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Danna Holbrook
Operator's Signature

10/2/03
Date

2003 HOUSE NATURAL RESOURCES

HB 1147

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1147

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 9, 2003

Tape Number	Side A	Side B	Meter #
1	XX		0-3720
Committee Clerk Signature <i>G. M. Meyer</i>			

Minutes:

Chair Nelson: opened the hearing on HB 1147 relating to appeals from the decisions of the water commission and the state engineer.

Dale L. Fink: Testified on behalf of HB 1147 (SEE ATTACHED TESTIMONY).

Rep. Keiser: There is a distinction between the time of the decision and when somebody becomes aware of the decision. What is process of notification for those impacted by a decision.

Dale L Frink: Referred to Matthew Sagsveen from the Attorney General's Office

Matthew Sagsveen: The process is informal, but so well known that if given the aggrieved they will have opportunity. This is to prevent years down the road coming back and claiming a grievance.

Rep. Keiser: I understand that that is the way it has been done in the past. It seems to me to be a little bit unfair. Because we will be running into a technicality when the decision is made it does not become public knowledge for two weeks. The person cannot respond in a timely fashion

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10/2/03
Date

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House Natural Resources Committee
Bill/Resolution Number HB 1147
Hearing Date 1/9/03

because of this statute. There should be a requirement that it become public information in some capacity. I would not support it because of this.

Dale L Frink: Mr. Chairman my only point is that at some point there needs to be some finality to it. That is one of the reasons I went to thirty days instead of fifteen. At some point we need to be able to say: "yes you have a permit." People are very nervous about being half way finished with construction and being repealed on a water permit.

Rep. Drovdal: What percentage of the decisions of the Water Commission have been appealed and what is the general time frame of those appeals.

Dale L Frink: I do not know the actual numbers but, we are working on that right now. The appeal process is quite extensive. This process is done through an administrative law judge. The process is quite drawn out and does cause problems in getting a permit.

Rep. Drovdal: What is the average time for an aggrieved party to come forward with a complaint.

Dale L Frink: Most of the decisions are not appealed. One of my staff have had them run for two to three month periods.

Rep. DeKrey: I wonder if thirty days is long enough.

Rep. Solberg: I would think the department would be tired of these permits taking two years.

Dale L Frink: We have had this process drag out for up to two years not for this reason in particular, but because of the entire process. This is one factor.

Rep. Clark: I don't have a problem with that deadline being put on there. My question is how are notices provided.

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Hearing Date 1/9/03

Dale L Frink: We advertise in the newspaper and contact anyone within a one mile radius and through public systems. There is a fairly extensive system for this. The final ruling does not have a formal notification process.

Rep. Nottestad: I have a problem pertaining getting back to the water resource board. There are many boards that meet once a month. Someone will be chastised for the thirty day deadline.

Dale L Frink: We advertise for the hearing. It is just the decision that we do not. I would like some finality to the process.

Rep. Nottestad: The burden of the notification should be on your department.

Dale L Frink: We do notify those who attend the hearing or provide written comments in some way to us. You will be notified. We do not advertise in the newspapers regarding the decision.

Chair Nelson: How is that notification made?

Matthew Sagsveen: We need to make the distinction between the water permits and 61-03-22 which is any decision the state engineer makes. That is different from the water permit process where testimony is given in a hearing process.

Rep. Porter: I am interested in the reason behind the word change "because of any action" in line 7 and 18. Right now an aggrieved person has the right to a fair hearing and it appears to me you are taking that right away. Where does that leave a person that is aggrieved?

Matthew Sagsveen: The changes were made to make it read better.

Rep. Porter: There must be a difference between an action and a decision.

Dale L Frink: Personally I do not.

Matthew Sagsveen: I think the purpose was to simplify it but if you want it could be left in.

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Hearing Date 1/9/03

Rep. Porter: The members of the committee are concerned over the notification process. There is no end date for finality to this process. After hearing the concerns do you think there needs to be something written into this to make a formal end notification process. My concern stems from the individual who might live two to three hundred miles away from the family farm. That person may go to the renter and discover that they were adversely affected and not know it. Is there something that needs to be done about that possibility.

Chair Nelson: If they are a land owner they would be notified.

Dale L Frink: If they are within one mile.

Rep. Klein (2150): Reiterates the concern for absentee landlord.

Dale L Frink: But we are getting pressure from those looking for a permit.

Chair Nelson: This is a double edged sword on one hand protecting the landowner and the public good by delaying the process.

Rep. Klein: Don't they apply for this permit long in advance?

Dale L Frink: The process takes longer than that you would have to apply the summer before in order to complete it in time. Part of it is a shortage of water. Someone comes in on a water permit on the Missouri river they would not have to wait that long. If they have access to the river it would be done in as short a time as possible. But a ground water permit will take longer.

Rep. Drovdal (2460): I disagree about the water permit on the Missouri river not taking a long time. Why do we use the same system regarding the decision.

Dale L Frink: It just adds expense to the individual making the request for a permit.

Rep. Kelsner: The committee understands the need for closure, but I guarantee you that if we pass this bill this session we will be back here next session with a snowbird who missed the

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Hearing Date 1/9/03

notification because of the mail being tied up. The problem is this language is strong. There recourse would be zero. No matter the excuse. How do we find a solution.

Rep. Norland (2800): How many hearings are there?

Dale L Frink: I would guess five to six.

Rep. Norland: How many are challenged.

Dale L Frink: I would guess ten percent. Fifty percent have at least one letter related to it.

Rep. Nottstad: Because of the time in advance of the permit the thirty of sixty day period is irrelevant.

Rep. DeKrey: Does the irrigator have to shut down following the decision.

Matthew Sagsveen: There is an injunction process.

Rep. DeKrey: How do they make the determinations as to who get the letters?

Dale L Frink: A circle is drawn around the site of the project.

Chairman Nelson appoints **Rep. Kelser**, **Rep. DeKrey**, and **Rep. Kelsh** to a subcommittee to work with the water commission for common ground.

Rep. Solberg stressed the need to provide closure to this process.

Chair Nelson pointed out that the bill would be unlikely to receive support on the floor in its present form.

Chair Nelson adjourned the meeting.

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1/2/03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1147

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 31, 2003

Tape Number	Side A	Side B	Meter #
1		xx	0-246
Committee Clerk Signature <i>C. M. M.</i>			

Minutes:

Chair Porter reopens HB 1147.

Rep. Dekrey: I spoke to the state water commission. They have another plan they are working on to solve this problem. They have no Problem with us killing this bill.

Rep. DeKrey moves a recommendation of Do Not Pass on HB 1147. **Rep. Nottestad** seconds the motion.

The motion carries by a vote of 10-0-4. **Rep. DeKrey** will carry.

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Date: 1/3/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1147

House House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Not Pass ~~Not~~

Motion Made By DeKrey Seconded By Not tested

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson					
Vice-Chairman Todd Porter	✓				
Rep. Byron Clark	✓				
Rep. Duane DeKrey	✓				
Rep. David Drovdal					
Rep. Lyle Hanson	✓				
Rep. Bob Hunsakor	✓				
Rep. Dennis Johnson					
Rep. George Keiser					
Rep. Scott Kelsh	✓				
Rep. Frank Klein	✓				
Rep. Mike Norland	✓				
Rep. Darrell Nottestad	✓				
Rep. Dorvan Solberg	✓				

Total (Yes) 10 No 0

Absent 4

Floor Assignment DeKrey

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

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Dorvan Solberg
Operator's Signature

1/2/03
Date

REPORT OF STANDING COMMITTEE (410)
February 5, 2003 3:43 p.m.

Module No: HR-22-1770
Carrier: DeKrey
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1147: Natural Resources Committee (Rep. Nelson, Chairman) recommends **DO NOT**
PASS (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1147 was placed on
the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-22-1770

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2003 TESTIMONY

HB 1147

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Diana G. Ball
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10/2/03
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TESTIMONY ON HOUSE BILL 1147

House Natural Resources Committee

**Dale L. Frink, State Engineer and Secretary to the
State Water Commission**

January 9, 2003

Mr. Chairman and Members of the House Natural Resources Committee, I am Dale Frink, State Engineer and Secretary to the State Water Commission. I am here in support of House Bill 1147.

House Bill 1147 amends N.D.C.C. §§ 61-02-76 and 61-03-22. These sections currently allow a person aggrieved by a decision of the State Water Commission or the State Engineer to request a hearing, but a time limit for the request is not provided. The proposed amendments provide that the request for a hearing must be made in writing within 30 days of decisions by the State Water Commission or the State Engineer. While many statutes provide for shorter time periods to request a hearing on various matters, I believe 30 days provides a reasonable time for someone who may be aggrieved by a decision to request a hearing. For example, N.D.C.C. § 20.1-16-05 requires a person whose hunting privileges have been suspended to request a hearing within 20 days. N.D.C.C. § 28-32-40, the Administrative Agencies Practices Act, requires anyone aggrieved by a final order of an agency to petition for reconsideration within 15 days.

In addition, the amendments require that the request must state how the person is aggrieved by the decision and the issues and facts to be presented at the hearing. When a hearing is held, the Administrative Agencies Practices Act, N.D.C.C. § 28-32-21 requires the notice of the hearing to include a written document identifying or explaining the issues to be considered and determined at the hearing. Therefore, the proposed amendments make the statutes in N.D.C.C. chapter 61 consistent with this provision of N.D.C.C. chapter 28-32. Requiring the person requesting the hearing to identify the issues in the request for a hearing also assists the Administrative Law Judge who conducts the hearing for the State Engineer to prepare the notice required by N.D.C.C. § 28-32-21. It also assists any other parties to the hearing and the State Engineer or State Water Commission in responding to the request and in preparing for the hearing.

I ask your favorable consideration of this bill. Thank you.

Dale L. Frink
Operator's Signature

10/2/03
Date

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1147

Page 1, line 10, replace "thirty" with "sixty"

Page 1, line 21, replace "thirty" with "sixty"

Renumber accordingly

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