

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1388

2005 HOUSE NATURAL RESOURCES

HB 1388

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1388

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 4, 2005

Tape Number	Side A	Side B	Meter #
1		x	3830-End
2	x		0-960
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

**Chr. Nelson:** Opened hearing on HB 1388. Rep. Nottestad absent. Clerk read the title aloud.

**Rep. Kempenich:** This bill would put a 100-yard circumference around buildings, no matter who owned the premises. It is an expansion, beyond land that you own.

**Vice Chr. Porter:** Are there any questions of Rep. Kempenich? Seeing none, thank you for your testimony. Is there further support for HB 1388?

**Brian Kramer, ND Farm Bureau:** We support this bill for two main reasons. First, it's a safety issue to owners of the buildings, and secondly, it could be a liability issue to owners of premises.

**Rep. Porter:** Are there any questions of Mr. Kramer? Seeing none, thank you for your testimony. Is there further support of HB 1388? Seeing none, is there opposition?

**Mike Donahue, United Sportsmen of ND and the ND Wildlife Federation:** (Written testimony attached.)

**Rep. Porter:** Are there any questions of Mr. Donahue?

**Rep. Drovdal:** I don't see it as an access issue. I would like to take it further, to no hunting within 100 yards of all buildings, including storage buildings with valuable equipment inside. (Cites examples of machinery being shot through the walls of a locked up building.)

**Donahue:** We don't support shooting holes in buildings nor in equipment.

**Drovdal:** Do you have another solution?

**Donahue:** Not right off the top.

**Vice Chr. Porter:** Are there further questions for Mr. Donahue? Seeing none, thank you. Is there further opposition to HB 1388?

**Dennis Daniel:** I have an amendment idea to add to Line 12. No person may build...

(Note: I asked Mr. Daniel for a copy of this amendment. He had already discarded it. When I returned to type it into the minutes, this section of the tape is now blank to the end.)

**Vice Chr. Porter:** Are there questions of Mr. Daniel? Seeing none, is there further opposition to HB 1388?

**Roger Rostvet, ND Game & Fish Dept.:** It needs reasonable consideration of property rights. One thing unintended may change the bill to be what the sponsor didn't want. Passed out a copy of NDCC defining "hunt." (**Written copy attached**) Maybe it should read, "No person shall discharge a firearm within x feet of buildings." Bowhunting may not be a danger. As the bill is currently written, you could not walk into shoreline properties.

**Rep. Porter:** Are there any questions of Mr. Kramer? Seeing none, thank you for your testimony.

**Vice Chr. Porter:** How many individuals have been shot by hunters in the field?

**Rostvet:** (Unintelligible response)

**Rep. Drovdal:** I'm still reading this as a safety issue as well as property rights. Some individuals use hunting season to scope out empty farm buildings, anhydrous tanks and such with theft in mind. If I catch them, they can always say they are just hunting. I'd like the bill to keep them far away from buildings for hunting purposes and accomplish two purposes at once.

**(Change to Tape 2A)**

**Rostvet:** I think under the current law, that is very well addressed because the current law says that no person shall hunt the premises of another within ¼ mile (of buildings). This would expand that outside of the individual's property. It has nothing to do with property that you own, such as a farm place. It would prohibit the neighbor who owns the land from walking within 100 yards of your house with a shotgun.

**Rep. Drovdal:** I don't see the neighbor as the problem in this case. How many game wardens do you have to enforce that law in my district, which is 9,000 square miles?

**Rostvet:** Making a law won't make more game wardens.

**Vice Chr. Porter:** Further questions for Mr. Rostvet? Seeing none, thank you. Further testimony in opposition to HB 1388?

**Harold Neameyer, Cass County Wildlife Club:** (Written testimony attached.)

**Vice Chr. Porter:** Questions of Mr. Neameyer? Seeing none, thank you. Is there further testimony in opposition to HB 1388?

**David Munsch, Morton Co.:** I resent the fact that it's always referred to as "hunters." Someone who shoots somebody else's buildings is nothing but a vandal and it's not up to the Game & Fish to police. It's up to the sheriff. I'm opposed.

**Vice Chr. Porter:** Thank you. Could you, please, just for the record, state your name? Further testimony in opposition of HB 1388?

**Curtis Blohm, ND Outdoor Heritage Coalition:** (Written testimony attached)

**Vice Chr. Porter:** Are there questions of Mr. Blohm? Seeing none, thank you. Is there further opposition to HB 1388?

**Larry Clark:** I oppose this bill for several reasons. First, I believe landowner rights are being violated. With this law and the existing law, we still have a problem with the 440 yards. I personally had some experiences with that. Not as a landowner. I think there needs to be a distinction made between bow, shot gun hunting and high powered rifle hunting, because ¼ mile can take up a whole field for someone who goose hunts, or an adjoining tree planting for somebody who wants to go bow hunting. It's tough to tell a landowner that he can't set some decoys in his whole field because of the neighbor, when they are ¼ mile away. I live in a well hunted area. There are lots of houses so you (would) take a lot of land out of hunting. If you ask for permission and the person isn't home that morning, that doesn't mean you have permission.

**Rep. Porter:** Are there any questions of Mr. Clark?

**Rep. Hanson:** You had better get the Game & Fish to explain that. You're wrong in your definition. If you own the land on one side of the road, you can hunt right up to your neighbor's land. You don't need the 440 yards.

**Clark:** I think this whole thing comes about because of a law that is referred to in the Fish and Game office as the Larry Clark Law. There was a stink a few years ago and the law was literally changed in mid stream and I was threatened and prosecuted. I have in my possession a tape recording and a drawing. I took the drawing and the proclamation in to the Fish & Game office,

and ND is a single party consent state. I carried the tape recorder in with my consent tape, recorded the conversation and was told, that I was hunting legally and that those that were bothering me should be prosecuted. So, I filed charges on a park ranger, a park manager, and a game warden. The guy hunting with me was never harassed by them. But Mercer County was going to prosecute me if I didn't, quote, "back off."

**Vice Chr. Porter:** Further questions? Seeing none, thank you. Further testimony in opposition to HB 1388?

**Bill Helphrey, ND Bowhunters Association: (Written testimony attached)**

**Vice Chr. Porter:** Are there questions for Mr. Helphrey? Thank you. Further testimony in opposition to HB 1388?

**Rep. Keiser:** Could I ask Mr. Rostvet to come back?

**Vice Chr. Porter:** Absolutely. Mr. Rostvet, would you return for questions?

**Keiser:** We're getting off the intent of the bill sponsor. Is there an issue between the definition of premises and a building occupied by another person?

**Rostvet:** Right now, the law says occupied buildings, premises, meaning your own land. It means that the 440 yards applies only to your property, not across the road to the neighbor's property.

**Keiser:** From a policy standpoint and from a safety perspective, does the department think that might be an issue that should be addressed? "Premises" is what we have. What they're asking for is the addition, somehow, of an occupied building. It doesn't work under the definition of premise.

**Rostvet:** I believe what the bill is trying to address is, using an example, going down a county road, you see a farmstead on the right hand side of the road with a shelter belt. Someone else owns the left hand side of the road; it's not posted and somebody hunts there. Under current law, the (first) landowner has no control over the other person's property or who hunts there. This law would extend that zone of influence from his premise or house across the road to another person's property.

**Keiser:** I understand what they are trying to do. All the testimony does not address the issue of the bill sponsor. That is the safety issue if there is a house right across the road, people could be legally hunting right in front of it.

**Rostvet:** Under current law, they could hunt right across the road.

**Vice Chr. Porter:** Further questions for Mr. Rostvet?

**Rep. Norland:** If we pass this bill, then even the person worried about the safety factor, is forcing the person on the other side of the road that can't hunt his property within 100 yards, then obviously, he can't hunt his own property. If it's my farm, and I have a grandchild who wants to come to hunt from my deer stand in my grove of trees, he can't do it. That's the way I interpret it. If you restrict someone on his property, and he can't hunt within 100 yards, I can't hunt on my property either.

**Rostvet:** I'm sure it would do that. Right now, it says "without permission." He could hunt on his own property.

**Norland:** How about the guy on the other side with that 100 yard restriction, without permission?

**Rostvet:** He couldn't hunt on his own property.



Page 7

House Natural Resources Committee

Bill/Resolution Number HB 1388

Hearing Date February 4, 2005

**Norland:** I don't get that.

**Rostvet:** That's the law we have.

**Vice Chr. Porter:** As long as there were two adjoining occupied buildings within 100 yards of each other on separate pieces of property, neither one of those individuals could hunt their own shelter belt next to their own house because they would encroach other.

**Rostvet:** Unless they had permission from each other.

**Vice Chr. Porter:** I think that was Rep. Norland's point. Are there further questions of Mr.

Rostvet? Seeing none, thank you, Roger. Is there further testimony in opposition of HB 1388?

Seeing none, I'll close the hearing on HB 1388.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1388

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 11, 2005

Tape Number	Side A	Side B	Meter #
1	x		3470-4040
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

**Chr. Nelson:** Let's take up HB 1388. Does anybody have amendments on 1388, the 100-yard distance between buildings bill?

**Rep. Nottestad:** I was gone during that hearing, was there no testimony passed out? I have nothing in my book.

**Chr. Nelson:** Mike Donahue had testimony... We made sure that there was testimony on your desk.

**Rep. Charging:** The Game & Fish recommended do not pass, The Cass County Wildlife Club opposed it, the ND Outdoor Heritage Coalition opposed it, and the bowhunters wanted it killed or amended further.

**Chr. Nelson:** What's the committee's wishes?

**Rep. Hunskor:** As I understand this, if I live on one side of the road, and a neighbor across (the road) from me has his land posted, then I could not hunt on my land. Is that correct?

**Chr. Nelson:** Yes, that's the way I understand it.

**Rep. Porter: I move a do not pass.**

**Chr. Nelson:** Rep. Porter moves a do not pass, is there a second?

**Rep. Norland: Second**

**Chr. Nelson:** Committee discussion?

**Rep. Drovdal:** I'm going to resist the do not pass. This bill was brought in for a safety purpose.

It says 100 yards from an occupied building. It doesn't say posted buildings or anything else.

It's brought in as a concern about the safety of residents living out there. I think this committee fails to address such a concern by looking for a bogeyman, property rights, and I think safety is far more important than property rights although property rights are very important. Think we've failed to address that concern, and it's time to clean this up.

**Chr. Nelson:** Further committee discussion

**Rep. Norland:** I look at it both ways. It's a safety factor, but I also look at it as property rights. We talk about how we're always thinking about gun hunters. As I read this bill, you're including bow hunters, as well. You could get permission from that person to hunt on your own land with a bow. There are a lot of property owners who don't get along with each other. If they chose not to let you hunt on your land because it was across the road from theirs, they could do so. I don't think anybody else should have that right. I feel that if I own that tree grove on the other side of the road and wanted to hunt it, then I should have the right to do that. I'm going to go with a do not pass.

**Chr. Nelson:** Further committee discussion

**Rep. Hanson:** Question.

Page 3

House Natural Resources Committee

Bill/Resolution Number HB 1388

Hearing Date February 11, 2005

**Chr. Nelson:** Question has been called on a do not pass motion on HB 1388. I'll ask the clerk to call the roll:

**DO NOT PASS VOTE: 12-Yeas; 2-Nays; 0-Absent; CARRIER: Norland**

✓  
intent

Date: 2/11/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1388 - hunting near occupied bldgs ✓

House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

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

Action Taken : Do not Pass

Motion Made By : Porter Seconded By : Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	✓		Rep. Bob Hunsakor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	✓	
Rep. Duane DeKrey	✓				
Rep. David Drovdal		✓			
Rep. Dennis Johnson	✓				
Rep. George J. Keiser		✓			
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Norland ✓

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

**REPORT OF STANDING COMMITTEE (410)**  
**February 11, 2005 2:44 p.m.**

**Module No: HR-28-2612**  
**Carrier: Norland**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1388: Natural Resources Committee (Rep. Nelson, Chairman) recommends DO NOT PASS (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1388 was placed on the Eleventh order on the calendar.**

2005 TESTIMONY

HB 1388

*By: Mike Donahue 2/4/05*  
**United Sportsmen of North Dakota**

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Bismarck, ND 58502

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E-mail: info@unitedsportsmen-nd.org

**TESTIMONY REFERENCING**

**HB 1388**

**By Mike Donahue, Lobbyist #<sup>7</sup>~~215~~**

**House Natural Resources Committee**

**February 4, 2005**

The United Sportsmen of North Dakota and the N.D. Wildlife Federation oppose this bill. We sympathize with the constituent but this bill is not the fix.

Every time a occupied building goes up near the property line of a PLOTS, Wildlife Management Area, Waterfowl Production Area, etc. more and more hunting access would be shutdown.

Please, **Do Not Pass.**



20.1-01-02

- a. The destruction, drastic modification, or severe curtailment of its habitat.
- b. Its overutilization for scientific, commercial, or sporting purposes.
- c. The effect on it of disease, pollution, or predation.
- d. Other natural or manmade factors affecting its prospects of survival or recruitment within the state.
- e. Any combination of the foregoing factors.

The term also includes any species classified as endangered pursuant to the Endangered Species Act of 1973, Public Law 93-205.

- 13. "Established road or trail" means any public highway or road, improved or otherwise, dedicated for public ingress or egress, or any other road or trail normally used for travel but does not include temporary trails across cultivated land used for agricultural purposes.
- 14. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, mountain lions, black bears, and red or gray foxes.
- 15. "Game birds" includes all varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sagehens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, and crows.
- 16. "Guide" means an individual who is employed by or contracts with a licensed outfitter to help the outfitter furnish personal services for the conduct of outdoor recreational activities directly related to the conduct of activities for which the employing outfitter is licensed.
- 17. "Gun dogs" includes any dog used to hunt protected wildlife.
- 18. "Harmful wild birds" includes blackbirds, magpies, English sparrows, and starlings.
- 19. "Harmless wild birds" includes all wild birds not defined herein as "harmful wild birds" or "game birds".
- 20. "Hunt" or "hunting" means shooting, shooting at, pursuing, taking, attempting to take, or killing any game animals and game birds; searching for or attempting to locate or flush any game animals and game birds; luring, calling, or attempting to attract game animals and game birds; hiding for the purpose of taking or attempting to take game animals and game birds; and walking, crawling, or advancing toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds. The term does not include possessing or using photographic equipment.
- 21. "Manufacturer" means any person engaged in:
  - a. The manufacture, construction, or assembly of boats or associated equipment.
  - b. The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.
  - c. The importation into the state for sale of boats, associated equipment, or components thereof.



# **Cass County WILDLIFE CLUB**

**Box 336  
Casselton, ND 58012**

*By: Harold Neameyer*



**TESTIMONY OF HAROLD NEAMEYER  
CASS COUNTY WILDLIFE CLUB  
PRESENTED TO THE HOUSE NATURAL RESOURCE COMMITTEE**

**ON**

**HB 1388**

February 4, 2005

Mr. Chairman and Members of the Committee:

The CCW Club opposes HB 1388 basically because it denies a landowner the right to hunt his or her own property. It infringes on private property rights. As the bill is written, a landowner would have to ask a neighbor for permission to hunt ones own land.

Hunters need to exercise common sense and safety when near occupied buildings. There is a world of difference between bow hunting and rifle hunting for deer.

The Club opposes HB 1388.



House Bill No. 1388

Reference: Prohibits hunting within 100 yards of an occupied  
building without the consent of the person  
occupying the building

House Natural Resources Committee

Hearing Date: February 4, 2005

Good Morning, Mr. Chairman and Committee members. My name is Curtis Blohm. I appear before you today representing the North Dakota Outdoor Heritage Coalition. This coalition was founded out of the need for representation before the legislative committee by North Dakota citizens concerned for the preservation of our unique outdoor recreational heritage.

The ND Outdoor Heritage Coalition fully is opposed to the amendment set forth in HB 1388. We feel that current law fully protects the occupant of any occupied building. We feel that this bill would require the hunter to gain permission from perhaps two landowners in some instances, the land that you intend to hunt and the adjacent neighbor. We feel that this bill could also make portions of some PLOTS lands not available for hunting.

I would pose a question to the Committee members on the proposed amendments of this bill. Would the landowner and/or the Game & Fish Department be responsible for additional signage for the potential 100 yard buffer created by this amendment on some of the PLOTS lands?

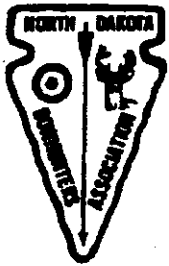
Thank You.

## **MISSION STATEMENT NORTH DAKOTA OUTDOOR HERITAGE COALITION**

The North Dakota Outdoor Heritage Coalition was founded out of the need to have representation of North Dakota citizens concerned with the preservation of their unique recreational heritage. Its members believe and support the following:

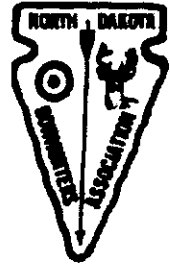
- a. The necessity of preserving and fostering the underlying principals of the Public Trust Doctrine and in preserving high quality outdoor recreational opportunities.
- b. The belief that North Dakota's fish and wildlife resources must be kept as publicly held resources, owned and managed by the State of North Dakota for the long-term benefit and enjoyment of its citizens.
- c. To work to create and maintain a fair distribution of our outdoor recreational opportunities, giving preference to our resident sportsmen.
- d. To seek to minimize the affect of commercial operations on our publicly held resources and recreational opportunities by limiting the number of commercial operations and the amount of land under their control.
- e. We support programs that open private land to access for outdoor recreation especially those that are community-based because of the associated economic benefit.
- f. We support the increased acquisition of public use lands for outdoor recreation such as the PLOTS program.
- g. Be an advocate for restrictions on the use of North Dakota's resources which serve to guarantee that all participants have satisfying quality outdoor experiences well into the future.

The North Dakota Outdoor Heritage Coalition believes that the State's fish and wildlife resources must be kept a publicly held resource, owned and managed by the State, for the long-term benefit and enjoyment of its citizens.



## North Dakota Bowhunters Association

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HB 1388

Good morning Mr. Chairman and members of the Natural Resources Committee.

My name is Bill Helphrey and I represent the North Dakota Bowhunters Association.

We are asking that you either defeat this bill or amend it in a manner that will exclude bow hunting from this bill's requirements.

We believe the original intent of this bill requiring a 440-yard buffer zone was to provide a safety margin around a residence on land owned by the person occupying the residence. This bill would reduce that margin to 100 yards even if one were hunting on their own property. Again, we believe the intent is to provide a safety margin.

Those that drafted both of these bills were obviously thinking about hunting with guns.

In North America, the average animal taken with a bow and arrow is taken at a distance of 90 feet or less. We feel this bill should not apply to anyone hunting with a bow and arrow.

Thank you for your time.

What questions do you have of me?