

2011 HOUSE ENERGY AND NATURAL RESOURCES

HB 1324

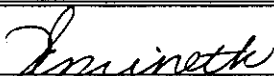
2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1324
01/27/2011
13652

☐ Conference Committee

Committee Clerk Signature



Minutes:

Rep. Porter: We will call HB 1324 to order.

Rep. Damschen: I represent district 10. HB1324 changes from a 20 days notification period prior to the commencement of operation it alerts the surface owner in writing 30 days before applying for a drilling permit. On line 16-19 it requires the plot map to show the location of the well and also when it is feasible the mineral developer will work with the surface owner to locate the well so that it does not unreasonably interfere with the surface owners operation.

I don't think the intent is to restrict the operations. The intent is to if possible for the landowner to be in fact sharing with the developer so if there is an option the developer could take that into consideration for the location.

Rep. Porter: Are there any questions for Rep. Damschen? Do line 18, if the intent is to show the location of the well on the plot map do we need the other language that talks about the unreasonable interference with the surface owners operation? It seems like it is setting up a dispute.

Rep. Damschen: It says "when feasible the mineral director shall work with the surface owner." I think the point is if it is feasible to still develop the minerals maybe they could say can you have it positioned here. It would be better for me if you would put it here.

Rep. Froseth: I represent district 6. This bill comes as a result of a new landowners association which was formed in Northwest North Dakota. The membership is growing quite rapidly in that association. They brought forth several concerns that are coming up due to the oil exploration. I stand in support of HB 1324.

Rep. Onstad: I represent district 4. I stand here in favor of HB 1324. I can see the problems that exist because I am a landowner myself. Representatives from landowner groups of Dunn County are forming. There are about 100 members right now. The Northwest landowners Association is growing they are over a 100 members strong. There are two associations in Mountrail County each one of those in 50-100 members strong. These organizations are growing because they have concerns. One of them is the notification. The current law right now is 20 days prior to drilling operations. They are notified and 20 days later they will start work. What this bill does is ask for a time period before it is permitted along with a plat map. It is not an unreasonable request to ask for a plat map because that is required in the states surface use agreement. They will work with the state on the location of the well. They provide a plat map to the state, these same land owners ask for the same consideration. The well site is one thing, but there is also the service road that follows.

How is that service road going to be brought into that particular well site? Is it going to cut through the drum field? That is what the land owner would like to part of. As for 30 days prior to the permitting process, is that once that permit is asked for there is a hearing held. We ask do they have a chance to be part of that hearing. It is unfair to that surface owner to be notified only 20 days before drilling operations.

Rep. Hofstad: Can you give me a time frame on how that process works between the permitting process and the drilling process? How many days are we talking about extending?

Rep. Onstad: Once the well is permitted they have one year to start operations.

Rep. Porter: In your testimony you talked about, "once the permit is received" and the bill says 30 before applying for the permit can you explain that?

Rep. Onstad: It is 30 days before the permitting process and then it could be at the discretion of the production company.

Rep. Porter: This is 30 days before applying for the permit. How long does it take from the time the permit is applied for until the permit is given to the company?

Rep. Onstad: When they ask for a permit, a date is given to them, it is that date.

Myron Hanson: I live on a farm near Souris North Dakota. I am the chairman of the Northwest Landowners Association and appearing on behalf of the association. We request that this committee give a do pass to HB 1324. We feel that it is only fair and a matter of common courtesy that the surface owner be given written notice of activity on the land in advance of the permit hearing. This would give the surface owner the opportunity to participate in the hearing process as it relates to his or her private property. The 20 day notice is an insufficient line to allow the surface owner to seek advice and respond. We feel this bill in no way impedes or restricts the mineral developer's right to ingress the ability to develop there's or the mineral holders interest. (see attachment 1)

Rep. Keiser: In the language in the bill it says "must not unreasonably interfere" how do we determine what unreasonably interfere means?

Rep. Onstad: I think this is a matter of communication between the mineral company and the surface owner. I don't believe that they are taking into account the size of some of the equipment that the farmers are using these days.

Rep. Hofstad: Is there a notification process in the county paper?

Rep. Onstad: Yes I believe this in the legal section of the county paper, but if I am a surface owner I may not have any idea that the minerals have been leased so I wouldn't read the legal section every week.

Rep. Damschen: There are some concerns about line 17 and 18. Is "feasible" a variable definition to all of us as well as "unreasonable" is? Do you want to set the drilling sites or do you just want to have your input so they can consider that before they make the final decision?

Rep. Onstad: Our organization does not want to impede with the drilling operations. All we are asking for is simple consideration.

Rep. Damschen: Is it you're in tending to keep the communication lines open?

Rep. Onstad: That is our concern here.

Woody Barth: I represent North Dakota Farmers Union. We have strong longstanding policies to make sure the landowner's rights are protected. It is brought out in this bill that the communication between the developers of the minerals and the landowner and the surface owner need to be in contact so that there is a level playing field.

Rep. Porter: On line 18, the language about "not unreasonably interfering with surface owners operation" how would you fore see that process working?

Woody Barth: I think that it is clear that the "unreasonable" and the "situation" described hopefully they could get a third party to negotiate and have all the parties sit down and talk about it.

Rep. Damschen: I think that example is why we need to put these bills in a subcommittee.

Myron Hanson: I have been on the North Dakota Credit Review Board for 20 years now. This board sets the rules for North Dakotas Agriculture Mediation Service. We have worked out some very difficult situations on agriculture credit during the 1980's and the 1990's I think this is would be no different.

Sandy Clark: From the North Dakota Farm Bureau. We stand support of this bill. We also believe that the surface owners should some notice. I think that we can find some level here of working together. In our organization we have visited with some of our members that say this is not a problem. The oil companies are good to work with, they know well in advance where the well is going to be and they sit down and talk about it and some cases they have moved these wells to accommodate the farmer. In other cases they say it is a problem. I don't know if this is a difference between the oil companies and surface owners then it is a matter of the law. Your comment about lines 17 and 18, the part about "when feasible the mineral developers shall work with the surface owner to locate the well" we think that is more important than having a plat.

Sheyna Strommen: I am with the North Dakota Stockmen's Association and we support HB 1324. (see attachment 2)

Derrick Braaten I am an attorney in Bismarck and am here to support of HB 1324. We serve farmers and ranchers across North Dakota, Minnesota, South Dakota and Montana. In the last year or two we have had lots of landowners come to us asking us questions about various oil and gas issues. (see attachment 3) What I hear from the surface owners is that they are frustrated because of the lack of communication between them and the companies. They feel powerless we know what happens when we split the surface estate form the mineral estate. I heard as well that there are some problems with the mineral developers with some of the specific wording of the bill. Everyone is open to tweaking that language with the understanding that this is to get these mineral developers and surface owners to engage earlier in the process. I visited with a gentleman who told me he was with Ward Williston and he said they always sit down with the surface owner and talk about where the well is going to go.

Mike McEnroe: I represent the North Dakota Chapter of the Wildlife Society. The chapter supports HB 1324 relating to the notice of oil and gas drilling operations. We believe this bill does represent improvements in current law. (see attachment 4)

Rep. Porter: Is there any further support to HB 1324? Is there further opposition to HB 1324?

Bruce Hicks: I am the Assistant Director of the Oil and Gas Division of the North Dakota Industrial Commission. We oppose the bill in this present form I believe it is workable with some amendments. What I have attempted to do here is give you the best case of the timeline of establishing units and the drilling process itself. (see attachment 5) We agree that there should be some flexibility, the companies and the landowners should get together.

Rep. Porter: It seems like this is more than a rubber stamp.

Bruce Hicks: The drilling process used to be pretty simple. It might have taken an hour to do the permit. It is a very long process now. We have five different stages that we go through on the permitting process. We try to streamline it with additional work to existing people and try to get to a final stage where the guys that have the expertise can issue it.

Rep. Porter: Is it correct that from the day that they apply for the hearing the average is 60 days before they are issued a permit to drill.

Bruce Hicks: That is the ideal. We have approximately 400 orders to write. Some of these were heard back in March and April.

Rep. Damschen: Line 16 through 19 "feasible and unreasonable" the wording says the developer shall work with the surface owner. Why would that drag your department into that process?

Bruce Hicks: We were afraid that we will have to have some documentation that this happened. Just because it is a law doesn't mean people are going to follow the law. I think the next step would be that there would have to be some type of documentation and then the next step to that is who is going to help in the negotiations?

Rep. Damschen: What do you envision as possible and fair as a notification, of the affected landowner?

Bruce Hicks: I agree that there should be negotiations early as I stated before, we encourage that. I think there should be some type of notification prior to going out there and stalking the ground.

Rep. Hofstad: Are your hearings with a lot of people? Or is this a hearing that does not have a lot of testimony?

Bruce Hicks: We do not have a lot of attendance at these hearings but they are open to the public and we encourage the people to come. It is well attended by well owners unless they have an issue.

Rep. Hofstad: In a hearing would you expect environmental groups and issues to be addressed at that hearing? Would you take into consideration the landowners concerns?

Bruce Hicks: We always take those issues into consideration. There are lot of laws that are always on our mind when we are approving these things.

Rep. Anderson: Farming and oil production are important in this state. I think a lot of this can be cleared up with a little courtesy and communication. What factors do they use in the site location?

Bruce Hicks: One would think that would be pretty easy to move a location. What has happened in the state is we have learned more on the Baaken, on how to develop it and how to produce these zones. A lot of the fracture stimulations that are done now are almost all stage fracked. If you start

moving one of those locations 200 feet away from the line for instance you could cost some reserves and it is unknown at this time it can be recovered because of the nature of the fracturing.

Rep. Hunskor: Some oil companies may not be responsible in communicating with the surface owner and that creates a bad taste toward the entire industry. Are there any suggestions that you may have to make the communication better between the surface owner and the oil industry?

Bruce Hicks: I think there will be some good discussions in the subcommittee meetings. We will certainly be willing to submit some suggestions and take a look at the other amendments that are proposed and comment on those. I think the first meeting should be before they stake the well and that would solve a lot issues.

Ron Ness: I am with the North Dakota Petroleum Council. I stand in opposition to the bill as drafted but we have potential amendments and think this is a good concept. We have met with the farmers and the surface owner groups and communication is the issue. There are limitations in certain areas but horizontal drilling has given us some ability to move that well. There are four bills in the house and senate and in addition two bills that everyone here should be aware are in House Appropriations HB 1343 is being heard. That is an emergency bill that would give the Department of Resources four new staffers immediately. We have always been committed to do this right but we are being overwhelmed. We support this in concept and think we can work through it. The 8 top oil and well producers permitted and created pads for have been settled. I am not saying these people were all completely satisfied but the reality is we were able to settle 97% of them.

Lines 9-13 in the bill should be struck. The NAWS must contain the map on the location. Lines 17-19 we don't believe is a Department of Mineral Resources issue. It says "when feasible the mineral developer shall work with the surface owner to locate the well so that the well does not unreasonably interfere with the surface owners decisions." That goes back to the settlement of surface damage agreements which the Department of Mineral Resources has no stake in that game. We have a web site that is very helpful landowners and surface owners. At our meetings we answer every question asked then we put those questions on the web site so people can go there and get the answers. It also tells you who to call for certain problems. The web site is NDOil.Org.

Jim Crom: I am with Ward Williston Oil Company. In this current form we would recommend a do not pass for this bill. The way it is worded is kind of backwards about how we do things. When we look at a well we put a plan together and with that project plan we have certain stages of days, which is 4-6 weeks perception and reality are not the same for permitting because they are very overloaded. When the surface owner and the mineral developer are discussing surface damages the point is that can change and that should be the initial point of discussion.

The Federal Government is also involved in this because there are tons of wildlife easements. After we talk to the surface owner we bring in the Federals to make sure that we are not impinging on what their rights are, they can hold things up.

Rep. Porter: Is there any further testimony? We will close the hearing on HB 1324.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB1324
02/10/2011
14346

☐ Conference Committee

Committee Clerk Signature

Minutes:

Rep. Porter we will open HB 1324

Rep. Hunsakor: I move a do not pass.

Rep. DeKrey: Second.

Rep. Porter: Is there any discussion? Motion Carried.

Yes 13 No 0 Absent: 2 Carrier: Nathe:

Date: 2-16-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1324

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Hunsakor Seconded By Rep. DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen	✓		Rep. Hunsakor	✓	
Rep. Brabandt	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper	ok				
Rep. Keiser	ok				
Rep. Kreun	✓				
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. Nathe

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

27-012

REPORT OF STANDING COMMITTEE

HB 1324: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
HB 1324 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1324

attachment 1

Mr. Chairman, members of the committee, my name is Myron Hanson. I live and farm near Souris, North Dakota. I am the chairman of the Northwest Landowners and I am appearing today on behalf of our organization.

The Northwest Landowners respectfully requests that this committee gives a due pass recommendation to House bill 1324.

We feel that it is only fair and a matter of common courtesy, that the surface owner be given direct written notice of contemplated exploration activity on his/her land in advance of the permit hearing. This would at least afford the surface owner the opportunity to participate in the hearing process as it relates to his/her private property.

In many instances, especially in the split estate situations that exist in North Dakota, the first indication that exploration activity is about to take place is a surveyor's stake marking the location of a drilling pad.

We feel that the current twenty day drilling notification is an insufficient time line to allow for the surface owner to seek advice and respond.

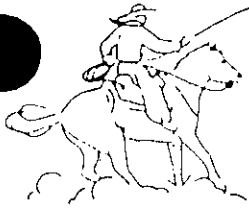
We feel that this bill in no way impedes or restricts the mineral developer's right of ingress and their ability to develop theirs or the mineral holder's interest.

Again, we believe that this is as much about a matter of simple courtesy as anything else and the surface owner should be afforded the direct opportunity to participate in the hearing process.

Thank you for your consideration of this matter.

North Dakota

attachment 2



STOCKMEN'S ASSOCIATION

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HB 1324

Good morning, Chairman Porter, and House Natural Resources Committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

Our organization rises in support of HB 1324. Our surface-owner members tell us if there is but one frustration with the oil development in their areas, it is that they feel left out in the dark, not really knowing what is going on in their neighborhoods and, in some cases, on their own property until the stakes are in the ground and the project is well on its way.

They seek to know what is happening, or what may be happening, earlier in the process, so they can plan accordingly and be engaged in the early stages. This bill would usher in surface owners much earlier in the process, instead of just 20 days before operations commence, and give them a chance to have more input in well siting and more opportunity to dialogue and develop a relationship with the oil company and its contractors.

SARAH VOGEL
LAW PARTNERS

Derrick Braaten
Partner

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Testimony of Derrick Braaten Concerning HB 1324
House Energy and Natural Resources Committee
January 27, 2011

My name is Derrick Braaten, and I am here to testify in support of House Bill 1324. I am an attorney in Bismarck, ND, and I am a partner with Sarah Vogel Law Partners. Our firm has a history of working on behalf of North Dakota's farmers and ranchers. Over the course of the past year or two, we have been asked by many farmers and ranchers for help with issues they are facing as a result of oil and gas development. Our initial response to our clients' inquiries was to direct them to attorneys who specialize in oil and gas law. We discovered, however, that most of these farmers and ranchers would return several months later explaining that they were unable to find an oil and gas attorney that did not have a conflict or was not too busy to help them. Our firm has responded by expanding our practice to serve North Dakota's farmers and ranchers, and other landowners, with their issues related to oil and gas, and other energy development.

I offer this background as context for the following statement: Upon expanding our practice to work for landowners dealing with issues related to oil and gas development, we have found ourselves just barely able to keep up with the phone calls we are receiving from North Dakota's landowners. Over the past year or so, I have had conversations with many North Dakota citizens, and a lot of what I have heard has been upsetting. There seems to be a refrain I hear from many landowners, though. Putting aside issues of inadequate compensation, which are nonetheless crucial, landowners have expressed frustration with the lack of communication from the industry.

We all know that a mineral holder has an implied easement to enter the surface estate to extract the minerals. In reality, this means that a surface owner has little legal control over how that mineral estate is developed. But North Dakotans don't rely on laws when they decide how they're going to treat people, and they expect the same of others.

I'll give you an example, which is just one notable example among many I could offer. I had a young man come into my office with his grandmother. He was a rancher and ran the ranch owned by his grandmother. A company had recently started putting a location in on his grandmother's land, which happened to be right in the center of his calving pasture. He asked a company representative if they could move the location to the edge of the pasture so he could continue using it for calving, and the company told him no. He asked them why they wouldn't move it, and he was told they would not move it because they did not have to.

There are many things we are not legally obligated to do, but North Dakotans don't treat each other with respect and common courtesy because they're legally required to do so; that's simply how people treat each other.

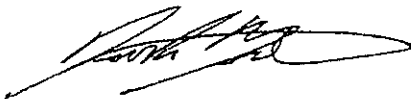
I don't mean to imply that all companies operate this way, and I've been taken to task before for getting the details of a story wrong, but my point is the same regardless.

If the oil companies are required to engage the landowner earlier in the process, prior to deciding where on that owner's property a well will be located, we can address many of the concerns of the people coping with the rapid oil and gas development in this state. Moving a well 100 yards might make no difference to a mineral developer, but it can make a world of difference to a farmer or rancher. This bill achieves the end of requiring the companies to engage the landowners earlier in the process, giving the landowner the opportunity to provide his input before crucial decisions are made.

It is my understanding that the industry proponents may have issues with the precise wording of this bill. The purpose of the bill, however, is to require that companies engage the landowners earlier in the process, and allow them to offer input on well locations and other decisions that will impact their land. If the companies have an issue with the precise wording, I'd encourage you to ask them for an alternative.

As someone who has spoken to landowners across the state, though, I wholeheartedly support this bill, and I urge a do pass on House Bill 1324.

Thank you,

A handwritten signature in black ink, appearing to read 'Derrick Braaten', with a stylized, sweeping flourish at the end.

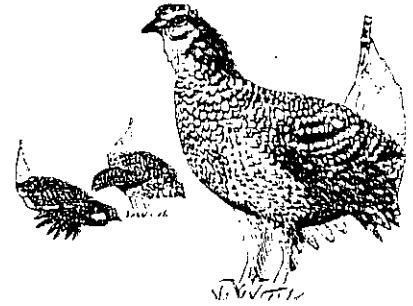
Derrick Braaten



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
ON HB 1324
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
JANUARY 27, 2011**

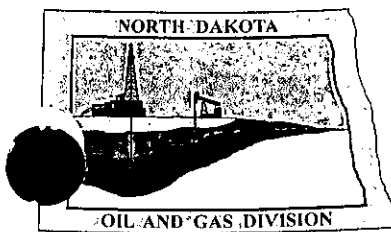
Chairman Porter and members of the Energy and Natural Resources Committee:

My name is Mike McEnroe and I represent the North Dakota Chapter of The Wildlife Society. The Chapter is a professional organization made up of over 320 biologists, land managers, university educators, and law enforcement officers in the wildlife and natural resource field.

The Chapter supports HB 1324 relating to the notice of oil and gas drilling operations. HB 1324 would require notice to the surface owner 30 days prior to applying for a drilling permit, and also require that the mineral developer, when feasible, work with the surface owner to locate the well so it does not unreasonably interfere with the surface owner's operations. We believe these would be improvements in current law that provide additional safeguards for the surface owner, whether farmer or rancher or public land manager. We also believe these requirements do not add more time to the drilling and production process; they only alter when in the time frame that notice is given to the surface owner.

We would also suggest an amendment that would extend notification to "other parties holding a publicly recorded property interest in the surface estate." This would extend the proposed improvements to holders of rights-of-way or easements as far as prior notice. We believe this also can be done with little or no delay in the drilling process, during the title search process already being done by the mineral developer's land men.

Thank you for the opportunity to comment on HB 1324. I will answer any questions the committee may have.



Attachment 5

Oil and Gas Division

Lynn D. Helms - Director

Bruce E. Hicks - Assistant Director

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

www.oilgas.nd.gov

House Bill No. 1324
House Energy and Natural Resources Committee
Pioneer Room
January 27, 2011

Testimony by
Bruce E. Hicks
Assistant Director
Oil and Gas Division
Department of Mineral Resources
North Dakota Industrial Commission

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Bruce Hicks. I am the Assistant Director of the Oil and Gas Division of the North Dakota Industrial Commission.

HB1324 amends North Dakota Century Code Section 38-11.1-05 (Oil & Gas Production Damage Compensation). The Industrial Commission opposes this bill and we offer the following:

Best Case Timeline for Establishing Spacing Unit and Drilling Well

<u>Current</u>		<u>HB 1324</u>
Day 1	majority working interest owner applies for hearing	Day 1
Day 7-14	advertise hearing in newspaper	Day 7-14
	operator gives 30-day notice with location plat to surface owner	Day 30
Day 31	hearing held	Day 31
Day 38	Commission staff reviews cases	Day 38
Day 45	Commission issues order	Day 45
Day 49	majority working interest owner receives order	Day 49
Day 50	operator gives 20-day general notice to surface owner	
Day 57	operator stakes loc— if NDIC moves loc, must resend notice	Day 57
Day 60	operator submits application for permit to drill	Day 60
Day 67	Commission approves permit & posts on Daily Activity Report	Day 67
Day 70	3-day wait period to allow all working interest owners to review permit	Day 70
Day 71	operator commences dirtwork on location	Day 71
Day 78	operator able to spud well	Day 78
Day 432	permit expires— 12 months after notice given to surface owner	
	permit expires— 14 months after notice given to surface owner	Day 432

Lines 7-10: ...the mineral developer shall give the surface owner written notice of the drilling operations contemplated at least ~~twenty days prior to the commencement of the operations~~ thirty days before applying for a drilling permit, unless waived by mutual agreement of both parties.

- ☺ current rule: send general notice to landowner **20** days before start operations
 - no plat necessary (certified by land surveyor)
 - allows flexibility to move location (landowner or NDIC request)
- ⊗ amendment: send notice to landowner **30** days before applying for drilling permit
 - additional onerous on NDIC staff (verify notice with documentation)

Lines 10-13: ~~If the mineral developer plans to begin drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time prior to commencement of drilling operations.~~

- ☺ current rule: allows less than 20 days notice if lease expiring
 - could save a lease: leases very expensive (\$300/acre = \$384,000 on 1280 spacing)
- ⊗ amendment: strikes language allowing less notice if lease will soon terminate
 - might prevent a well from being drilled

Lines 16-19: The notice also must contain a plat map showing the location of the well. When feasible, the mineral developer shall work with the surface owner to locate the well so that the well does not unreasonably interfere with the surface owner's operations.

- ⊗ amendment: requires plat with notice and contains ambiguous language like "when feasible" and "unreasonably interfere"
 - plat required (certified land surveyor might not be available on short notice)
 - certified plat is substantial cost (operator invested \$ less likely to move loc)
 - moving location would require new 30-day notice
 - would not allow skidding rig to redrill lost hole without waiver
 - would not allow last-minute flexibility (offsetting well shows could influence loc)
 - what authority will interpret "feasible" and "unreasonably interfere"—this language will require a mediator to invest many man-hours possibly on every location

This bill in its present form will require one FTE (Petroleum Engineer) at a cost of \$196,500 and could require considerable on-site discussions with operators and landowners.