

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

1279

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1279

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1279

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 20, 2005

Tape Number	Side A	Side B	Meter #
3	x		36.6 to end
3		x	0.1 to 28.4

Committee Clerk Signature



Minutes: **Rep. Devlin, Chairman** opened the hearing on HB 1279, A Bill for an Act to create and enact a new section to chapter 23-20.3 of the North Dakota Century Code, relating to contaminated properties; to amend and reenact sections 11-33-01 and 40-47-01 and subsection 1 of section 58-03-11 of the North Dakota Century Code, relating to institutional controls by counties, cities, and townships; to provide a continuing appropriation; and to declare an emergency.

Rep. Todd Porter representing District 34 and prime sponsor appeared to discuss the bill, its purpose and to suggest an amendment to the bill as drafted. The bill grew out of the diesel fuel spill in Mandan. The plume oil diesel oil encompasses an area of about twelve square blocks of downtown Mandan. The purpose of this bill is fill in the state law that which is lacking in dealing with a problem of this magnitude. When a settlement is made as they have in Mandan there needs to be a mechanism for the State Health Department to put limits on what a piece of property could be used for, to limit future liabilities of the subsequent buyers upon restoration,

Land values have dropped thus how do you use that land to support the kind of commercial loan you need in that area, there is concern for back taxes not paid to the county, and a lot of innocent people have been effected directly and indirectly, if lending institutions do loan money for development on a site as loan carrier do they have liability exposure for as long as they have financial control -- the list goes on. This is not a problem isolated to the city of Mandan -- there are other North Dakota cities such as Minot and Linton currently dealing with similar problems though of varying magnitudes. There are many cities maybe most who are exposed to potential catastrophes. This bill was drafted with the help of many state agencies, the health department, the attorney generals office, public service commission, and many local officials and private individuals having input. A bill this complex is a long time in the writing and since its introduction there are some refinements which Rep. Porter offered in writing for the committee. There was a long list of persons appearing in a well organized presentation. Each stuck to their script quite well and answered questions as they went along.

Ken LaMont, mayor of the city of Mandan spoke in favor of the bill on behalf of the city and of some of their experiences. A copy of his prepared remarks is attached.

Larry Goetzfridt a property owner from the downtown area of Mandan spoke in favor of HB 1279. A copy of written comments are attached.

Todd Steinwand, President of the Wells Fargo Bank in Mandan spoke from the point of view of the lending institutions and was in support of the bill. A copy of his of prepared statment is attached.

David Glatt Chief of the Environmental Health Division of the North Dakota Department of Health spoke in support of the bill. A copy of his prepared remarks is attached. There was considerable question and answer for Mr. Glatts appearance before the committee.

Lyle ___? Special Assistant Attorney General to the Health Department continued in response to question regarding the state exposure as far as liabilities were concerned as well as to what the state could do to protect buyers in cases of liability exposures once the State has released the land for sale and occupancy.

Kevin Hullet, President of the Bismarck-Mandan Chamber of commerce spoke in support of the bill. A copy of his written remarks is attached.

Rep.Devlin, Chairman closed the hearing on HB 1279 as there was no further testimony for or against.

In committee action the amendments were moved for approval by **Rep. Dietrich**. The motion was seconded by **Rep. N. Johnson**. The motion carried on a voice vote.

Rep. Pietsch moved a 'Do Pass as Amended and referred to Appropriations' motion. **Rep.**

Koppelman seconded the motion. On a roll call vote the motion carried **10 ayes 0 nays 2 absent**. **Rep. Kretschmar** was designated to carry HB 1279 on the floor. End of record.

FISCAL NOTE

Requested by Legislative Council
01/27/2005

Amendment to: HB 1279

1A. 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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$25,000		\$50,000
Expenditures			\$50,000	\$25,000		\$50,000
Appropriations			\$50,000	\$25,000		\$50,000

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would establish environmental certainty for landowners of contaminated property. This would require the Department to complete activities above those currently conducted to include:

- Development of site specific institutional controls and negotiate their implementation
- Participate as necessary with Political Subs to establish institutional controls through participation in public hearings
- Evaluate need for insurance or other financial assurance measures to address future potential monitoring or clean up activities
- Provide Responsibility Exemptions or regulatory assurance letters
- Development of agreements to establish Environmental Remediation Operating Fund and administer as appropriate.

This bill provides for a new continuing appropriation identified as the environmental remediation operating fund. Activity for the fund are included in other funds under 1A - State Fiscal Effect.

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.*

Provides for a continuing appropriation to the Department to develop rules and, as appropriate, collect fees. Fees collected would be used to net out expenditures. It is difficult to estimate the number of properties requesting regulatory assurance. On the high end the Department could be looking at approximately 15 cases per year or \$37,500, and on the low end, 5 cases or \$12,500. Our guess is based on an average number of these cases or 10 per year and \$25,000 annually.

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.*

Anticipated expenditures include program development, rules development and implementation. During the 2005-07 biennium expenditures are estimated to be approximately \$50,000 of general funds costs for program development and initial implementation. Future costs related to implementation of the program will be dependant upon the number

of contaminated properties requesting regulated assurances (see explanation in revenue section) and will be charged to a continuing appropriation.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Requesting \$50,000 of general funds for the 2005-07 biennium for initial start up costs of the program. Future revenue and expenditures for the program will be deposited and expended from a continuing appropriation included in other funds.

Name: Kathy J. Albin
Phone Number: 328-4542

Agency: Health
Date Prepared: 01/28/2005

FISCAL NOTE

Requested by Legislative Council
01/12/2005

Bill/Resolution No.: HB 1279

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	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$25,000		\$50,000
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Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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- Participate as necessary with Political Subs to establish institutional controls through participation in public hearings
- Evaluate need for insurance or other financial assurance measures to address future potential monitoring or clean up activities
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Anticipated expenditures include program development, rules development and implementation. During the 2005-07 biennium expenditures are estimated to be approximately \$50,000 of general funds costs for program development

and initial implementation. Future costs related to implementation of the program will be dependant upon the number of contaminated properties requesting regulated assurances (see explanation in revenue section) and will be charged to a continuing appropriation.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Requesting \$50,000 of general funds for the 2005-07 biennium for initial start up costs of the program. Future revenue and expenditures for the program will be deposited and expended from a continuing appropriation included in other funds.

Name: Kathy J. Albin
Phone Number: 328-4542

Agency: Health
Date Prepared: 01/18/2005

January 20, 2005

VR
1/21/05
1063

HOUSE AMENDMENTS TO HOUSE BILL NO. 1279 P.S. 1-21-05

Page 1, line 19, after "controls" insert "that address environmental concerns"

Page 1, line 23, remove "**23-20.3-12.**"

HOUSE AMENDMENTS TO HB 1279 P.S. 1-21-05

Page 2, line 1, replace "and" with "or"

Page 2, line 27, remove "and"

Page 2, line 30, replace the underscored comma with "; and"

Page 2, line 31, replace "and agree" with:

"h. Agree"

HOUSE AMENDMENTS TO HB 1279 P.S. 1-21-05

Page 3, line 22, after the underscored period insert "The political subdivision is responsible for providing all notices under this subdivision, but any public hearing must be held jointly by the political subdivision and the department."

HOUSE AMENDMENTS TO HB 1279 P.S. 1-21-05

Page 4, line 2, remove "the department," and remove the second underscored comma

Page 4, line 7, replace "c." with "3." and after "alternative" insert "to institutional controls, after completion of the assessments and requirements of subsection 1"

Page 4, line 13, replace "3." with "4."

Page 4, line 14, remove "authority"

Page 4, line 16, replace "4." with "5."

Page 4, line 21, after "property" insert "or results in the exposure of contaminants to receptors on the property"

Page 4, line 25, replace "6" with "7" and replace "7" with "8"

Page 4, line 26, after "property" insert "for any new or additional discharge, release, or movement of pollution or contamination"

Page 4, line 27, after "release" insert "or culpability for exposure of onsite or offsite receptors to pollution or contamination"

HOUSE AMENDMENTS TO HB 1279 P.S. 1-21-05

Page 5, line 3, replace "5." with "6."

Page 5, line 9, replace "6." with "7."

- "8. Participation by a lender in an agreement under this section may not be construed as management of the property under chapter 32-40.1. Lenders who participate in an agreement under this section may not be held responsible for any environmental remediation on the site or property except as provided in subsection 3 of section 32-40.1-02. As part of an agreement under subsection 7, the department may issue a letter of regulatory assurance to a lender which states that the lender is not responsible for environmental remediation on the property or site, and which addresses other issues relating to responsibility, notice, violation of agreement under subsection 7 by the owner or operator, default, or other matters affecting potential environmental liability, investment, or redevelopment. A responsibility exemption of regulatory assurance given or granted to a lender under this section also applies to a lender's transferees or assigns, provided the party has had no prior involvement with or responsibility for the site of the environmental release, and uses and manages the property after the transfer or assignment in compliance with institutional controls or other conditions established under this section and the requirements of this chapter and chapter 61-28."

Page 5, remove lines 30 and 31

Page 6, remove lines 1 through 6

HOUSE AMENDMENTS TO HB 1279 P.S. 1-21-05

Page 6, line 7, replace "8." with "9."

Page 6, line 9, replace "or" with ". In addition" and replace "6" with "7 the department may collect an administrative fee for a specific site or project to address the department's costs and expenses at that site or project"

Page 6, line 10, replace "6. All" with "7, or may collect an administrative fee in an amount set by rule from a person making a request for a responsibility exemption or regulatory assurance under this section. Any"

Page 6, line 16, replace "9." with "10."

Page 6, line 24, replace "10." with "11."

Page 6, line 29, replace "11." with "12."

Page 7, line 1, replace "12." with "13."

HOUSE AMENDMENTS TO HB 1279 P.S. 1-21-05

Page 7, line 2, after the first "a" insert "regulated" and after the underscored comma insert "pollutant, contaminant."

Page 7, line 13, replace "13." with "14."

Page 7, line 15, after the underscored period insert "A regulatory assurance is not voidable under subsection 5."

Page 7, line 16, replace "14." with "15."

Page 7, line 19, after the underscored period insert "A responsibility exemption is voidable only against a person that violates an institutional control or a condition of a letter of no further action or no further remediation, or that is responsible for a new or additional

HOUSE AMENDMENTS TO HB 1279 P.S. 1-21-05
release or migration of a regulated substance or pollutant on the property or site, or
whose actions or negligence cause the violation, release, or migration."

3 of 3

Page 7, line 20, replace "15." with "16."

Page 7, line 26, replace "16." with "17."

HOUSE AMENDMENTS TO HB 1279 P.S. 1-21-05
Page 8, line 14, after "controls" insert "that address environmental concerns"

Page 8, line 28, after "controls" insert "that address environmental concerns"

Renumber accordingly

Date: *January 20, 2005*
Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *HB 1279*

House POLITICAL SUBDIVISIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Do Pass as Amended and refer to APPMg
Rep. Pietsch Seconded By *Rep. Johnson*

Representatives	Yes	No	Representatives	Yes	No
Rep. Devlin, Chairman	✓		Rep. Ekstrom	✓	
Rep. Herbel, Vice Chairman	✓		Rep. Kaldor	✓	
Rep. Dietrich	✓		Rep. Zaiser	A	
Rep. Johnson	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	A				
Rep. Pietsch	✓				
Rep. Wrangham	✓				

Total (Yes)

10

No

0

Absent

2

Floor Assignment

Reps. Kretschmar

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

REPORT OF STANDING COMMITTEE

HB 1279: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (10 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1279 was placed on the Sixth order on the calendar.

Page 1, line 19, after "controls" insert "that address environmental concerns"

Page 1, line 23, remove "23-20.3-12."

Page 2, line 1, replace "and" with "or"

Page 2, line 27, remove "and"

Page 2, line 30, replace the underscored comma with "; and"

Page 2, line 31, replace "and agree" with:

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Page 4, line 26, after "property" insert "for any new or additional discharge, release, or movement of pollution or contamination"

Page 4, line 27, after "release" insert "or culpability for exposure of onsite or offsite receptors to pollution or contamination"

Page 5, line 3, replace "5." with "6."

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"8. Participation by a lender in an agreement under this section may not be construed as management of the property under chapter 32-40.1. Lenders who participate in an agreement under this section may not be held responsible for any environmental remediation on the site or property except as provided in subsection 3 of section 32-40.1-02. As part of an

agreement under subsection 7, the department may issue a letter of regulatory assurance to a lender which states that the lender is not responsible for environmental remediation on the property or site, and which addresses other issues relating to responsibility, notice, violation of agreement under subsection 7 by the owner or operator, default, or other matters affecting potential environmental liability, investment, or redevelopment. A responsibility exemption of regulatory assurance given or granted to a lender under this section also applies to a lender's transferees or assigns, provided the party has had no prior involvement with or responsibility for the site of the environmental release, and uses and manages the property after the transfer or assignment in compliance with institutional controls or other conditions established under this section and the requirements of this chapter and chapter 61-28."

Page 5, remove lines 30 and 31

Page 6, remove lines 1 through 6

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Page 7, line 20, replace "15." with "16."

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Page 8, line 14, after "controls" insert "that address environmental concerns"

REPORT OF STANDING COMMITTEE (410)
January 24, 2005 11:25 a.m.

Module No: HR-15-0908
Carrier: Kretschmar
Insert LC: 50079.0202 Title: .0300

Page 8, line 28, after "controls" insert "that address environmental concerns"

Renumber accordingly

2005 HOUSE APPROPRIATIONS

HB 1279

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1279

House Government Performance Division

☐ Conference Committee

Hearing Date February 7, 2005

Tape Number	Side A	Side B	Meter #
1	X		4234-End
		X	1-3100

Committee Clerk Signature 

Minutes:Minutes:**Chair Carlson** opened general discussion on rereferred HB 1279, relating to institutional controls by counties, cities, and townships; to provide a continuing appropriation; and to declare and emergency.

Dave Glott, Chief of Environmental Health Section for ND Department of Health: Primary responsibility has to deal with Environmental Protection programs within the state. HB 1279 primarily deals with innocent land owner type legislation, where a person who purchases a piece of property or has a piece of property that becomes contaminated through no fault of their own, has an opportunity to get some liability relief. This bill allows the department to write a letter saying that you didn't put it there, we're not going to come after you. It doesn't get the person who put it there off the hook, there still liable. The intent is to get property back on the tax rolls.

Chair Carlson: Does this include the diesel fuel under the city of Mandan?

Dave: That's where it started out, and that's primarily where this came from. People were having problems selling their businesses, nobody would buy it. They couldn't get loans from

banks, because banks were concerned that they would be liable or lose their investment in that establishment as well. What this does is it provides some regulatory insurance to the investing organizations, that we won't come after them as a State Health Department under the environmental laws.

Rep. Monson: Who caused this in the first place? Is it the railroad?

Dave: In the Mandan's case it was the railroad. We were under a long and lengthy litigation with them. We just settled with them last summer, the tune of about 24 million dollars to handle the cleanup.

Rep. Monson: If the railroad has settled with you, wasn't that a sufficient amount of money to clean up, and get the problem behind the banks?

Dave: It is, but that's going to take time. The banks still feel they need the letter saying we're OK as far as the Heath Department, you didn't put it there as a landowner, and we won't come after you if there's any problems that arise in the future.

Rep. Monson: What happened to the 24 million?

Dave: The 24 million right now is, we have hired a contractor to go in and start cleaning it up. This is through the Health Department and the City of Mandan. We have a separate trust that's been set up just to deal with remediation.

Rep. Skarphol: What happens if you don't have enough money?

Dave: We will have enough money. Basically the railroad said it would take 9 million to clean it up, we said it would take 40 million. We came in the middle and looked at our technology, as far as cleanup, and 24 million should do the job.

Rep. Monson: That's the state that collected that money actually, or who owns that 24 million?

Dave: That's in a public trust called the Mandan Remediation Trust. That is established just to deal with cleanup of contamination in downtown Mandan.

Rep. Skarphol: Who established the trust?

Dave: That was through the Attorney Generals office, and through their legal authorities to be able to establish a public trust.

Rep. Glassheim: If this were to happen again, and if you were not to get money from the original causer, what's the impact of this?

Dave: We have an assessment done to identify what is there, where it is, and what concentration. We would take a look at it, and then establish institutional controls. Once we had that information we would be able to write a letter to the new land owner or existing land owner, saying we know where the contamination is, it isn't moving, and it isn't creating a health issue. We have no further claims or concerns on this.

Rep. Monson: In some of these little towns, there was maybe a gas station there 50 years ago, and right now there's probably nothing. Somebody comes in there and decides they want to buy that piece of property, and somebody down the road finds years from now that there is contamination there. How are you going to prove that it isn't the person that bought it?

Dave: Typically on these, we have a pretty good idea of what chemical is stored there. If a farmer bought land and they had bulk tanks on there, then we'd have to do some investigation work to see if we can tie the contamination in the soil to the tanks themselves.

Chair Carlson: What's the price tag here?

Dave: Where we're at is we're asking for 50,000 dollars to basically develop a policy and rules.

The rules would allow us to establish fees to recoup our costs in the future. Basically it's to get us going for the first biennium. We're asking for the 50,000 dollars primarily for the staff time.

Chair Carlson: Don't you normally do this anyway?

Dave: To a point we do that. We haven't gone to this level where we're getting into institutional control negotiations requiring insurance from responsible parties, and setting up an environmental remediation fund. Those are all things that we do not do now, and I anticipate when it gets down to brass tax negotiating institutional controls, basically controls on how you can use your land, those can get contentious in some cases.

Rep. Monson: I have to believe that up to this point with all your negotiating, you must have spent an awful lot of money, or the Attorney General's office, to get as far as you did. This must just be a drop in the bucket here.

Dave: Are negotiations with Burleighton Northern did cost hundreds of thousands of dollars. We were fortunate enough to be able to get the Environmental and Protection Agency to contribute 90% of that. On new facilities we would not have that type of a source of income.

Rep. Skarphol: What's the typical cost of an assessment?

Dave: Assessments vary, your probably running in that 5 to 10 to 15,000, depending on how invasive they get.

Rep. Skarphol: So the requesting party typically has to pay the cost of these assessments?

Dave: That's correct.

1Rep. Skarphol: So you think it would be appropriate for the seller of the property to be charged the cost of these assessments, or more appropriate the buyer?

Dave: It's a mixed bag. If you have a responsible party, the seller would probably be the one to do that. There are cases where we have property that's abandon, where you can't find a responsible party. They turn it back to the county for taxes.

Rep. Skarphol: The reason you think this should be funded with some general fund dollars, is that it would get it back on tax rolls?

Dave: The general fund dollars is there's a policy development rule making process. The way that goes is it's 6 to 9 months to get that done. That would allow us to get this going.

Rep. Glassheim: So the 50,000 is not going to be every biennium?

Dave: That's correct. The way I'm looking at it is that it's to get it up and running, it's not asking for an FTE.

Rep. Skarphol: It does refer in the fiscal note to a continuing appropriation being established to do this.

Dave: Under the other funds.

Rep. Glassheim: So you would collect fees?

Dave: That's correct.

Rep. Monson: So the 50,000 that your asking for in general funds is simply to give you money to develop the procedure?

Dave: Yes, that's correct. First is to develop the policy and rules to go through that process, and to deal with a few of those systems that come in now.

Chair Carlson: How did you arrive at the 50,000 dollars?

Dave: Just looking at the time it would take to establish the rules, and also to implement and do some of this work on a couple of sites to get an idea of what the cost is going to run us.

Rep. Skarphol: Are you going to try to determine who the guilty party is if there is a request for this? Are you going to call it a waiver?

Dave: What we always do is try to identify who put it there, and then whether or not there liable financially.

Rep. Skarphol: If they are, are you going to require them to clean it up?

Dave: We could require them to clean it up, or we would have them put some money into some financial vehicle, such as the Environmental Remediation Fund, or purchase insurance that would cover some unlikely event in the future.

Rep. Skarphol: The party that contaminated the property has passed away, and the current owner probable knew of it and has done nothing about it. Now a third party want's to purchase it. We know who put it there. Are you going to try to get somebody to clean it up? Are you going to just in the records, identify who did it?

Dave: That's correct. What we would do is identify how severe the contamination is, and does it create a problem for people. We would be able to give them a letter saying we know the contamination is there, it's at these levels, doesn't pose a threat, we are not going to come after you.

Rep. Skarphol: In the rule making process, are you going to set out the methodology that your going to lose or excuse? S o if somebody wants to buy a piece of property, they can look at the methodology and say this is what's going to end up happening, and I think we could live with that.

Dave: It's voluntary, it's not required. The risk you run is if you don't know how severe the contamination is, and you buy that piece of property, you still could be held liable for that.

Rep. Skarphol: With regard to establishing the fee, do you see the fees getting higher as the number of cases increase in order to pay for that position in that case?

Dave: I don't know. I'm sure there's a line some place that we can go up to, and be able to make it work.

Rep. Skarphol: Let's say you end up with 30 a year.

Dave: That would be a tough one. We've been fortunate enough to reorganize how we do some more business, so I'm not going to be asking for another FTE.

Rep. Skarphol: How many calls do you get?

Dave: I don't know how many calls we get, as far as people abandoning property we here about that. Every county, every city has that. Underutilized property is contaminated, nobody wants to buy it.

Chair Carlson: What happens if we pass the bill and don't put the money into it?

Dave: It would be very difficult for us, we'd have to scramble.

Chair Carlson: Can you fund it on the fund that's set up in Mandan?

Dave: For Mandan I believe we could do some of that, for any other sites in the state we couldn't do that under that fund.

Chair Carlson: Could you not attach a fee of some type to the prior owner of the land if he had the money?

Dave: Yes, and that's what this bill would allow us to do.

Rep. Monson: Everytime we pass a law, are you not supposed to make rules? Doesn't cost you money to make rules?

Dave: It does cost us money to make rules, and we don't make rules under every law. The time and effort that would have to go into the 6 to 9 months to establish the rules is a cost.

Rep. Monson: So your saying you can probably do it without the money, but it would take a lot longer.

Dave: Possibly, where it sets right now, is it's asking the department to go above and beyond what they do now, setting up a law. I believe there is a fiscal impact to that.

Rep. Glassheim: In here you talk about the Environmental Remediation Operating Fund, and the Petroleum Tank Release Compensation Fund. Could you tell me what these are, how much is in each of them, and where the money comes from?

Dave: Under the Environment Remediation Fund, that is a fund identified in this law, a new fund. It doesn't mark where the money is going to go and who's going to handle it.

Rep. Glassheim: How does the money get into the Environmental Remediation Operating Fund?

Dave: In issues where, say for instance you want to buy a piece of property and the current owner of the property, who put the contamination there, that would be the fees. Also if we want assurances that we have to monitor that property for the next 3 years, they would put money in that fund to allow that monitoring to occur at no cost to you.

Rep. Glassheim: Would judgments, like the train problem, in the future go into something like that?

Dave: It potentially could be.

Rep. Glassheim: Could not 50,000 dollars come out of that 24 million just to write rules that would apply to Mandan, which could be used in other situations as well?

Dave: The true settlement was around 3.25 million dollars. That included the 24 million, money to the city of Mandan, and another trust to do development downtown. It can only be spent for activities within Mandan to remediate the contamination.

Rep. Glassheim: To write rules which allow Mandan to get this letter, which allows Mandan to sell it's property and be financed to the bank.

Dave: We couldn't take that money directly from that trust fund.

Chair Carlson: Who is the benefactor in most cases of a bill like this?

Dave: It would be the innocent landowners.

Chair Carlson: How about the county that puts the rural property back on the tax role?

Dave: Counties could benefit from that, cities could benefit, banks could benefit.

Rep. Monson: I'm thinking that your going to find a whole lot of people when they find out we passed this law, are going to come out of the woodwork and say they didn't want anybody to know they were sitting on top of contaminated land from the previous owner, but now they want to let them know.

Dave: Could be, even though I think in the long run there is some good things there.

Rep. Skarphol: There is no waiver of any kind as far as liability for anybody who may have caused the problem?

Dave: No. If we identify the responsible party that put it there, they don't get a waiver, but the person that comes to buy the land who didn't put it there could get that.

Rep. Skarphol: How about the situation in which past public policy didn't benefit, there's not a problem created by it, but the land owner insists that there is. Can you require the removal?

Dave: The big thing is to substantiate it. We would take a look at it.

Rep. Glassheim: If we're talking about some vacant land, I don't want to charge these people more than the 500,000 dollars, but if you have a 300,000 building at stake, and you guys come in and give them this letter, I'm not sure I have a problem charging them 500,000 to make the 300,000 building workable.

Rep. Skarphol: You currently have a fund that exists for cleanup of potential sites?

Dave: That one was established for the West Chem. fire in Minot for emergency response. If we had an incident like that and we didn't have a responsible party, we could go to contractors saying start containing this problem right away. It's more of an Emergency Response Fund.

Rep. Skarphol: A sloughs contaminated with salt water, would this legislation allow to get it cleaned up?

Dave: I don't think the legislation will allow to get it cleaned up, but the legislation would make it so the state wouldn't come after the owner to clean it up because he didn't put it there.

Recessed General Discussion until after Floor Session.

Reconvened General Discussion on HB 1279.

Lyle Witham, Assistant Attorney General: I represent the Health Department and most of their litigation and issues involving environment.

Rep. Skarphol: Is it an appropriate use of the sum of 50,000 dollars out of the 24 million settlement to help the department develop the administrative rules they need to address any issues with regard to this particular piece of legislation?

Lyle: The trust was designed and is set up to only pay for the remediation of the downtown area. If this bill is passed there will be an ability to get reimbursement from the trust for specific department costs relating to that cleanup.

Rep. Skarphol: If you don't develop those rules, I don't think your going to remediate the Mandan situation either?

Lyle: Will remediate Mandan, whether we get the bill passed or not.

Rep. Skarphol: So your going to have the ability to satisfy the lenders in Mandan to allow for the mortgages on property that are potentially contaminated even if this bill doesn't pass?

Lyle: Satisfying the lenders is a separate issue from the remediation. What this bill allows us to do is to draw the line on finishing the remediation, probably at a level where there is less remediation necessary than if this bill doesn't pass.

Rep. Skarphol: So this bill will aid you, but not necessarily necessary to do what it is you need to do?

Lyle: That is correct.

Rep. Skarphol: So if this bill fails it will have no effect on the sale of that property in Mandan?

Lyle: It will have an effect on sales of the property, it won't probably effect their remediation.

Rep. Skarphol: So the sale of the property is not a factor of remediation?

Lyle: The remediation fund is for the remediation of the contamination. This bill deals with the issue of allowing us to give releases to property before the property is fully remediated based on certain conditions that we place on the property. We either negotiate with the land owners, or it is established as part of a zoning process with the city.

Rep. Skarphol: Who established the criteria for the utilization of this 24 million ?

Lyle: The trust was set up as part of the settlement agreement with the railroad.

Rep. Skarphol: So the trust was established by the Attorney Generals office?

Lyle: The trust was established by the City of Mandan, the Health Department, and the State of ND as part of a settlement of litigation.

Rep. Monson: Did I understand you to say that part of this set of rule making could be covered by that trust, at least the part pertinent to Mandan?

Lyle: I think it would probably be appropriate as part of the cost, if we prorated that to the trust. I would recommend to the trust that they consider paying that.

Rep. Monson: Would you care to give us a number?

Lyle: This program is for the whole state, and the first couple of years of implementation is what really we're talking about for the 50,000. In terms of the total, I would think a reasonable guess would be maybe 10% to 20% of the total time we will spend on this particular project.

Closed General Discussion Hearing.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1279
Contaminated Properties

House Appropriations Full Committee

☐ Conference Committee

Hearing Date February 8, 2005

Tape Number
2

Side A

Side B
X

Meter #
#8.1 - #36.7

Committee Clerk Signature

Chris Alexander

Minutes:

Rep. Ken Svedjan, Chairman opened the discussion on HB1279.

Rep. Al Carlson explained that this bill is in response to the serious diesel fuel spill in Mandan that caused those lands to be unmarketable because of the environmental ramifications of the spill. In most cases this was the problem of the second owner rather than the original owner and these second owners were unable to get a loan on their property or get a clear title to market their property. So although this bill does not mention the Mandan situation specifically, it deals with what would happen in similar situations around the state. The bill creates the opportunity where it does not create the liability for the second owner of the property that was not responsible for the mess that was created. The fiscal note is there to set up rules and to set up procedures and take samples of the property, etc...and in doing so, this could become bigger than anyone might think because it could happen to any gas station owner in a small town, any fertilizer plant in a small town or even a bigger town, but there could a lot more spills in areas that they didn't

anticipate so they requested \$50,000 in the fiscal note which is not in the Governor's budget to assist the setting up of a fund. There was a \$24 million fund set up for the clean up in Mandan and our question to the Health Department was if there were moneys available within this \$24 million to help get this program and fund set up. The answer was maybe, that we could be repaid for any work that was done to this specific site. Our committee thought that this could be done but we were not sure if we could establish a second fund of \$50,000 to do it. The subcommittee did not take action on this because we did not receive the information about the repayment for Mandan work until late in the day. The bill is all right as it is but my recommendation is to leave off the fiscal note.

Rep. Keith Kempenich asked if there wasn't already a fund for these gas leak dollars.

Rep. Al Carlson answered that there had been lots of funds but that it was his understanding that these funds could not be co-mingled.

Rep. Bob Skarphol commented that page 6 line 5 has a reference to an "environmental Remediation Operating Fund." This fund does not actually exist and the amendment Ms Arvy Smith was to put together would have created a fund for these moneys. We need an amendment to create this fund.

Rep. Ken Svedjan, Chairman asked if there was an amendment drafted.

Rep. Al Carlson answered that Ms Arvy Smith came down when she saw the bill on the calendar and said we needed to change the name of this fund or create this fund so there was a place for these funds to go.

Rep. Keith Kempenich commented that the fiscal note stated that this is to establish the Environmental Remediation Operating Fund (meter Tape #2, side B, #13.9)

Rep. Ken Svedjan, Chairman clarified that this fund does not exist and a designation needs to be made as to which fund these dollars would go into and the funds would be derived from the \$24 million set aside for the Mandan clean up.

Rep. Al Carlson responded by saying it would be a portion of the funds that could come from this. The Health Department was very cautious, both in stating the number of sites that would need work and how much of the \$50,000 could be billed back to Mandan.

Rep. Ken Svedjan, Chairman commented that there was no appropriation in this bill but only the fiscal note of the \$50,000.

Rep. Mike Timm, Vice Chairman asked if the state had any control over the \$24 million in Mandan and what are they going to do with it.

Rep. Al Carlson answered that it was his understanding that it was very specific about what it could be used for and how the money could be distributed. It was a legal settlement between the City of Mandan and the Railroads and the Health Department was involved in the negotiations of the contract. It is in a trust that has to be paid out. It is limited but it is available through the billing for the work that has already been done by the Health Department through this bill.

Rep. Mike Timm, Vice Chairman asked how the Health Department can bill Mandan for work that needs to be done in other cases.

Rep. David Monson commented that Mandan will be the first of five cases to be worked on and the Health Department would have to write the rules with. So since it will be the first we're hoping to get some of the money back from there but they won't cover the whole \$50,000 since there will be other work done outside of Mandan.

Rep. Al Carlson commented that the bill itself is good. We can put a chunk in the fund and hopefully it will regenerate itself. (meter Tape #2, side B, #18.2)

Rep. Bob Skarphol clarified that the \$50,000 is to create the rules and procedures for these situations not to do the clean up work itself.

Rep. Ole Aarsvold asked who the "they" were that we are speaking about and what their services are.

Rep. Al Carlson answered the Health Department. Rep Carlson continued by saying that if we did not fund this the Health Department will have to do it on their own.

Rep. Ken Svedjan, Chairman asked if Legislative Council has done an amendment on this yet.

Ms Roxanne Woeste from Legislative Council answered no.

Rep. Ken Svedjan, Chairman clarified that if this bill is passed, amended or otherwise, it would only put the bill in place. In order for it to be funded it would either need to be added to the Health Department's budget or if we can get start up funds from Mandan as special revenues. There is no appropriation in this bill.

Ms Roxanne Woeste answered that this is correct. The Department would have to find the money to carry this out. (meter Tape #2, side B, #21.4)

Rep. Francis J. Wald noted that on page 2 of the fiscal note talks about a continuing appropriation and Rep Wald asked for clarification about this..

Rep. Ken Svedjan, Chairman answered that the fund would perpetuate itself.

Rep. Al Carlson commented that there would be revenues in and out of the fund based on who does the clean up work. There could also be fines or settlements so there would need to be a continuing appropriation authority to keep the money flowing in and out of the fund.

Rep. Ken Svedjan, Chairman asked how this reconciled with what Rep Skarphol asked earlier about how the \$50,000 was to be used to write the rules. If you expend the \$50,000 to write the rules, how do you replenish it?.

Rep. David Monson commented that the \$50,000 was to write the rules and this is general fund portion of the bill. We are hoping to get some money from Mandan to help reduce this cost. Every bill that we pass here has some kind of writing of rules or processing that needs to be done.

Rep. Ken Svedjan, Chairman asked for clarification from the Health Department on these issues regarding the \$50,000 fiscal note and how these funds might replenish themselves. A second need is to identify the fund that could be used for these funds.

Ms Arvy Smith from the Health Department explained that the \$50,000 were start up costs to help write the rules and do site samples to help develop the rules. These are one time costs. It is difficult to estimate how many of these will come into our office.

Rep. Ken Svedjan, Chairman asked Ms Smith to explain how the fund would replenish itself.

Ms Arvy Smith answered that the Health Department would collect fees that would be put in this fund. If this fund is not established we could put these funds in our Health Department Operating Fund.

Rep. Ken Svedjan, Chairman asked what we would need to do to establish the fund.

Ms Arvy Smith answered that we could strike the "environment remediation fund" and replace it with the "Department of Health Operating Fund."

Rep. Mike Timm, Vice Chairman mentioned that if we left this language in the bill then the Department of Health would have to start up this fund.

Ms Arvy Smith agreed and said that they would then need some authorizing language in the bill that would authorize the Department of Health to create this fund and specifies what funds will go into it and what the funds could be used for.

Rep. Ken Svedjan, Chairman clarifies that the nature of the amendment would only be to change the name of the fund to the Department of Health Operating Fund. Another point in this bill is if it is passed there is no appropriation in it. And the Health Department Budget is in the senate.

Rep. Jeff Delzer asked if we change the fund to their operating fund would we need to give them continuing appropriation authority on this fund or would they already have it.

Ms Arvy Smith answered that the Department of Health only have one area of continuing appropriations authority in regards to this fund.

Rep. Jeff Delzer commented that the department of Health was given specific authority for this area and we would need to give specific authority for this new area as well.

Rep. Ken Svedjan, Chairman stated that the Legislative Council needed to work up an amendment for naming the fund and limit the continuing appropriation to just this project. This amendment needs to be accomplished by tomorrow morning and we can finish this bill up in the morning.

Ms Arvy Smith noted that the limit on the continuing appropriation may already be in the bill on line #9 of the engrossed bill.

Rep. Ken Svedjan, Chairman directed this information to the Legislative Council and asked that they take all these into consideration when drafting the amendment.

Rep. Bob Skarphol commented on page 7 lines 6-10 in the engrossed bill.

Mr. Dave Glatt from the Department of Health commented on these lines. The environmental remediation fund is to be used to monitor the mediation of those types of activities. If there is sufficient funds available, because we participate in the petroleum fund periodically, they put up the 10% and we may have federal funds available. If the funds are sufficient we could reimburse the petroleum fund for whatever moneys they invest in the project. The petroleum compensation fund was established to address only leaking storage tanks above or below the ground. So it could only be used for remediation cases.

Rep. Francis J. Wald commented that when the petroleum compensation fund was written it excluded railroads. He asked if this bill was changing this exclusion.

Mr. Dave Glatt answered no.

Rep. Ken Svedjan, Chairman commented that the discussion of this bill will close for now and be re-opened in the morning.

Rep. Ken Svedjan, Chairman adjourned the meeting. (meter Tape #2, side B, #36.4)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1279
Contaminated Properties

House Appropriations Full Committee

☐ Conference Committee

Hearing Date February 9, 2005

Tape Number
1

Side A
X

Side B

Meter #
#0 - #9.8

Committee Clerk Signature

Chris Alexander

Minutes:

Rep. Ken Svedjan, Chairman called for the clerk to take the roll and opened the discussion on HB1279.

Rep. Bob Skarphol distributed and explained amendment #0301. This amendment removes the environmental remediation operating fund and substitutes the Department of Health Operating Fund. The moneys will be kept in a separate account in these funds.

Rep. Bob Skarphol moved to adopt amendment #0301 to HB1279.

Rep. Al Carlson seconded.

Rep. Ken Svedjan, Chairman clarified that in yesterday's discussion on this bill we asked Legislative Council to amend this bill by naming the fund mentioned and to ensure that the continuing appropriation authority was limited to just this project. Amendment #0301 reflects both of these directives. Chairman Svedjan called for a voice vote to adopt amendment #0301 to HB1279. Motion Carried.

Rep. Bob Skarphol moved a Do Pass As Amended motion for HB1279.

Rep. David Monson seconded.

Rep. Al Carlson asked if the Department of Health views this fund as a fund that will regenerate itself so that your department will not be back here in the next biennium asking for more money.

Mr. David Glatt from the Department of Health answered that they see this as a continuing appropriation so there would be no reason to return and ask for more funding.

Rep. Francis J. Wald asked about the bottom of page 9 lines 19-21 where it says the board of township supervisors, some counties don't have townships, so should this language change.

Mr. David Glatt answered that we addressed the townships and we addressed the counties on the first page so we left it up to whoever had the authority. There is no conflict with this language. (meter Tape #1, side A, #5.0)

Rep. Ole Aarsvold questioned section 4 and asked if townships had to be zoned first before they were eligible for this program.

Mr. David Glatt answered yes.

Rep. Ole Aarsvold asked if they were not zoned then the authority would be with the subdivision of action.

Mr. David Glatt answered yes and said that they did not want to exclude any political subdivision that had any authority to enter into this type of an agreement.

Rep. Ken Svedjan, Chairman clarified the status of the bill by explaining that there was no appropriation in the bill and that if we pass the bill we would add the money in the budget bill for the Health Department once we get it or it would be dead.

Rep. Bob Skarphol asked if the legislature could help in anyway to get any funds from the \$24 million settlement in Mandan or could the department of Health handle it on their own.

Mr. David Glatt answered that he believed the department could handle it on their own since conversation on this has already begun.

Rep. Ken Svedjan, Chairman called for a roll call vote on the Do Pass As Amended motion for HB1279. Motion carried with a vote of 23 yeas, 0 neas, and 0 absences. Rep Skarphol will carry the bill to the house floor.

Rep. Ken Svedjan, Chairman closed discussion on HB1279.

Date: **February 9, 2005**
Roll Call Vote #: **1**

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1279

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number **50079.0301**

Action Taken **DO PASS AS AMENDED**

Motion Made By **Rep Skarphol** Seconded By **Rep Monson**

Representatives	Yes	No	Representatives	Yes	No
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson	X		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer	X	
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	X		Rep. Larry Bellew	X	
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Gulleason	X		Rep. James Kerzman	X	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson	X				

Total Yes **23** No **0**

Absent **0**

Floor Assignment **Rep Skarphol**

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

REPORT OF STANDING COMMITTEE

HB 1279, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (23 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1279 was placed on the Sixth order on the calendar.

Page 6, line 28, replace "the environmental" with "a separate account in the department's"

Page 6, line 29, remove the first "remediation"

Page 6, line 30, after "and" insert "moneys deposited in this account"

Page 7, line 5, replace "environmental remediation operating fund" with "separate account in the department's operating fund from fees collected under this section"

Page 7, line 8, replace "the environmental remediation operating fund" with "moneys in the separate account"

Renumber accordingly

2005 SENATE POLITICAL SUBDIVISIONS

HB 1279

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1279

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 4, 2005

Tape Number
1

Side A
X

Side B

Meter #
0 - 3377

Committee Clerk Signature



Minutes:

Chairman Cook called the Senate Political Subdivisions Committee to order. All members (6) present.

Chairman Cook opened the hearing on HB 1279 relating to contaminated properties; relating to institutional controls by countiess, cities and townships.

Senator Dwight Cook, District 34, Mandan, ND, one of the sponsor of the bill, introduced SB 1279. This is a bill that came out of a serious problem in Mandan. Years ago, unfortunately we had a tremendous amount of diesel fuel that has been spilt at a railroad yard and that diesel fuel has migrated to the water table underneath a major portion of downtown Mandan. Therefore we have not only a large amount of contamination underneath our downtown but we have a lot of property that has a liability issue tied with that property. The bill is meant to offer a solution to a problem that exists when property owners try to sell the property, try to prove their property

where they want to go and borrow some money. There is not a bank that will borrow them any money and the reason is the liability issue and the risk that goes with that.

Representative Todd Porter, District 34, Mandan, ND, Sponsor of HB 1279, testified in support of the bill. This bill comes to you through the work of many in the interim. This bill would not be in front of you today without all the work and assistance from the State Health Department, Insurance Commissioner Office and the City of Mandan. As you know, Mandan has been in the middle of a long term disaster for the last fifteen or twenty years in relationship to a diesel fuel contamination problem right in the central business district of downtown Mandan. I think the latest estimate that I heard was three million gallons of diesel fuel at one point in time were in and around the area. It was first discovered when they build the law enforcement center in downtown Mandan and they were digging the elevator shaft into the ground and they noticed diesel fuel coming up and at the time they did not know where it was coming from and there were other gas stations and things in that area. The Health Department got involved and after all the work that went into it, it was determined that this plenum spread about twelve blocks and came from a refueling point on the Burleighton Northern Santa Fe Railroad which had been there since they first brought diesel locomotives to Mandan back in the 1940's. The fuel spill as it progressed with the clean up ended up in a law suit. The lawsuit was settled and now Mandan is ready to start over and get going again with downtown Mandan. The main purpose of this bill is bringing all the players together and all the work that was put forth on this particular bill to provide a means of economic stimulus to downtown Mandan. The problems that have presented themselves because of this massive spill is existing owners of property values have declined dramatically. Who would you sell your building to, on top of three million gallons of diesel fuel?

Nobody wants the building. The other problem that came up is, if that is the case and I want to expand my business, no financial institution wants to come in and lend you the money. The first part of the bill allows for the institutional controls; it allows the health department to come in and in this case there is not a whole lot of background work that needs to be done because they know where the fuel is and how deep and where it is moving too. This particular piece of legislation works state wide. They had another similar situation in Minot, and one in Linton ND. Any place where you have large refueling places along an railroad line, I would guess you have contamination. The institutional controls allows the health department to move in to the area after all the ground work and scientific data has been gathered and allows them to tell a business that if they do these certain things for your business it is safe, depending on the business. It is up to the health department to put the institutional controls in place, building by building across the state if someone once them. This piece of legislation is up to the individuals if they want them, there is no mandates involved in it so if you don't want them you don't have to get them. The other thing it puts in place are some limits of liability for the financial institutions. One of the things we see in down town Mandan, is the financial institutions are not willing to risk assuming that kind of liability. The biggest piece of liability is if someone defaults on a loan and they end up with the business back. Do they also end up with the clean up responsibility and the responsibilities of any other health concerns and problems? The financial institutions need that reassurance from the state that they do not assume that liability when they become involved with a property that has institutional controls put on it. We put a fifty thousand dollar appropriation on the bill for the health department to put these institutional controls in place and the fees that they would put out to business.

Senator Fairfield: Does this limited the liability of the polluting entity?

Rep Porter: No, the responsibility always remains with the polluting entity.

Senator Dever: Are the property owners receptive to this and understanding of this?

Rep Porter: We had a meeting in Mandan prior to the legislative session and worked through the Bismarck/Mandan Chamber of Commerce and we had maybe twenty five or thirty downtown businesses that are really effected by this. It even spreads out into residential areas also. The response was that they were receptive to this and also understood that there was nothing in this that made them get these institutional controls if they did not want to. I have not heard any negatives on this.

Senator Cook: Could you please speak briefly to all the parties that are involved in this process.

Rep. Porter: We really tried to get all players at the table when we were doing this to make sure that as we came into the legislative session that this was really an effort of this whole group from the Health Department, Legislative Council, City of Mandan, The Chamber, GNDA, Insurance Commissioners Office and Melcomb Brown was hired as a special assistance attorney general during the course of the law suit. It was really a community effort and a state effort to make this happen. They both agreed that in order to see an economic move back into an area this devastated by this large spill something needs to be put in place.

Ken LaMont, Major of Mandan support in favor of HB 1279. (See attachment #1)

Todd Steinwand, President of Wells Fargo Bank in Mandan, ND, testified in support of HB 1279. (See attachment # 2)

Dave Glatt, Section Chief of the Environmental Health Section for the ND Department of Health testified in support of HB 1279. (See attachment # 3)

Senator Gary Lee: I am looking for any unintended consequences that might be a result of this.

For example there is a fairly substantial farm chemical storage business not too far from where I live. Does it encumber the township in anyway and put them in a different position than they would be now?

David Glatt: Not that he is aware of. What it does provide is when you have a facility that has offerings such as a fertilizer facility or chemical warehouse, when they leave the property and there is contamination associated with it and nobody wants to buy it because there are liabilities associated with it, then what I believe this bill will do is free up that property.

Senator Dever: Would this be consistent with any Federal regulations that might apply.

David Glatt: That is correct. It was fashioned after some federal legislation.

Stephanie Iwaniw, Director of Government Affairs for the Bismarck-Mandan Chamber of Commerce, testified in support of HB 1279. (See attachment # 4)

No further testimony for or against HB 1279.

Chairman Cook closed the hearing on HB 1279.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1279

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 10, 2005

Tape Number
1

Side A

Side B
X

Meter #
3770 - 4124

Committee Clerk Signature



Minutes:

Chairman Cook opened the discussion on HB 1279 regarding the diesel fuel spill bill..

Senator Triplett: This looks like a well thought out bill and I don't think there is anything we could do to make it better or change it.

Chairman Cook: Representative Porter brought a group of people to the table and they took a bill that started out as a twenty eight page bill and it got it down to nine pages and focused on what it was intended to do. It did model after some other legislation in other states but other states are now starting to look at this one and change theirs. There is not a greater complement that you can get.

Senator Hacker moved a Do Pass.

Senator Triplett seconded the motion.

Roll call vote: Yes 6 No 0 Absent 0

Carrier: **Senator Cook**

Date: 3-10-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1279

Senate Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Senator Hacker Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator Nicholas P. Hacker, VC	X				
Senator Dick Dever	X				
Senator Gary A. Lee	X				
Senator April Fairfield	X				
Senator Constance Triplett	X				

Total Yes 6 No 0

Absent

Floor Assignment Senator Cook

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

St. Comm. Report
done 3-10-05

REPORT OF STANDING COMMITTEE (410)
March 10, 2005 2:17 p.m.

Module No: SR-44-4685
Carrier: Cook
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1279, as reengrossed: Political Subdivisions Committee (Sen. Cook, Chairman)
recommends DO PASS and BE REREFERRED to the Appropriations Committee
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1279 was
rereferred to the Appropriations Committee.

2005 SENATE APPROPRIATIONS

HB 1279

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1279

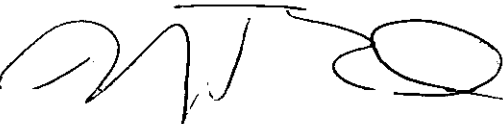
Senate Appropriations Committee

☐ Conference Committee

Hearing Date 03/21/05

Tape Number	Side A	Side B	Meter #
1	x		0-3085

Committee Clerk Signature



Minutes:

Chairman Holmberg opened hearing of HB 1279. Roll was taken, all members were present.

Rep. Todd Porter, District 4 appeared in support of HB 1279. Rep. Porter stated that this bill is a result of the BNSF situation, or the spill in Mandan, and also incidences in Minot. This bill would effect those areas as well as other areas in the state that have refueling stations, were a spill or another form of contamination can occur. This allows for the Health Department go enter the contaminated site to asses what needs to be done so if can be safely inhabited, i.e. installing ventilation systems. Because of the contamination buildings, or land property values will go down. The second part of the bill allows for banks to become involved with immunity. They are not assuming the liability for the pill or the property. All of this is done voluntarily.

Sen. Bowman (340): What is the definition of institution control?

Rep. Porter: This is a measure that the Health Department needs to be done for building use and occupancy. The Health department is the institutional control. They buyer of the property would look for this.

Sen. Bowman: There would be an increase in value?

Rep. Porter: Yes.

Sen. Thane (475): Who will provide the advice to the County Commissioners?

Rep. Porter: The Department of Health. Remember, the property owner must ask for an institutional control, it can only be done if it is voluntary on the part of the property owner.

Sen. Andrist (619): Do we have rules for this or do we have to create a new body?

Rep. Porter: I don't have that answer.

Sen. Christmann: What are the possible ways it could happen?

Rep. Porter: A city, County or a private person.

Sen. Christmann: What protects people from having others call the Health Department to move them off their land. In other words how would we prevent this scenario; I owned land that once had a gas station on it. The city wants me to sell to them so they can build a parking lot. The Health Department says that it is contaminated, and I am forced to sell it because it is now worth very little.

Rep. Porter: It is a voluntary program.

Sen. Krauter (1289): This to me is a shift in liability scenario, its shifted to the Health Department if ten years down the road could the Health Department be liable? That's what it sounds like, am I hearing that wrong?

Rep. Porter: Yes, there is no shift of anything. What you have is a best building practice put in place and the best use practice is put in place for your property. The Health Dept. scientifically determines the best safety devices to be put into place.

Sen. Krauter: You can't guarantee never, if something were to happen and you did those practices and sold the property and the new owner has problems they will want to sue me as an owner. And I will say that I did the best practices and they will look to the health department. If this was to go to court I think I would have the jury in my favor.

Rep. Porter: I will let Mr. Glatt go into that further.

Sen. Lindaas (1525): As time goes on, will the contaminator still have liability, and the responsibility?

Rep. Porter: No, they will always be liable.

No further questions were asked of Rep. Porter.

Dave Glatt, Chief of Environmental Protection Programs, Health Department appeared in support of HB 1279. Mr. Glatt stated that people who own or purchase contaminated property, that is contaminated not of their own action. This bill requires the department to do several things that we have not done in the past. To look at institutional controls, to participate in public informational meetings, and to look at what type of insurance we might have to negotiate for unforeseen incidences in the future, and gives the department the ability to develop rules, and recoup some of the costs associated with it.

Sen. Andrist (270): Tell us about the fiscal note, the \$50,000. Why is it needed and how would it be spent?

Mr. Glatt: It would include starting costs, we don't know how much it will cost. The \$50,000 would get us through the first year.

Chairman Holmberg: The \$50,000 of General Fund money, there is no money in the bill?

Mr. Glatt: It is additional work, with out the money we will do it, but it will cost the department, hindering their budget.

Chairman Holmberg closed hearing of HB 1279

Date 3-21-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. ~~SB~~ 1279

Senate SENATE APPROPRIATIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

DO PASS

Motion Made By

Seconded By

K

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	/		SENATOR KRAUTER	/	
VICE CHAIRMAN BOWMAN	/		SENATOR LINDAAS	/	
VICE CHAIRMAN GRINDBERG	/		SENATOR MATHERN	/	
SENATOR ANDRIST	/		SENATOR ROBINSON	/	
SENATOR CHRISTMANN	/		SEN. TALLACKSON	/	
SENATOR FISCHER	/				
SENATOR KILZER	/				
SENATOR KRINGSTAD	/				
SENATOR SCHOBINGER	/				
SENATOR THANE	/				

Total (Yes)

50

No

0

Absent

Floor Assignment

PDS - Cook

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

REPORT OF STANDING COMMITTEE (410)
March 21, 2005 10:11 a.m.

Module No: SR-51-5542
Carrier: Cook
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1279, as reengrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Reengrossed HB 1279 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1279

Chairman Devlin and members of the Committee, my name is Ken LaMont, I am Mayor of Mandan, and am in favor of the passage of House Bill 1279.

*Some testimony
Sweet to
Send*

My remarks will be brief as there are many people here today to discuss the details of House Bill 1279.

I thank Representative Porter for taking the lead on the development of House Bill 1279, along with support from Representative Kelsch, Senator Cook and the many individuals from the North Dakota Department of Health and the financial community who recognize the issues we face in Mandan. All have stepped up to the plate to provide assistance in crafting House Bill 1279.

- The Problem:
 - Pollution creates uncertainty and impairs the reuse of property.
 - Lenders are unwilling to lend, thus reinvestment in property comes to a standstill.
- The Solution:
 - Create liability protection for owners, developers, lenders and tenants
 - Create cleanup end points allowing development to occur
 - Remove contaminants "to the extent practicable"
 - Property Specific Application of Engineering and Institutional Controls

House Bill 1279 is the beginning of this solution. Contaminated property not only exists in North Dakota, but throughout the country and this type of legislation has been successfully implemented in other states to deal with the "reality of remediation". It is time for North Dakota to move forward with these significant issues.

Thank you Chairman Devlin, and Committee members. I urge the passage of House Bill 1279.

Testimony
HB 1279 -- Support
January 20, 2005

Mr. Chairman and members of the House Political Subdivisions Committee, my name is Larry Goetzfridt. I am a property owner in downtown Mandan and I am here to ask you to support House Bill 1279.

You are aware of the diesel fuel plume that exists below downtown Mandan due to decades of negligent product handling. A settlement has been recently reached between the City of Mandan and the offending party and the reclamation process has begun. This is a positive move in the right direction but more work needs to be done.

The contamination below the city has had a very negative affect on economic development. Business owners such as myself are unable to expand businesses or sell property due to the fear, uncertainty and lack of willingness on the behalf of financial institutions to invest in a downtown that is not sitting on very firm ground.

House Bill 1279 is the vehicle that can move economic development forward in Mandan by allowing our local government to regulate and make assurances of the level of decontamination. This process will allow us to give the financial community the assurance they need to invest in redevelopment.

Thank you, Chairman Devlin and members of the House Political Subdivisions Committee for this opportunity to share my thoughts. I ask that you support this legislation and recommend a Do Pass for HB 1279. I would be happy to answer any questions you may have at this time.

TESTIMONY REGARDING HB #1279

My name is Todd Steinwand and I am president of Wells Fargo Bank in Mandan.

*Same given
to Senate*

I'm here in support of HB 1279.

As you all know, the Mandan downtown area is contaminated with a diesel spill plume. This is a known contamination and efforts are underway to help remediate this property. The contamination makes it very difficult to lend money to owners and potential owners of the property located in the plume.

There are two significant risks that financial institutions face when lending money on contaminated property that are above and beyond the normal risk associated with real estate loans on uncontaminated property. Those risks are:

- 1) That the lender may become liable for the cost of the clean up of the property should the lender become an owner of the property by right of foreclosure.
- 2) What is the value of the property in light of the fact that the property is on a contaminated site. Determining the value is difficult for several reasons:
 - a) Can the new owners be held liable for the cost of the clean up?
 - b) What are the limitations on remodeling the building on the contaminated site? Is it safe for the public and what steps need to be taken to the property to make it safe? What are those costs?
 - c) Are there limitations on what the property can be used for and still maintain public safety from the contamination?

This bill removes the risk of the lender or new property owners being held liable for the clean up as long as the lender has no prior involvement with or responsibility for the original contamination or the environmental release and uses and manages the property in compliance with the institutional controls and conditions established by the Department of Health.

In addition, this bill through institutional controls, responsibility exemptions, or letters of no further action by the State Health Department sets the guidelines on how the property can be used and still be safe for the public. This bill will help remove the doubt as to what remodeling can take place and does specifically limit the liability of the new owner for the cost of the clean up. It basically sets the rules on the property so all new owners are aware of what those rules are. This should help stabilize and eventually increase the value of those properties and will help mitigate some of the risks that the financial institutions have in determining what the value of these properties are.

This legislation is not only important for the redevelopment of downtown Mandan, but provides a process on how the state can deal with lenders and property owners on other existing contaminated sites and sites that become contaminated in the future.

I strongly urge your support of this bill.

Sincerely,

Todd Steinwand
President

Testimony

House Bill 1279

House Political Subdivisions Committee

same given to Senate

Thursday, January 20, 2005; 2 p.m.

North Dakota Department of Health

Good afternoon, Chairman Devlin and members of the House Political Subdivisions Committee. My name is David Glatt, and I am section chief of the Environmental Health Section for the North Dakota Department of Health. I am here today to testify in support of House Bill 1279.

House Bill 1279 addresses a long-standing environmental and financial issue facing many lending institutions and landowners in the state. The issue is whether landowners should be responsible or liable for any cleanup of environmental contamination on real property if they did not contribute to the contamination or cause it to occur.

At the present time, the Department of Health has no option but to require existing landowners, regardless of their involvement with the contamination, to be responsible for any potential cleanup of the contamination. Although the department has tried to ease the burden as much as possible, landowners can still be liable for contamination they did not create, resulting in property that is difficult, if not impossible, to sell; property that is abandoned and turned over to a political subdivision for back taxes; or the inability of existing landowners to secure loans for property upgrades.

House Bill 1279 provides the authority and identifies a process for the department to issue regulatory assurance or exemptions from future environmental regulatory action to interested landowners. Through a process that is identified in this bill and that could be further clarified in rules, the department will determine the extent of environmental contamination through the evaluation of site assessments; establish and implement covenants or institutional controls with private landowners or political subdivisions; and solicit public involvement. In addition, the department may require potential environmental insurance or financial assurances. It is a similar process that many other states have identified in law and have made available to existing or potential landowners of contaminated property in an effort to keep property liquid, encourage investment and return property to the tax roles.

House Bill 1279 also provides the department the authority to develop rules, assess fees, and spend the funds for administration of remediation activities.

This concludes my testimony. I am happy to answer any questions you may have.



January 20, 2005

Testimony on House Bill 1279
Kelvin L. Hullet, President
Bismarck-Mandan Chamber of Commerce

Some testimony given to Senate

Mr. Chairman and Members of the Committee. Good Afternoon, I am Kelvin Hullet, President of the Bismarck-Mandan Chamber of Commerce. I am here today in support of HB 1279. This bill, introduced by Representatives Porter and Kelsch and Senator Cook is important to the future re-development of Downtown Mandan and other locations across the state of North Dakota.

As you are all aware, the Mandan downtown area is contaminated with a diesel spill plume. This is a known contamination and efforts are underway to help remediate this property. The contamination makes it very difficult to lend money to owners and potential owners of the property located in the plume.

Since I have been in the community, there has been extensive discussion about how we go about re-establishing a vibrant downtown area in Mandan. While it will take some time to clean up the properties in downtown, one of the pressing issues is how to create investment in the downtown on properties known to be contaminated by a hazardous substance.

This bill removes the risk of the lender or new property owners being held liable for the clean up as long as the lender has no prior involvement with or responsibility for the original contamination or the environmental release and uses and manages the property in compliance with the institutional controls and conditions established by the Department of Health.

In addition, this bill through institutional controls, responsibility exemptions, or letters of no further action by the State Health Department sets the guidelines on how the property can be used and still be safe for the public.

This bill will help remove the doubt as to what remodeling can take place and does specifically limit the liability of the new owner for the cost of the clean up. It basically sets the rules on the property so all new owners are aware of what those rules are. This should help stabilize and eventually increase the value of those properties and will help mitigate some of the risks that the financial institutions have in determining what the value of these properties are.

This legislation is not only important for the redevelopment of downtown Mandan, but provides a process on how the state can deal with lenders and property owners on other existing contaminated sites and sites that become contaminated in the future.

Mr. Chairman and Members of the Committee, on behalf of our organization, I urge you to move this bill forward to the full house with a Due Pass.

Testimony: January 20, 2005
House Bill 1279 - SUPPORT

We the undersigned support House Bill 1279:

Name	Business	Address	Phone
1 MARK A. ZAROK	MANDAN PLYWOOD	116 W MAIN ST	663 3719
2 Rosemary K. Rhoden	Mandan	2118 W. Main	663-9842
3 Wlene J. J. J.		110 West Main Mandan	663-9135
4 Tom K. K.		101 E Main - MDN	663-223-2338
5 Logotype Station		104-3rd Ave N.W.	663-8593
6 Pat Schleicher		1403-9 Ave N.W.	MDN 665-8715
7 Jerran Genz		122 W M	663 8618
8 David Berger		1182 Av NW	667-2828
9 RaeAnn Kelsen		611 Craig A	663-0774
10 Todd Steinwand		111 2nd Ave NW	667-1501 Wells Fargo
11 Wade Bachmeier	Century 21 Landmark	1142nd Ave NW	667-1234
12 Larry Coetzfriedt	Simplified Furniture	302 W Main	667 667
13 Dr. David Berger	NEWGARD CHIROPRACTIC	MDN	663-5855
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March 4, 2005

Testimony on House Bill 1279
Stephanie Iwaniw, Director of Government Affairs
Bismarck-Mandan Chamber of Commerce

Mr. Chairman and Members of the Committee. Good Morning, I am Stephanie Iwaniw, Director of Government Affairs for the Bismarck-Mandan Chamber of Commerce. I am here today in support of HB 1279. This bill, introduced by Representatives Porter and Kelsch and Senator Cook is important to the future re-development of Downtown Mandan and other locations across the state of North Dakota.

As you are all aware, the Mandan downtown area is contaminated with a diesel spill plume. This is a known contamination and efforts are underway to help remediate this property. The contamination makes it very difficult to lend money to owners and potential owners of the property located in the plume.

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This legislation is not only important for the redevelopment of downtown Mandan, but provides a process on how the state can deal with lenders and property owners on other existing contaminated sites and sites that become contaminated in the future.

Mr. Chairman and Members of the Committee, on behalf of our organization, I urge you to move this bill forward to the full Senate with a Due Pass.