritual, ecological, archaeological, and historical integrity of the Killdeer Mountains of western North Dakota and protect them from industrial development that harms the American Indian sites, plant and wildlife habitat, ranching, hunting, tourism, scenic beauty, and recreation for which the Killdeer Mountains are known and loved."

If you want to be on our mailing list, please sign our contact sheet or contact one of us. You can also link with us through our facebook site.

Lori Jepson
863-6653
<lorijepson@ndsupernet.com>

Rob Sand
863-7263
<killdeermtn@gmail.com>

Testimony on SB 2357

Before the Natural Resources Committee

8 February 2013

Tom Isern, Founding Director
Center for Heritage Renewal, North Dakota State University
Professor of History / University Distinguished Professor

My thanks to the committee for the opportunity today to bring a modest professional analysis, based on a review of recent events, before the committee as it considers this bill providing for an orderly survey of cultural resources on state trust lands.

There has been considerable public notice of the process whereby the state has leased certain lands adjacent to Killdeer Mountain for petroleum development. A key concern has been the status of Killdeer Mountain as a significant historical and archeological site. This caused me, as a scholar concerned with the conservation of heritage resources, not only to pay attention to the process in progress but also to inquire as to its customary mode of operation.

The question is, how do we ensure the conservation of irreplaceable historical and archeological resources located on our state lands when those lands are under development for mineral extraction, or for other purposes? More specifically, how do we know what is out there, so that we do not destroy it with the footprint of development, unawares?

The answer is, we don't know what is out there. On federal lands, there is a process, somewhat flawed but established and functioning, for survey prior to development. On state lands, we have a sort of informal process, but it has palpable deficiencies.

I am grateful to many parties for helping me to understand the process as it stands now. These people, such as Lance Gaebe at the Land Board and Fern Swenson at the State Historical Society of North Dakota, are good public servants. They struggle to do what needs to be done under statute—to cooperate in the preservation of historical and archeological resources—with a process that is flawed.

Having investigated the process, I described it earlier this week, on Tuesday, in a guest editorial for the *Bismarck Tribune*. A copy of that piece is attached to my testimony, but let me quote from it here in order to show the problem with our current process.

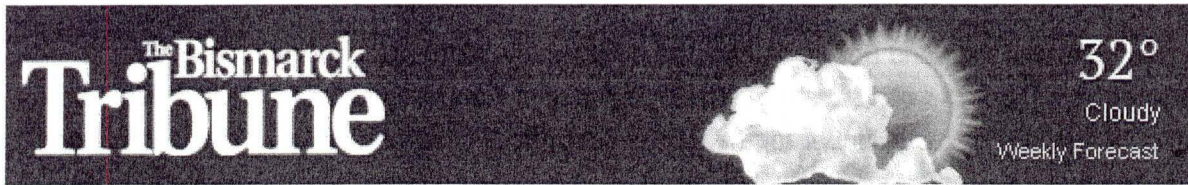
The process with reference to heritage resources on the state lands works this way. Before the land department lists tracts for potential leasing, it calls for the Historic Preservation Department of the State Historical Society to provide its records of historic and archeological resources known to be present. Land Commissioner Lance Gaebe takes these records into account as leases are bid and negotiated, and again, especially, when the land board negotiates with an oil company the surface damage agreement that will govern how development proceeds and collateral damage is compensated. The land board has considerable leverage at this point in the process.

Agreements with the land board in hand, the oil company still has to go through the well permitting process with the State Industrial Commission Oil and Gas Division. The O & G Division has a hearing (done last October for the Killdeer Mountain lands) and makes a recommendation to the industrial commission. . . .

[However], there is a hole in the process at the leasing stage. The information that the land board gets from the state historical society is incomplete to nonexistent. This is not the fault of either the land board or the historical society. Information exists only if some previous, likely federal, development has generated earlier cultural resource survey work. There is no provision in the process, as there should be, for physically going over the ground to determine what heritage resources are there. Consequently, leases and agreements can be concluded which directly threaten significant heritage resources. This happened, despite technical adherence to law by all parties involved, in the matter of Killdeer Mountain.

SB 2357 seeks to get ahead of this problem by providing for an orderly survey of state trust lands to discover their historical and archeological resources. The purpose is to guide and facilitate prudent and profitable development of our lands, while safeguarding our heritage resources. In my professional opinion, this is a timely, indeed overdue, measure, and so I commend the bill to you with informed enthusiasm. Thank you, again.

complete



Killdeer Mountains threatened by process

By TOM ISEERN Fargo

It is time for more light and less heat on the issue of petroleum development in northern Dunn County.

The leasing by the state of certain school trust lands in the Killdeer Mountains locality for petroleum development has sounded alarms among historians, archaeologists and all friends of antiquities.

Those questioning the development make three points:

First, the Killdeer Mountains area is a site of religious and cultural importance to several native peoples of the region. Second, it was the site, in 1864, of one of the most significant military engagements in the history of Indian-white conflict on the northern plains. Third, the Killdeer Mountains environs are known to be rich in archeological material. Heedless development, thus, may imperil irreplaceable heritage resources.

Is this, then, heedless development? It is not, but neither is it well considered. Public scrutiny prompted by the proximity of development to such a noteworthy site as the Killdeer Mountains has exposed problems with the processes for conserving our heritage.

The state trust lands at issue are school lands, a legacy of federal frontier land policy, granted to the state for the support of public schools. The Department of Trust Lands, under direction of the Board of University and School Lands, manages them for revenue that the Legislature then appropriates for education. We are fortunate to have these lands. We have been wise to retain them.

The process with reference to heritage resources on the state lands works this way: Before the land board lists tracts for potential leasing, it calls for the Historic Preservation Office of the State Historical Society to provide records of historic and archeological resources known to be present. Land Commissioner Lance Gaebe takes these records into account as leases are bid and negotiated, and again, especially, when the Land Board negotiates with an oil company the surface damage agreement that will govern how development proceeds and collateral damage is compensated. The Land Board has considerable leverage at this point in the process.

Agreements with the Land Board in hand, the oil company still has to go through the well-permitting process with the state. The Department of Mineral Resources' Oil and Gas Division has a hearing (done last October for the Killdeer Mountains land) and makes a recommendation to the state Industrial Commission. On Jan. 24, the commission adopted the recommendation by Mineral Resources Director Lynn Helms to proceed with permitting on the state trust lands in the Killdeer Mountains.

In addressing the issue of heritage resources on state trust lands, there is a need for reasonable good will by state officials and by the public. We, the public, need to want to solve these problems, not exploit them for some perceived advantage.

There are two obvious issues illustrated by how the Killdeer Mountains situation has unfolded.

First, Helms, in public statements and personal communications, does not take cognizance of state law (55-10-09 of the state Century Code), which requires all state agencies to cooperate with the state Historical Society in the preservation of historic and archeological sites. The law is imperative, and it is crystalline. It is qualified somewhat by a 1988 opinion of Attorney General Nick Spaeth, but that opinion by no means absolves any agency of its obligations under the law

Second, and in the long run more important, there is a hole in the process at the leasing stage. The information that the Land Board gets from the State Historical Society is incomplete to nonexistent. This is not the fault of either the Land Board or the Historical Society. Information exists only if some previous, likely federal, development has generated earlier cultural resource survey work. There is no provision in the process, as there should be, for physically going over the ground to determine what heritage resources are there. Consequently, leases and agreements can be concluded that directly threaten significant heritage resources. This happened, despite technical adherence to law by all parties involved, in the matter of the Killdeer Mountains.

With respect to a heritage site as profoundly significant as the Killdeer Mountains, we should move deliberately, reset if necessary, and address public concerns. As for the general process _ that wants reform, which requires legislative attention.

(Tom Isern is professor of history, university distinguished professor, and director of the Center for Heritage Renewal at North Dakota State University. Opinions here expressed are not necessarily those of NDSU.)

http://bismarcktribune.com/news/columnists/killdeer-mountains-threatened-by-process/article_1797841e-6cd9-11e2-ab42-0019bb2963f4.html

5 February 2013




Senate Bill 2357
Senate Appropriations Committee
February 14, 2013

Mr. Chairman and members of the Committee, my name is Fern Swenson, and I am the director of the Archaeology and Historic Preservation Division at the State Historical Society of North Dakota.

The State Historical Society supports Senate Bill 2357 because this will provide a means to gain the information needed to make decisions regarding cultural resources and their significance on State Trust Lands. It is more efficient to know what is present than to have to deal with an unexpected discovery situation during construction.

The State Historical Society of North Dakota is the sole repository for forms and reports related to recorded cultural resources and the results of investigations for the state. When federal or state projects are undertaken those agencies consult with the State Historic Preservation Office/State Historical Society regarding what is known about the project area. The files we maintain are important resources in making decisions. The spatial data is maintained in a Geographic Information System which is necessary in order to keep pace with the increasing number of projects in North Dakota. We review approximately 5,800 projects annually.



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The US Forest Service manages over 1.1 million acres across the state. Approximately 41% of their lands have been surveyed and follow-up archaeological test excavations have been conducted to determine significance of archaeological cultural resources. Some federal agencies have surveyed more lands managed by them and others have inventoried less.

Of the State Trust Lands only 3% of the 708,407 acres have been surveyed. Thus, when the State Land Department requests information about known cultural resources on lands they manage, we have very little information to share. This bill would provide a mechanism to begin getting a handle on identifying what resources are on state property managed by the State Land Department. We would begin by surveying lands that are in areas with the greatest development and at the same time look at the areas with high potential for cultural resources to be present. The aim is to gain information in order to make well-informed decisions about cultural resources and their significance. Knowing ahead of time allows for thoughtful planning and alternatives to be considered.



Thank you.



Testimony
Senate Bill 2357 – relating to duties of the commissioner of university
and school lands and the director of the state historical society

Appropriation Committee
Senator Holmberg, Chairman

February 14, 2013

For the record my name is Richard Marcellais, Senator from District 9
Rolette County.

On behalf of the Native American Nations in the State of North Dakota
Senate Bill 2357 would create and maintain an inventory of those
cultural resources of both on and off the Native American reservations.

After signing treaties with the United States government from the
1850's to the 1870's, North Dakota Native Americans were placed on
several reservations. Many tribal members remain on these reservations
still today. There are five reservations in North Dakota, two of which
occupy land in both South and North Dakota. The Spirit Lake Nation
(Devils Lake Sioux) is located at Devils Lake, in east central North
Dakota. The Fort Berthold Reservation is home to the Three Affiliated
Tribes (Arikara, Hidatsa, and Mandan), and lies in the west-central
part of the state along the Missouri River. The Standing Rock
Reservation (Standing Rock Sioux) straddles both North and South
Dakota and is about forty miles south of Bismarck. The Turtle
Mountain Reservation (Chippewa and Metis) is the northernmost
reservation, just below Canada in north central North Dakota. The
Sisseton Reservation (Sioux) is predominantly in South Dakota, with
just the northernmost edge in southeastern North Dakota. Keep in mind
that some of the Native American lands maybe off the reservation such
as in Pembina, Turtle Mountain Public Domain Lands near Williston.

This bill would assist with the survey of all lands, create and maintain
an inventory of those cultural resources, protect the Native American
sacred lands, cemeteries, burial grounds, etc.

Thank you very much for the opportunity to appear in support of
Senate Bill 2357. I will try an answer any questions the committee may
have.