

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2224

2001 SENATE AGRICULTURE

SB 2224

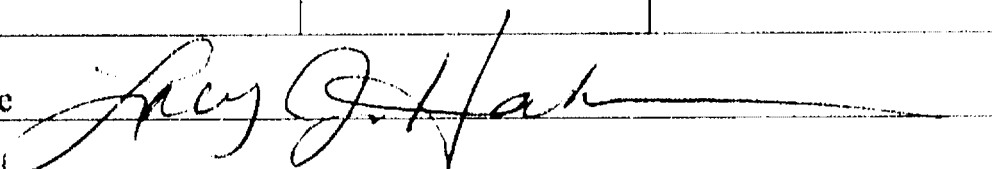
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2224

Senate Agriculture Committee

☐ Conference Committee

Hearing Date January 26, 2001

Tape Number		Side A	Side B	Meter #
Jan. 26	1	X		25.8 - 32.2
Feb. 1	2	X		0.0 - 9.9
Committee Clerk Signature				

Minutes:

SENATOR NICHOLS; Sponsor, introduced this bill. This bill simply states that highways with no-mow areas may be hayed or mowed after July 15th of each year without payment or penalty

SENATOR O' CONNELL; Sponsor, testified in support of this bill.

SENATOR SOLBERG; Sponsor, testified in support of this bill. Economic bill. This a resource that we are not using, could be used for hay.

REPRESENTATIVE DELZER; Sponsor, testified in support of this bill.

SENATOR KLEIN; Are we going to lose transportation dollars?

REPRESENTATIVE DELZER; It is my understanding the government has the right to open areas for haying in times of need. I think this bill will go a little beyond that and say that it is always open after the fiftieth of July.

BRIAN KRAMER; ND Farm Bureau, testified in support of this bill. We have been supportive of trying to remove the no-mow restrictions on the highways since there inception. Insurance losses - accidents from the lack of haying along roads.

JULIE ELLINGSON; ND Stockman's Association, testified in support of this bill. We believe that this bill will save time and money for the highway department in terms of snow removal and at the same time put the grass into good use in terms of livestock feed.

ROBERT WIRTZ; testified in support of this bill. Shared with the committee the things that have happened to him over the years since the highway was put in. The highway runs through his ranch, taking away more than 7 acres.

SENATOR WANZEK; Do you feel that you were mislead in believing that you could mow in a no-mow area and they confiscated your hay after the fact.

DALLAS MOORE; Testified in support of this bill.

BILL PFEIFER; ND Chapter The Wildlife Society, testified in opposition to this bill. See attached testimony.

SENATOR ERBELE; What detrimental effect do you see for wildlife by mowing after July 15th?

BILL PFEIFER; If this is mowed every year you don't get the taller, denser stand and is probably advantageous to mow this every four or fifth year by removing this because then you start to encourage the presence of small animals.

SENATOR URLACHER; Are all no-mow areas under replacement for habit?

BILL PFEIFER; Yes, they are.

SENATOR NICHOLS; Cost for the farmers - loss of land in field and pasture.

GRANT LEVI; NDDOT - Deputy Director for Engineering, provided information and presented maps showing the no-mow areas.

SENATOR WANZEK; How is the amount of acres that are affected determined?

GRANT LEVI; It is part of our project development process. We send a biologist out, who goes through and identifies either thought the soil or the water present, the wetland acres.

SENATOR KLEIN; Will this bill hurt transportation funding?

GRANT LEVI; I am not sure.

SENATOR NICHOLS; At the time these evaluations were made, were there an exact determination on the trade.

GRANT LEVI; It varies depending on the project.

SENATOR URLACHER; Can a certain portion along the road be mowed for safety?

GRANT LEVI; We do allow the top of the road and the in slope of the roadway. We cut them down for snow, and provides visibility for drivers.

The hearing was closed.

February 1, 2001

Discussion was held:

SENATOR KLEIN; I think that we are being sensitive to the nesting time.

SENATOR URLACHER; This bill allows landowners to cut in the no-mow areas but some of that is already used for mitigation and they wouldn't be able to break the mitigation.

SENATOR KLEIN moved DO PASS on this bill.

SENATOR ERBELE seconded the motion.

SENATOR URLACHER; They don't recognize a lot of acres that are wildlife habitat. Look at all the CRP we have. It is there because of wildlife, I am for any land we can open up.

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Senate Agriculture Committee

Bill/Resolution Number SB 2224

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SENATOR URLACHER; There is more wildlife numbers today than there ever has been and

there is still the discussion that we are ruining habitat but we are building habitat as well.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR NICHOLS will carry the bill.

**CO**

**NT**

**NEXT FICHE**

Date: 2-1-01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. ~~SB 2224~~

2224

Senate Agriculture Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

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

Action Taken DO PASS

Motion Made By SEN. KLEIN Seconded By SEN. ERBELE

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment SENATOR NICHOLS

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



**REPORT OF STANDING COMMITTEE (410)**  
**February 1, 2001 4:36 p.m.**

**Module No: SR-18-2167**  
**Carrier: Nichols**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2224: Agriculture Committee (Sen. Wanzek, Chairman) recommends DO PASS**  
**(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2224 was placed on the**  
**Eleventh order on the calendar.**

2001 HOUSE AGRICULTURE

SB 2224

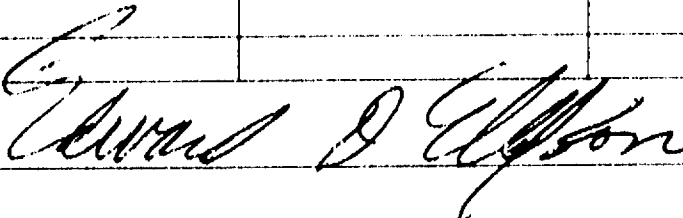
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2224

House Agriculture Committee

☐ Conference Committee

Hearing Date 3--1--01

Tape Number	Side A	Side B	Meter #
FOUR	A		00 TO 4200
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: WE WILL OPEN THE HEARING ON SB 2224.

REPRESENTATIVE DELZER: SB 2224 is a bill that would have to do with the now mow areas. It would allow haying after July 15th. This has been an on going situation. I know the Governor can allow mowing after July 15th. This would simply make it open all the time. I think it is a good idea. I don't see any reason why we don't do it. I'd much like to see my ditches mowed. I am here in support of the Bill.

SEN. NICHOLS: Thank you Mr Chairman. Dist 4. This bill would allow for mowing after July 15. This date was chosen specifically so that the Governor could permit mowing after that date. When easements agree being taken the date is July 15. Why we should pass this Bill. Safety reasons. Animal are harder to see without the mowing. Snow is also a problem in the no hay areas. The high ways are more expensive to maintain in the no mow areas.

Noxious weeds are also a problem. The highway department try's to do a good job, I know.

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House Agriculture Committee  
Bill/Resolution Number SB 2224  
Hearing Date 3--1--01

There are economies involved. Hay to farmers and ranchers. There are 8,100 acres I think that fit under this designation. Three to four bales per acre which is fairly conservative. We are looking at about \$500,000.00 dollars of economic impact for farmers and ranchers across the state. Each of the ranchers that testified in the Senate hearing last week testified that they were promised that they could hay in their areas. They are trying to correct the situation so that they can hay. We will have to get together with the Federal dollars and if we can get the Governor to sign it we will be able to get together with DOT Federal Departments, etc.

CHAIRMAN NICHOLAS: Rep. Mueller

REP. MUELLER: How many miles are we talking about.

Sen. Nichols: The miles are primarily along Highway # 2 and Highway # 83.

The right away was purchased. on highway #. The two lanes were not built so there is more hay along #2

SEN SOLBERG: Dist. 7 This is a good Bill. Cost savings to Highway Department. Cost savings to the Highway Department. Certainly to the benefit of the land owner that has given up land. We would like to have our no mow areas back. We here we will lose Federal Dollars but I think we should call their Bluff. We can sit down and talk to DOT FEDERAL. I think it is time that we do something for the farmers and ranchers.

CHAIRMAN NICHOLAS: Any more support for HB 2224. Any opposition to 2224.

DAVID SPRYNCZYNATYK: DIRECTOR OF NDDOT.

PLEASE SEE PRINTED TESTIMONY THAT IS ATTACHED.

Mr Chairman and Committee Member: Any questions:

REPRESENTATIVE FROELICH: Is there any chance that the mowing could be done every other year, rather than every year.

DAVID S: The reference to the periodic mowing is not just every other year. It is every five years or so. It depends on what has happened in the mean time in terms of water conditions. What the role of the habitat has been? The need to cut to revitalize it etc. There is no definition. It just says periodic. The no mow has been enforced since the agreements have been entered into. Those go back to the 70's and 80'. There have been a number of occasions six or seven or so years because of the disaster declaration. The Governor has declared disaster and has stated and allowed us to go in and have those areas mowed earlier to provide hay. To my knowledge it has been enforced since the very beginning. When ever we hear of a violation we go out and with the land owner and catch it before he mows the whole area.

CHAIRMAN NICHOLAS: Any other questions?

Vice Chairman Johnson: Has there ever been conversation of moving these acres?

DAVID S: Yes, there has been recently. That second alternative is, the state could be required to mitigate the environmental impact of allowing mowing on right of way currently designated 'no-mow'. The states cost to purchase the necessary land would amount to 2 million to \$2.5 million. Please look at the no-mow areas map. We would acquire land near the areas that would be released from the no-mow area. Look at the map and see the distribution. In the event that SB 2224 dose pass into law that would certainly be one of the first things we would want to do is to try to work with the Federal Hi-way Administration and the other agencies. See what it is that we would have to do. We certainly not in any position to repay the farmers. My concern is that this would increase the cost to our department to about

\$2 million dollars. That could push back other projects. My testimony addresses the whole 350 mile stretch.

Rep. Onstad: Who is going to file complaints?

David S: We went into binding agreements. The law did require mitigation. The idea of the no-mow areas were accepted and agreed. It would be the Federal Hi-way administration that would come back at us for violating the agreement. The legal binding agreement that we had with them.

REP. LLOYD: What kind of compensation was arranged initially with farmers with No-hay areas.

DAVID S: The lands that we are talking about was compensated at \$4 to \$450. per acre.

I have not been aware that any where in the contract with the landowners that said in addition to the payment for the land they also have rights also to other areas for mowing. This was tested in the courts a few year ago. The court said dose in fact belong to the state and there is no documentation that would give the former land owner any right to it. The sold it.

Rep. Mueller: Can this be worked out with the Federal Hi-way department.

DAVID S: The Federal Hi-way Administration is seriously concerned about this Bill. They believe it violates agreement that we have. That is where they laid out these two alternatives that I described to you.

REPRESENTATIVE LEMIEUX: If we give up 8,000 acres of Hi-way safety for 140 acres of wetland. That is an awful price to pay because I cruise along these Hi-ways. I consider the no-mow area a hazardous zones.

DAVID S: I don't disagree with you. It was my predecessor in the 70's and 80's that agreed to this. The fact at that point of time, the director commissioner thought that that was appropriate.

REPRESENTATIVE LEMIEUX: If it was about 150 acres. Do we have a wetlands bank that we could draw on for militating those acres out. Can we do that someway?

DAVID S: We tried to develop a wet lands bank. We don't have one in place.

We think that there is merit in developing a wetland bank. We are going to explore it so that we could mitigate projects.

CHAIRMAN NICHOLAS: Any other testimony for this Bill. Any opposition?

BILL PFEIFER: Thank you Mr Chairman. Please see printed testimony

CHAIRMAN NICHOLAS: I am going to appoint a Sub Committee.

REPRESENTATIVE LLOYD: I guess I am somewhat confused with regard to the number of acres that are in question? To me there is 142 on this side of wetland acres and 8200 over here that were acquired. That is a long way between acres for wild life and I am trying to understand the contradiction between those two values.

BILL PFEIFER: There is quite a ration there. I have no idea how that was put together.

I'll get this information back to your Chairman.

CHAIRMAN NICHOLAS: Committee Members, what I am going to do is appoint a subcommittee to work with Bill and the Department and Senator Nichols and see if there is something that can be worked out. I am going to appoint Representative Lloyd as chairman of that subcommittee and appoint Rep. Wrangham on that subcommittee, and Rep. Sandvig.

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House Agriculture Committee

Bill/Resolution Number SB 2224

Hearing Date 3--1--01

See if there is some mutual ground here. Sen. Nichols has some interest in Bill proposal and see if there is some middle ground.

BILL PFEIFFER: I think it is going to save face. By the way, in visiting with couple of the agencies. It sound like there are several alternatives already be discussed. That probably will be acceptable to both. So I don't think it is a impossible thing to do.

CHAIRMAN NICHOLAS: Any other comments on this Bill. I think we have a direction for this Bill 2224. WE WILL CLOSE ON SB 2224.



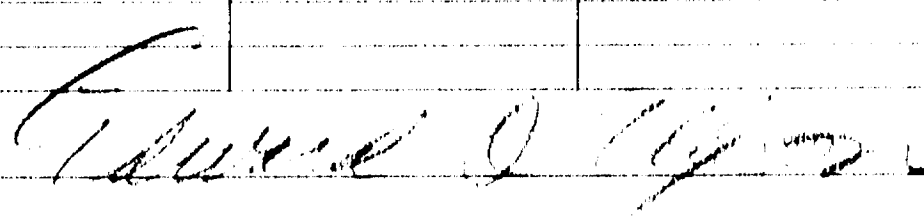
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2224

House Agriculture Committee

☐ Conference Committee

Hearing Date 3--16--01

Tape Number	Side A	Side B	Meter #
TWO	A		295 TO 1954
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: COMMITTEE MEMBERS, WE WILL OPEN THE HEARING ON SB2224. THE BILL RELATES TO HAYING OF NO-MOW AREAS.

AS TO THE AMENDMENTS: PLEASE SEE ATTACHED AMENDMENTS: S SECTION 3, EFFECTIVE DATE. SECTION 1 OF THIS ACT BECOMES EFFECTIVE ON JANUARY 1, 2004. THERE IS A MOTION FOR A DO PASS AS TO THE AMENDMENTS.

REPRESENTATIVE LLOYD MADE THE MOTION AND IT WAS SECONDED BY REPRESENTATIVE PIETSCH.

REPRESENTATIVE LLOYD: CHAIRMAN NICHOLAS, I MIGHT EXPLAIN A LITTLE BIT. THERE WERE CONCERNS TO THE NO MOW ISSUE THAT SENATOR NICHOLS BROUGHT TO US. THE BILL AS ORIGINALLY PRESENTED BASICALLY SAID THAT THE PERSON OWNING THE LAND ADJACENT TO AN AREA WITHIN THE RIGHT OF WAY OF A HIGHWAY WHICH IS DESIGNATED AS A NO-MOW AREA MAY HAY THE

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House Agriculture Committee  
Bill/Resolution Number SB 2224  
Hearing Date 3--16--01

THE NO-MOW OR MANAGED-MOW AREA AFTER JULY FIFTEENTH WITHOUT ANY PAYMENT OR PENALTY. THAT WAS THE ORIGINAL BILL. THE ENGROSSED VERSION CHANGES SOME THINGS IN THERE. THERE WERE THREE OF US ASSIGNED TO THIS BILL AS A SUB-COMMITTEE. REP. SANDVIG, WRANGHAM AND MYSELF. THE ISSUE THAT WE ACCOMPLISHED I THINK WAS MEETING WITH THE DOT. WE CAME OUT OF THAT MEETING FEELING GOOD BECAUSE THERE WAS A LOT OF DISCUSSION BECAUSE OF THE FEDERAL HIGHWAY DEPARTMENT, HAVING A MORE ACCEPTABLE STAND WITH REGARD TO CORRECTION AND CHANGE AND ASSISTANCE FOR THIS PROBLEM. IT HAS BEEN GOING ON FOR MANY YEARS. WE HAD A SIT DOWN MEETING WITH THE FISH AND WILD LIFE SERVICE. USF AND WILD LIFE SERVICE IS IN ONE HUNDRED PERCENT AGREEMENT WITH ATTEMPTING TO RESOLVE THIS ISSUE. MY UNDERSTANDING IS SO IS THE ND GAME AND FISH. THIS AMENDMENT, AS A RESULT OF THAT MEETING AND EVERYBODY SEEMS TO BE IN AGREEMENT WITH THE AMENDMENT THAT WE PRESENTED AND DISCUSSED WITH IT. BASICALLY THERE ARE SEVERAL THINGS ABOUT IT YOU NEED TO UNDERSTAND. THE DIRECTOR OF THE DOT SHALL WORK WITH THE APPROPRIATE STATE AND FEDERAL AGENCIES. TO EVALUATE THE REASONABLE AND APPROPRIATE ENVIRONMENTAL MITIGATION OPTIONS. THOSE MITIGATION OPTIONS, AS WE HAVE DISCUSSED WITH THE PART OF THE HIGHWAY THAT IS GOING TO CONTINUE TO BE EXPANDED INTO THE FOUR LANE FROM STANLEY ON OUT WILL BE IMMEDIATELY ABSORBED INTO HOW THIS AMENDMENT STATES. IN

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House Agriculture Committee

Bill/Resolution Number SB 2224

Hearing Date 3--16--01

OTHER WORDS THEY WILL START TO MITIGATE THAT, THAT PORTION OF THAT HIGHWAY. THE OTHER THING THE MITIGATION WILL CONTINUE WITH REGARD TO THE OTHER SEGMENTS OF THE HIGHWAYS THAT ARE INCLUDED. THE DIRECTOR SHALL SUBMIT A PLAN TO THE FIFTH-EIGHTH LEGISLATIVE ASSEMBLY. SO DOT WILL SUBMIT A PLAN NEXT LEGISLATIVE SESSION. TO ELIMINATE AREAS DESIGNATED AND ELIMINATE THE AREAS DESIGNATED AS NO-MOW MANAGED AREAS AND RIGHT OF WAY. THE OTHER THING ABOUT THIS AMENDMENT IS IN SECTION THREE. JAN. 1, 2004 EFFECTIVE DATE. THEY NEED A LITTLE EXTRA TIME, SO WE AGREED TO THAT. FISH AND WILD LIFE FEELS THAT THE MAJORITY OF THE MONEY WILL COME FROM THE FEDERAL GOVERNMENT. TO MITIGATE THE SITUATION. THEY FEEL THAT THERE IS A LOT OF LEEWAY TO RESOLVE THE ISSUE IN THE FACT THAT THEY MAY FIND ONE SINGLE AREA AND LET THAT BE THE MITIGATION FOR THE WHOLE HIGHWAY SYSTEM. THEY SAID THAT IF THEY CAN DO THAT, THAT IS WHAT THEY WILL DO. WHETHER AN EASEMENT OR OUTRIGHT PURCHASE OR WHAT EVER BUT THEY WOULD BE WILLING TO DO THAT. IT MAY HAVE TO DO IT IN AREAS I LIKE THE WAY IT IS STRUCTURED.

CHAIRMAN NICHOLAS: WE ARE TALKING ABOUT 8000 THOUSAND ACRES.

REPRESENTATIVE BERG: WE ARE KEEPING THE ISSUE ALIVE UNTIL NEXT SESSION. BUT THE BILL AS IT CAME IN I WAS STRONGLY OPPOSED TO THE BILL.

FROM A PERSON THAT HAS BOUGHT HAY TO FEED CATTLE WHICH YOU DON'T WANT TO DO AND YOU SEE HAY IN THE DITCHES IT IS FRUSTRATING. FUNDAMENTALLY, PEOPLE SOLD LAND TO BUILD A HIGH WAY. THEY GOT PAID THEY DON'T HAVE A RIGHT TO GO BACK IN AND HAY THAT. TO SOME DEGREE, I THINK THAT WE ARE TRYING TO FIX SOMETHING THAT IF YOU BELIEVE IN PROPERTY RIGHTS AND THEY HAVE SOLD THE PROPERTY THEY SHOULD NOT HAVE THE RIGHT TO GO FARM IT. IT IS PRETTY CREATIVE THE WAY THEY HAVE USED THE DITCHES FOR WETLANDS. SAVED OTHER ACRES THAT WERE FARMING THE DITCHES SO IF WHAT HAPPENS HERE IS WHAT WE WANT TO HAPPEN, POTENTIALLY THEY WILL TAKE THE DITCHES AND GO OUT AND BUY ACRES THAT MAY BE CULTIVATED ACRES TO MITIGATE THIS THAT MAY OR MAY NOT BE BETTER. THAT MAY BE BETTER LAND THEN THE DITCHES. IT JUST COST A WHOLE LOT OF MORE MONEY. IT IS FED. MONEY BUT IN A SENSE IT IS OUR MONEY. WE ARE GOING TO END UP WITH THE SAME SITUATION. IN A DIFFERENT PLACE. THE BOTTOM LINE FOR ME IS I SUPPORT THE AMENDMENTS AND THE BILL IN TERMS OF KEEPING IT ALIVE BUT I DO FEEL THAT WE ARE KIND OF CROSSING IN WRONG DIRECTION:

CHAIRMAN NICHOLAS: REPRESENTATIVE BERG SOME OF THIS DITCH HAY IS PRETTY DARN GOOD HAY. WHERE YOU GET OUT WEST WHERE THEY REALLY NEED THE HAY AND YOU GET IN OUR AREA WHERE THEY HAVE HAD EXCESSIVE RAIN FALL ARE ABLE TO GO IN AND PUT SOME ALFALFA OR NATIVE GRASS'S OR WHAT EVER ON SOME OF THAT LAND.

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House Agriculture Committee

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Hearing Date 3--16--01

REPRESENTATIVE LEMIEUX: MENTIONED...A LOT OF ROAD KILL BASICALLY  
BECAUSE OF BIRDS ETC. IN DITCHES WITH HAY.

CHAIRMAN NICHOLAS: WE DO HAVE A DO PASS ON THE AMENDMENTS.

THE CLERK WILL TAKE THE ROLL. THERE WERE""14 YES""0 NO""1 ABSENT.

REPRESENTATIVE RENNER WILL CARRY THE BILL.

WE WILL CLOSE THE HEARING ON SB 2224.

VR  
3/16/01

PROPOSED AMENDMENTS TO SENATE BILL NO. 2224

HOUSE AMENDMENTS TO SB 2224 HSE. AGR. 3-16-01

Page 1, line 2, after "areas" insert "; to provide for a report to the legislative assembly; and to provide an effective date"

Page 1, after line 9, insert:

**"SECTION 2. NO-MOW AREAS - REPORT TO LEGISLATIVE ASSEMBLY.**

The director of the department of transportation shall work with the appropriate state and federal agencies to evaluate reasonable and appropriate environmental mitigation options and alternatives. The director shall submit a plan to the fifty-eighth legislative assembly to eliminate areas designated as no-mow or managed-mow areas from the right of way adjacent to highways under the department's jurisdiction.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on January 1, 2004."

Renumber accordingly

Date: 3-16-01  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2221

House AGRICULTURE

Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number

AS AMENDED

Action Taken

DO PASS

Motion Made By

Mueller

Seconded By

Free Rich

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	<input checked="" type="checkbox"/>		Rod Froelich	<input checked="" type="checkbox"/>	
Dennis E. Johnson - Vice Chairman	<input checked="" type="checkbox"/>		Doug Lemieux	<input checked="" type="checkbox"/>	
Rick Berg	<input checked="" type="checkbox"/>		Philip Mueller	<input checked="" type="checkbox"/>	
Michael Brandenburg	<input checked="" type="checkbox"/>		Kenton Onstad	<input checked="" type="checkbox"/>	
Joyce Kingsbury	<input checked="" type="checkbox"/>		Sally M. Slandvig	<input checked="" type="checkbox"/>	
Myron Koppang	<input checked="" type="checkbox"/>		Dennis J. Renner	<input checked="" type="checkbox"/>	
Edward H. Lloyd	<input checked="" type="checkbox"/>		Dwight Wrangham	<input checked="" type="checkbox"/>	
Bill Pietsch	<input checked="" type="checkbox"/>				

Total (Yes)

14

No

0

Absent

1

Floor Assignment

Mueller

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

**REPORT OF STANDING COMMITTEE**

**SB 2224: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2224 was placed on the Sixth order on the calendar.

Page 1, line 2, after "areas" insert "; to provide for a report to the legislative assembly; and to provide an effective date"

Page 1, after line 9, insert:

**"SECTION 2. NO-MOW AREAS - REPORT TO LEGISLATIVE ASSEMBLY.**

The director of the department of transportation shall work with the appropriate state and federal agencies to evaluate reasonable and appropriate environmental mitigation options and alternatives. The director shall submit a plan to the fifty-eighth legislative assembly to eliminate areas designated as no-mow or managed-mow areas from the right of way adjacent to highways under the department's jurisdiction.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on January 1, 2004."

Renumber accordingly



2001 TESTIMONY

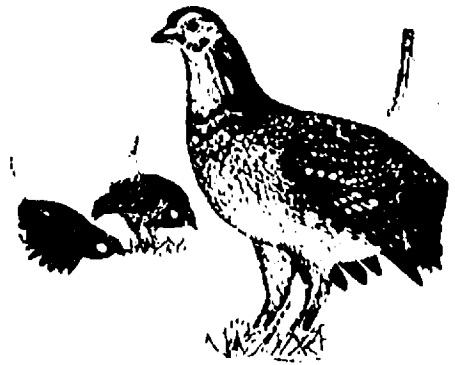
SB 2224



*North Dakota Chapter*

## **THE WILDLIFE SOCIETY**

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF BILL PFEIFER  
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY  
PRESENTED TO THE SENATE AGRICULTURE COMMITTEE  
ON SB 2224, JANUARY 26, 2001**

**MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:**

I'm Bill Pfeifer representing the North Dakota Chapter of The Wildlife Society. The Wildlife Society opposes SB 2224.

No-mow or managed-mow areas are those portions of road right-of-way that serve as mitigation for wetlands disrupted during highway construction.

In exchange for receiving federal funds for construction of these highways, the North Dakota Department of Transportation was obligated to comply with the National Environmental Protection Act (NEPA) which requires mitigation for the loss of wetland acres.

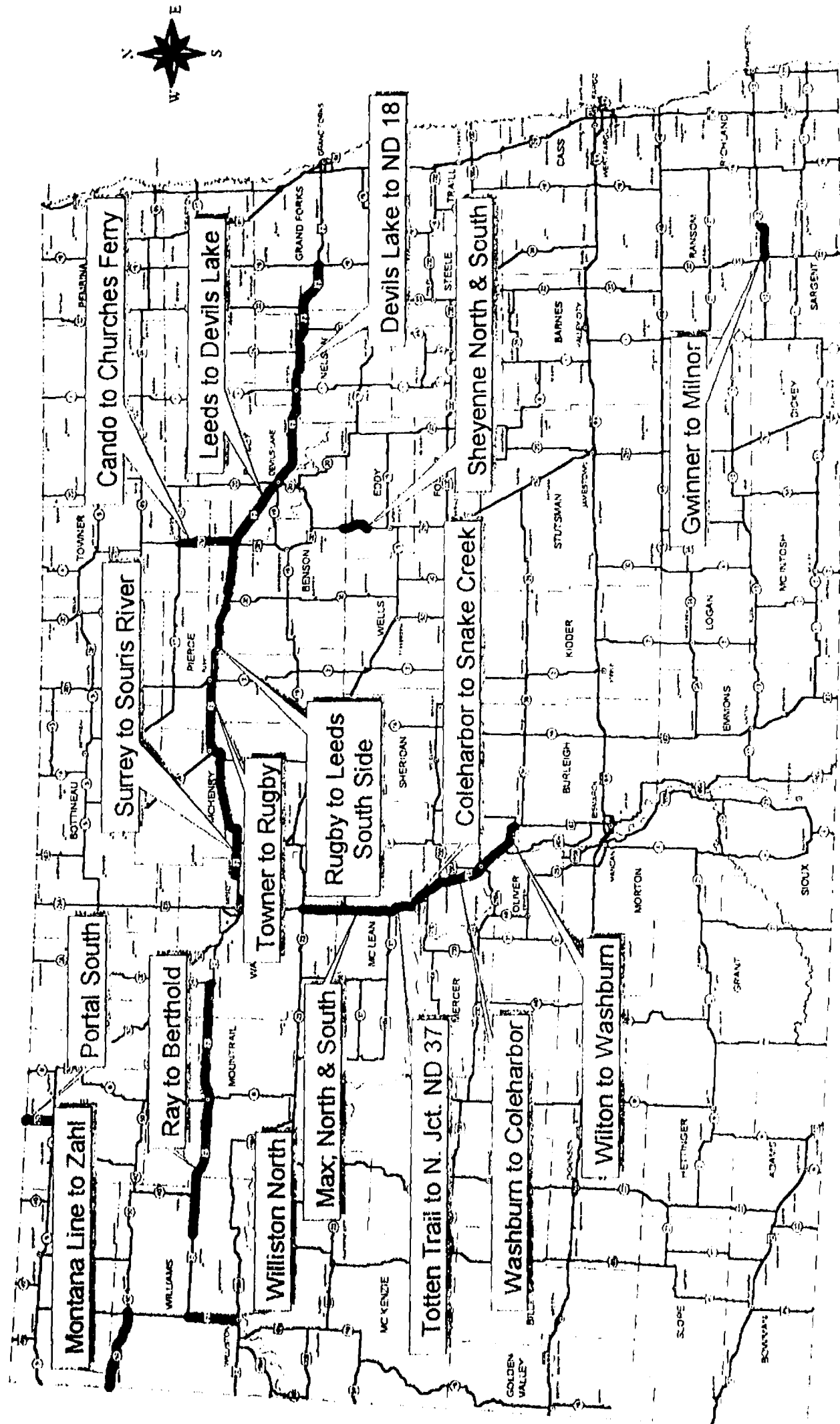
An agreement was reached whereby the North Dakota Department of Transportation could utilize the road right-of-way to satisfy the NEPA compliance thereby reducing North Dakota's cost of purchasing additional off-site lands to replace the wetlands destroyed during construction.

A condition of this agreement prevented the mowing of certain portions of the right-of-way and those portions could be mowed only when declared a drought emergency by the governor of North Dakota. These right-of-way areas were to serve as wildlife nesting habitat. All parties to this agreement, including the landowners adjacent to the managed-mow areas, consented to this agreement. Landowners were paid for the

lands that are now under the management of the North Dakota Department of Transportation.

According to SB 2224, landowners adjacent to these manage-mow areas would be allowed to break this agreement and mow these areas on an annual basis thereby removing the governor's drought emergency clause.

Passing SB 2224 will only conflict with federal law and likely will not serve as a solution. Therefore, The Wildlife Society opposes SB 2224 and requests a DO NOT PASS.



STATE OF  
**NORTH DAKOTA**  
PREPARED BY THE  
 NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
 MAINTENANCE AND ENGINEERING SERVICES DIVISION  
IN COOPERATION WITH THE  
 U.S. DEPARTMENT OF TRANSPORTATION  
 FEDERAL HIGHWAY ADMINISTRATION  
IN COOPERATION WITH THE  
 U.S. DEPARTMENT OF TRANSPORTATION  
 FEDERAL HIGHWAY ADMINISTRATION  
 12 0 10 20 30 40 50 Miles  
 12 0 10 20 30 40 50 Kilometers  
 January 2001

# HOUSE TRANSPORTATION COMMITTEE

March 1, 2001

North Dakota Department of Transportation  
David A. Sprynczynatyk, Director

SB 2224

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## ENVIRONMENTAL MITIGATION

The National Environmental Policy Act (NEPA) of 1969 requires the Department to complete an environmental review on every federal-aid highway project that significantly affects the environment, as these projects did. Federal law requires a final environmental document which is publicized, available to anyone upon request, and presented at public hearings for that project. The document must contain mitigation measures which are incorporated into the highway project as specified in federal law, which states:

*"It shall be the responsibility of the applicant, in cooperation with the Administration, to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished as part of its program management responsibilities...."*

### "NO-MOW"

The "no-mow" concept was developed in the 1970s as a mitigation commitment by the Federal Highway Administration (FHWA) and the N.D. State Highway Department (now the N.D. Department of Transportation, or "Department") in order to accommodate development of the state's highways. The commitment is to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and N.D. Game and Fish Department. The mitigation agreements allowed the Department to fill adjacent wetlands during roadway widening in exchange for creating wildlife habitat on highway right of way, so that the highway improvement did not, in sum, diminish the natural environment.

The attached map shows North Dakota's no-mow areas in highway right of way, comprising about 8,200 acres. The state purchased this land from landowners in the 1970s and early 1980s at a cost of \$200-\$225 per acre for pasture land and \$375-\$450 per acre for crop land. Typical environmental document language regarding no-mow was as follows:

*"A managed mowing program will be instituted on the right of way for this portion of the highway. The Highway Department maintenance forces will mow the median area and shoulder areas as needed for safety and aesthetics. Under normal circumstances, the remainder of the right of way will remain unmowed for periods of several years. This will provide residual cover over the winter and for the following spring reproductive period. ...Periodic mowing will be used as a management technique to revitalize plant vigor and consequently enhance habitat conditions for nesting waterfowl. Any mowing of the right of way for wildlife habitat management purposes will be done only after consultation between the Highway Department, State Game and Fish Department, and the U.S. Fish and Wildlife Service."*

We have also attached a drawing of a typical right of way section.

## **POSSIBLE RESULTS OF ENACTING SB 2224**

As we were preparing our testimony for today, we discussed this issue with the agencies involved. They all had serious concerns about SB 2224. Eliminating an environmental mitigation commitment is not something to be undertaken lightly. Such commitments are legally binding.

In addition, these commitments were established and carried out as a matter of trust between agencies, to enable the construction of one common good -- highway improvements -- without jeopardizing another common good: the natural environment. Breaking these commitments injures the trust between agencies.

In particular, FHWA responded that if SB 2224 is passed and the Department is required to implement it, the following actions would be necessary:

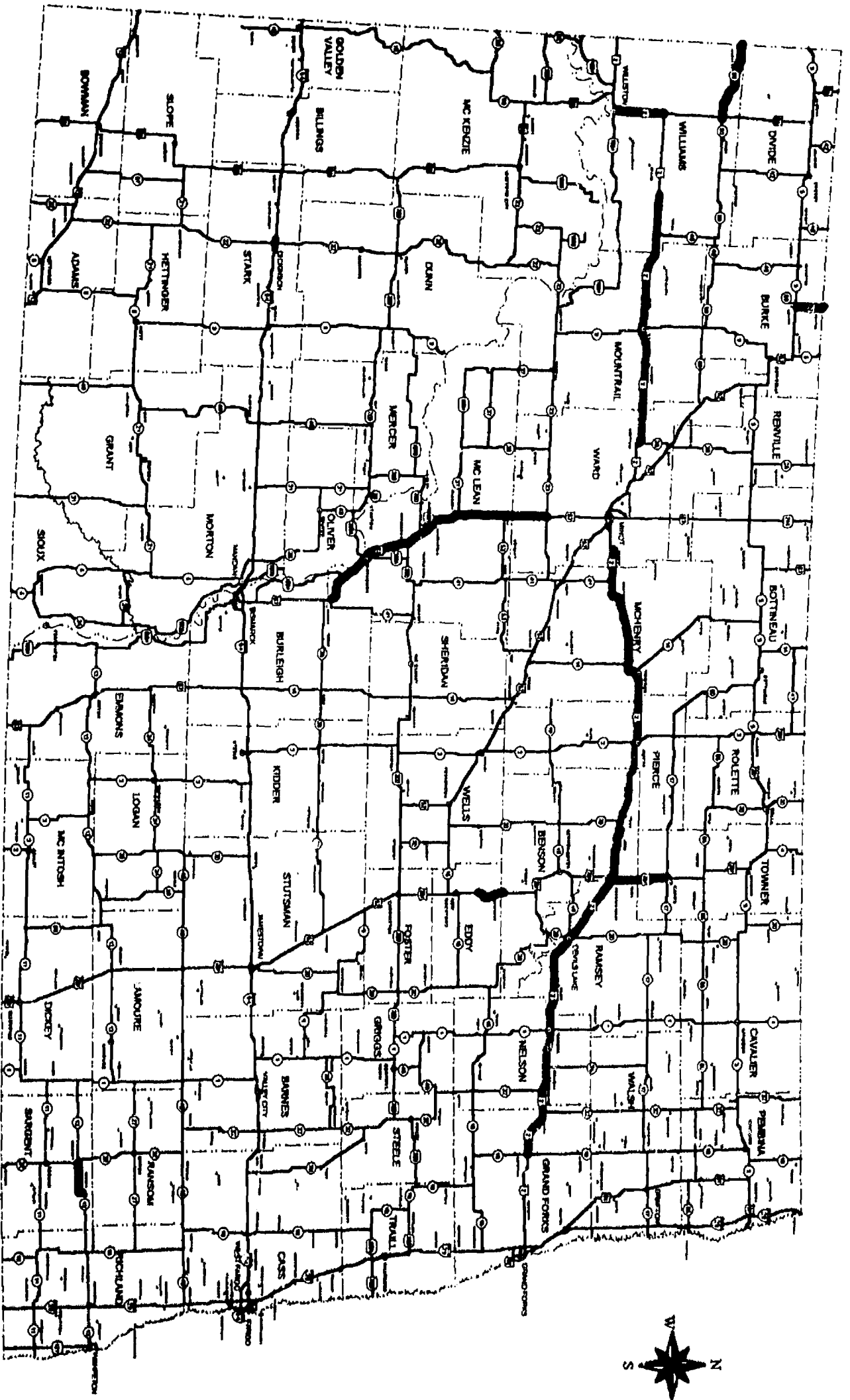
1. The state could be required to pay back all federal funds used to build the highway projects on which no-mow right of way was created. There are about 350 miles of no-mow right of way. When they were built, over a period of several decades, the average cost would have been about \$500,000 per mile. This amounts to roughly \$175 million which the state would have to repay.
2. Alternatively, the state could be required to mitigate the environmental impact of allowing mowing on right of way currently designated "no-mow." This would involve establishing wetlands on private property off-site. The state's cost to purchase the necessary land would amount to \$2 million to \$2.5 million.

## **CONCLUSION**

This is a very complex issue and involves many federal and state agencies. As future federal-aid highway projects take place within areas currently designated "no-mow," the Department intends to try to reach agreements with the other agencies involved that will allow us to mitigate off-site on a project-by-project basis. We believe that this is the most reasonable, economical way to deal with the issue. It would enable the Department to maintain its relationship of trust with state and federal resource agencies. It would also enable the Department to allow mowing of right of way, and to mitigate off-site, when all agencies agree that doing so would be in the landowners' and state's best interest.

The Department has met with the FHWA, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the N.D. Game and Fish Department. All involved agencies have indicated that they have serious concerns with SB 2224. They feel that passage of the bill would violate a long-standing, legally binding agreement the Department has with them.

Although there has not been a request for a fiscal note, we believe that SB 2224 could cost the state millions of dollars. Passage of SB 2224 could also have serious consequences for North Dakota's federal-aid highway program, which is an important factor in the state's economic prosperity.



**No Mow Areas**

**No Mow**

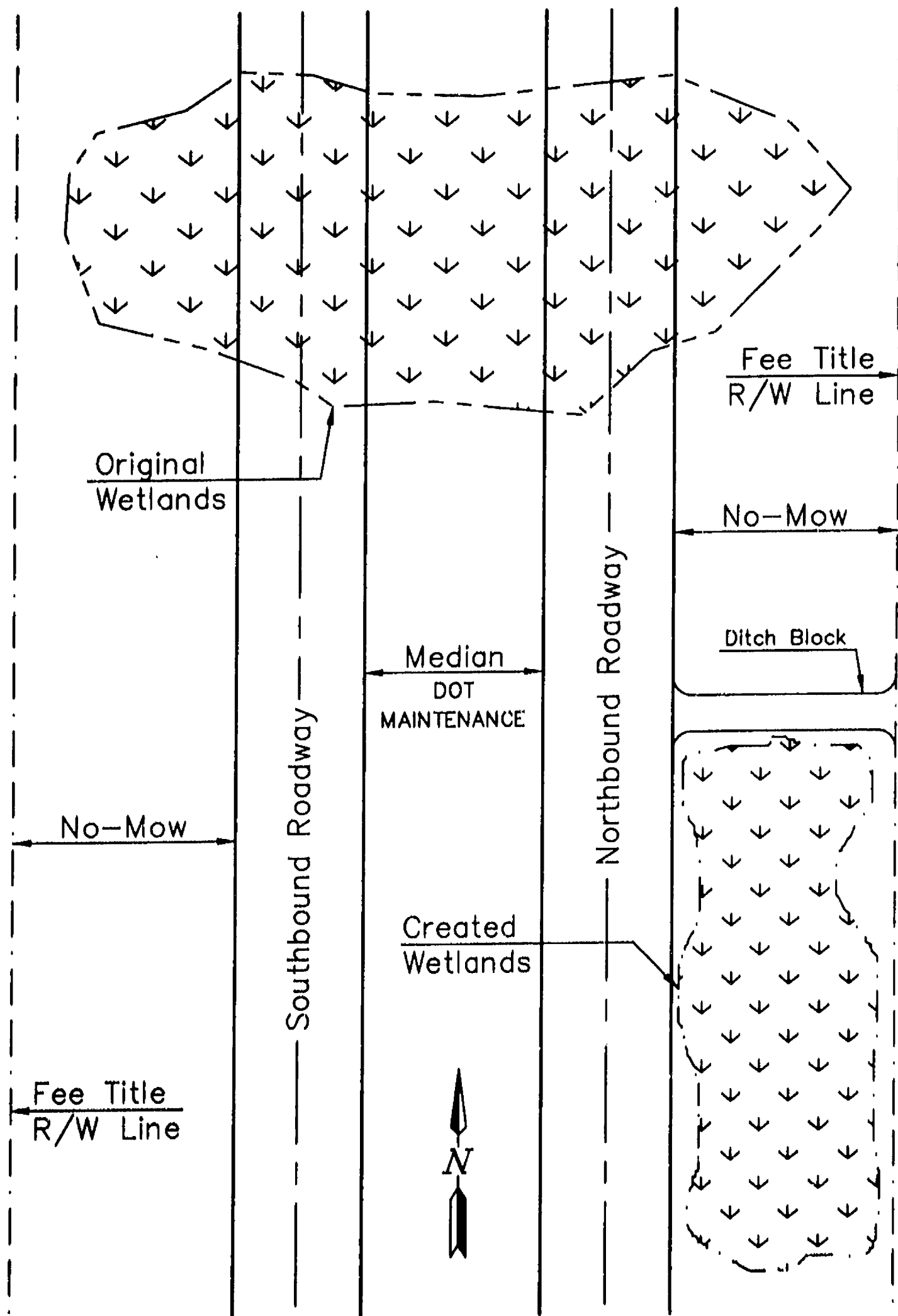
**STATE OF  
NORTH DAKOTA**

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
MAINTENANCE AND ENGINEERING SERVICES DIVISION**

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION**



March 2001







*North Dakota Chapter*

## **THE WILDLIFE SOCIETY**

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF BILL PFEIFER  
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY  
PRESENTED TO THE HOUSE AGRICULTURE COMMITTEE  
ON SB 2224, MARCH 1, 2001**

**MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:**

I'm Bill Pfeifer representing the North Dakota Chapter of The Wildlife Society. The Wildlife Society opposes SB 2224.

No-mow or managed-mow areas are those portions of road right-of-way that serve as mitigation for wetlands disrupted during highway construction.

In exchange for receiving federal funds for construction of these highways, the North Dakota Department of Transportation was obligated to comply with the National Environmental Policy Act (NEPA) which requires mitigation for the loss of wetland acres.

An agreement was reached whereby the North Dakota Department of Transportation could utilize the road right-of-way to satisfy the NEPA compliance thereby reducing North Dakota's cost of purchasing additional off-site lands to replace the wetlands destroyed during construction. It must be noted that mitigation commitments contained in environmental documents are locally binding.

A condition of this agreement prevented the mowing of certain portions of the right-of-way and those portions could be mowed only under special conditions. Environmental Impact Statements (EIS) are the basis for mitigation commitments, several examples state "There will not be any mowing permitted on the remainder of the highway right of way acquired for this project unless special permission is granted by the

State Highway Department" and "Harvesting of hay on the right of way would be permitted only after receiving permission from the Highway Department." These right-of-way areas were to serve as wildlife nesting habitat. All parties to this agreement, including the landowners adjacent to the managed-mow areas, consented to this agreement. Landowners were paid for the lands that are now under the management of the North Dakota Department of Transportation.

Make no mistake, mitigation is going to occur, either onsite on the road right-of-way or off-site. Onsite mitigation would require the North Dakota Department of Transportation (ND DOT) to enforce the present no-mow commitment. Offsite mitigation would require the state of North Dakota to purchase restorable wetlands as replacements. This will likely cost millions of dollars.

Three outcomes can occur to SB 2224. If SB 2224 passes and becomes law in its present form, landowners who mow the right-of-way without permission will be in direct violation of federal regulations and the ND DOT will likely result in federal intervention and subsequent costs to the state.

If SB 2224 fails, nothing is resolved and the ND DOT will continue to enforce the no-mow commitment and we'll likely be back next session with the same disgruntled adjacent landowners wanting to again pass legislation to resolve the issue.

By either passing or killing this Bill, both appear to be a lose-lose situation. A third and preferable alternative would be to remove the context of SB 2224 and replace with the following:

#### **NO MOW ALTERNATIVE, SB 2224**

"Direct North Dakota Department of Transportation to develop replacement alternatives and implementation strategies to no mow highway mitigation areas, in cooperation with State and Federal agencies. North Dakota Department of Transportation will report their preferred alternative and cost analysis to the 2003 legislative session for discussion, action, and appropriate legislation allowing for implementation of the preferred alternative. This resolution would not preclude

investigating or implementing interim modification to no mow alternatives should they arise."

Under this scenario, the ND DOT would continue to enforce the no-mow commitment as in the past. The ND DOT would not be required to spend a large sum of money to go off-site to acquire exchange mitigation. The ND DOT would then work with the other agencies during the interim to arrive at an alternative or alternatives and then report back to the legislative session in 2003. If the alternative selected is to purchase off-site mitigation, the state should be prepared to spend a very large amount of funds.

If this third alternative is not acceptable, The Wildlife Society remains in opposition to SB 2224 and requests a DO NOT PASS.