

2011 HOUSE AGRICULTURE

HB 1462

2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1462
February 4, 2011
Job #14038

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(With fiscal note)

Relating to compensation for members of the credit review board; relating to agricultural mediation service; relating to the home-quarter fund; and to provide an appropriation.

Minutes:

Rep. Froseth, Co-Sponsor: I was working with the NW Landowners Association to form a mediation service for landowners and oil companies to use. I found out the Agriculture Department was also updating some provisions in their mediation section. So we came together on this housekeeping bill.

I want to speak to Section 7 on page 7. This is an update of the present ND Agricultural Mediation Service. The department would like to change that to the ND Mediation Service. On page 8, Section 9, this modifies the mediation service to include a farmer, creditor, person dealing with a farmer, person eligible for mediation with an agency of the U.S. Dept. of Agriculture. Add "or an owner, lessee, or lessor of mineral interests" and "North Dakota mediation service."

I noticed it doesn't spell out landowner. I would like to have the bill amended. On line 19 between "farmer" and "creditor" add "landowner."

The problem that exists between the landowner and oil companies: When an oil company wants to set up a site on a landowner's property, they can negotiate for damage payment and loss of production. There is no mediation if they don't agree. It is a take it or leave it situation. The mediation is a cheaper process than the arbitration board. It is \$25/hour to appear before the board. The only recourse now is to hire an attorney and go to court. The Land Department will explain the rest.

SB 2274 will establish a surface rights board to mediate disputes. That is a complete new board. Landowners and oil companies would prefer this system.

Chairman Johnson: Do you have an idea how many claims there would be?

Rep. Froseth: I don't have an idea. The makeup of the board is three members as set in code.

Representative Mueller: If I am a landowner, how do I know which place to go—arbitration or mediation?

Rep. Froseth: That is your decision and how large a settlement. Mediation service would be the least expensive with the quickest results. Huge amounts of \$50,000 or \$100,000 or more you would probably want to go to the courts.

Representative Wall: Would a mediation decision be binding?

Rep. Froseth: I believe it is.

Tom Silbernagel, Agricultural Mediation Service Administrator, ND Dept. of Ag.:

Amendment (See attached #1b)

(See attached #1a)

Mediation creates a stronger agreement.

The mediation service was founded in 1989. There were two credit counseling programs in existence at that time. The Agriculture Department had its own in 1985. It ran out of money. Then the two programs were combined. Between 1986-1988 most of the original \$2 million was spent on the counseling program. At the end of 1988, approximately there was a little over \$200,000 remaining in the Home Quarter Fund. In 2006 the board started transferring Home Quarter Funds to the Ag. Dept. to match federal dollars.

When we put the word "landowner" in the amendment, it leaves the door open to anybody. So we need some discretion. We need something to prioritize or refuse cases.

Representative Mueller: On the first page of testimony you talk about 70% of the money being federal to run the program. Would expanding to oil country jeopardize your federal funding?

Tom Silbernagel: We would have to be careful about the types of cases we call allowable. The more cases we show using federal dollars the cheaper this is going to look.

Representative Schmidt: The mediation is voluntary. What if one party doesn't want to.

Tom Silbernagel: If they refuse to mediate, they could end up in court.

Representative Wall: When would you deny mediation?

Tom Silbernagel: When it is clearly outside the intent of the law. For example, if two homeowners in town are fighting over where to put the corner post for a fence, that is one we probably wouldn't give a lot of consideration. However, if we can keep them from going to court and it is still in the best interest of the state, we are saving money. We want the law broad so no one fell through the cracks in the energy development area. If we use the word "may", we have a little discretion in how we handle it.

Chairman Johnson: Have you had conversation with the parties involved?

Tom Silbernagel: We've had a number of calls since the initial news release in August. People are just looking for information. Once we get the go ahead and get a promotional program going, this will pick up. In the credit crunch of the 80s, once they knew we were there, we were overrun.

Representative Mueller: The credit review board now becomes the mediation review board. There is no one on the board with a background in minerals. Is that a concern?

Tom Silbernagel: The members of the board now are two farmers, two bankers. This is still all about money. We may need training in oil law. Appointments will be made in June and could be with that type of background.

Representative Mueller: Are you sure you want to get into this business?

Tom Silbernagel: I feel if there is a job to do, we have the know-how. Things are good in agriculture now that the demand for our services in the finance area isn't requested as much. We have a system that would work.

Sandy Clark, ND Farm Bureau: We are in support of HB 1462. If there is a service needed, then the Agriculture Department is a logical place to do that. The system is in place. Our position in these surface owner issues has been that we believe in the free enterprise system. We believe with these surface owner damages, there should be one payment for damage and one payment for lost opportunity or production. They should both be negotiable issues between the landowner and the mineral company.

Myron Hanson, NW Landowners Association Chairman: (see attached #2)

Ron Ness, President of ND Petroleum Council: (see attached #3)

Once things go to court, nobody in the company is allowed to talk about anything other than the lawyers. The Agriculture Commissioner has a role on the Industrial Commission related to oil and gas.

HB 1387 creates a staking notice. Sometimes only a stake is in the ground to know where an oil well is going. Under this change you would have to notify that surface owner before coming out to be on the property.

This is good government. We don't need to create a new entity.

Chairman Johnson: Are you going to see a willingness of both parties coming to the table?

Ron Ness: That is our hope.

Representative Wall: Will this bring more disputes?

Ron Ness: I don't think so. I had a producer call with a number of drilling rigs operating. He paid two landowners different amounts of money. Now the first landowner wants what the second landowner got. Under current law we get to a stalemate and there they sit.

Representative Schatz: What kind of training would the Agriculture Department get to go up to speed to learn about mineral and oil county?

Ron Ness: There are differences between an easement and a right of ingress. You need to understand what the Surface Damage Act says. You have to know the rules of the game to facilitate the game.

Representative Rust: The predominate request will probably come from the landowner? Do you see requests coming from the other side?

Ron Ness: The call I got yesterday is a classic example. One of the things the Agriculture Commissioner told my board members, who represent about 90% of the oil production, is that typically an oil company would send out their land men and they would do the research. They decide what to pay for the land. Cropland is worth more than pasture land. Paying everybody the same is not the right policy. The Agriculture Department can bring that valuation process into the discussion.

Representative Rust: What is your best estimate since this is a voluntary program of participation by the oil companies? The landowner is more than likely going to be there. The oil company may not.

Ron Ness: I hope you are wrong. The oil operator knows where they will have the disputes. It will depend upon the success the program has.

Representative Wall: Do you think there should be a minimal fee assessed each party before they go into mediation?

Ron Ness: This is a proven program at \$25/hour. On a \$5,000 dispute the attorney fee will eat it up.

Opposition: None

Chairman Johnson: Closed the hearing.

Representative Holman: Moved the proposed amendment.

Representative Boe: Seconded the motion.

Voice Vote taken. Motion carried.

Representative Schatz: Moved a **Do Pass as amended** on HB 1462.

Representative Rust: Seconded the motion.

Representative Headland: It is a good program but I struggle with the fact that the taxpayer has to subsidize it. I think the fee charged should pay for the service that they are getting. I can't support this.

Representative Belter: I would echo that. There should be a fee to cover the charge.

Representative Trottier: There is a difference for the Ag. Dept. They allow a number of free hours to the customer.

Representative Schatz: The amount of money that we are spending and time for court service, if they go to court the State of ND will be responsible.

Representative Rust: Do the charges to the state come out of the general fund?

Ken Junkert, Administrative Service, ND Dept. of Agriculture: The Ag. mediation budget is funded through three sources. We have general funds, federal funds which are the largest portion, and special funds. There are two sources of special funds. One would be user fees. We charge user fees. We take those monies and deposit them into the Commissioners' operating fund. The other portion of the special funds is the Home Quarter Fund which will be closed out if the bill passes. Those dollars will be deposited in the Commissioner's operating fund and used to pay for the nonallowable costs or the federal match portion. The greatest portion of this budget is over half a million dollars of federal funds.

Representative Rust: There are hundreds of millions of dollars generated by the oil and gas industry. The two basic people at the beginning are landowners and oil companies. If both groups are willing to give it a try, this is an insignificant amount of money to mediate some problems.

Ken Junkert: We do have authority to charge an hourly rate of \$25/hour. When we put together the Fiscal Note, we were looking at five hours at the table per mediation event. Those fees would be brought back into the program to help pay for part of this process.

A Roll Call vote was taken on **Do Pass as amended**.

Yes: 8 No: 5 Absent: 1 (Representative Wrangham)

DO PASS as amended carries. Rereferred to Appropriations.

Representative Johnson will carry the bill.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1462
2/15/11
Job #14557

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to compensation for members of the credit review board; the agricultural mediation service; the home-quarter fund; and to provide an appropriation

Minutes:

Chairman Delzer: It looks like this was an 8-5 Do Pass as amended.

Representative Dennis Johnson, District 15: What we have here is the agriculture mediation service. Part of the bill is to change their name to the ND Mediation Service. They want to extend what they are doing now to include people with mineral interests. They would mediate between surface owners and oil companies. The Senate had a bill that was going to create a whole new operation as far as board members. In the House, we extended the duties to the Ag Mediation Service. Part of the expenditures are going to be state dollars. This program has been 70% federally funded and 30% state funded. Five of the committee voted against the proposal because it was going to be the use of the state dollars. Since we had the hearing, the people in the Ag. Dept. would like to rather than have the money attached to this bill to instead have the authorization to expend the money it would generate. It is an estimate at this point because they have not been providing this service. We were given an example, if they charge \$25/hour to both parties which is \$50/hour X about 5 hours per case with about 100 cases so \$5,000 is the estimate they need for this biennium.

The expiration of the Home Credit Act is \$100,000 there with \$12,000 of it going to this fund also. They need the authorization to be able to spend this \$37,000.

Chairman Delzer: That would have to be done in the Ag. Commissioner's budget. The Fiscal Note says the next time (2013-2015) there would be an expenditure of \$100,000 of general fund.

Representative Johnson: We see the elimination of the Home Quarter Act which has the \$100,000. I assume that would be the monies to replace it. Keep in mind this is all estimates. \$25,000 is what we are talking right now. If this program is going to take off like ag mediation did 20 years ago or if it is not used then the income won't be there and there won't be a need for funding the program.

Chairman Delzer: Your understanding of this is it gives them the authority to spend the money they create the \$37,000. If we wanted to put language on here that this must be done within their existing appropriation that would be acceptable.

Representative Johnson: They need the authorization to spend the monies they collect.

Chairman Delzer: \$37,000 is not in the budget.

Representative Johnson: \$12,000 is there from the Home Credit Act. \$25,000 is the guesstimate.

Chairman Delzer: Do they not have continuing appropriation for what they bring in for fees on Ag Mediation.

Representative Johnson: My understanding is, that was part of the Home Credit Act. That pays out in this biennium now. That will be gone.

Chairman Delzer: Becky Keller, Legislative Council, can you check on that?

Representative Skarphol: In your discussions, what is the cost for someone to request mediation process?

Representative Johnson: We were told there is a process of charging \$25 per hour to both parties. The person providing the services gets \$50 per hour, and they can usually resolve an issue within 5 hours of mediation.

Representative Skarphol: I don't think anyone has any idea how many of these will be requested. We are going to be looking at in excess of 1,000 permits per month. If this is available it could get saturated with utilization. I think you are underestimating the utilization of this service.

Representative Johnson: You probably have better insight. These are the numbers they anticipate. This was brought in from a legislator from that part of the state.

Chairman Delzer: Did you ask if there is any other legislation before us that affects this same issue?

Representative Johnson: To my understanding there was legislation in the Senate that created a whole new board that would be a stand-alone mediation service. This bill is just to expand upon the ag mediation service which would be less costly.

Chairman Delzer: Did you find out the status of that bill in the Senate?

Representative Johnson: It's been defeated on the floor.

Representative Kaldor: This seems like a new realm. In ag mediation, the mediator has brought together the two parties that are in dispute and agree to accept the mediation.

Representative Johnson: That's my understanding.

Representative Kaldor: Do we have evidence that surface owners and oil companies are going to come to the same. . . They won't come to mediation unless that is something they already agreed in principle to do.

Representative Johnson: That's exactly why this is all an estimate. This is a new concept. If we can avoid litigation through mediation, save both parties a lot of money, and resolve these issues. We have to start somewhere.

Representative Kaldor: I don't know enough about mineral interests and the circumstances, but I'm a little concerned that in a lending circumstance between a farmer and a lender they have already signed a contract to pay a loan back with interest. Then we've come to a point where that is not possible. In surface owner issues, you don't have that underlying agreement. Did that come up in committee because it seems to be a world apart?

Representative Johnson: With good farm prices the work in the Ag. Dept. has slowed down. These folks have the time and expertise backgrounds. We felt this is a good direction to bring these parties together. If this program doesn't work, we've tried it.

Chairman Delzer: Did you ask them, if you limited the amount that could be done to the \$25,000?

Representative Johnson: The \$25,000 is determined on how many clientele they have. This is figured on 100.

Chairman Delzer: But the issue here is if you have given them authority to do it and it ends up being a lot more than \$25,000 they still have the authority to do it. You could limit it up to that many cases.

Representative Nelson: The surface owners have been around this session. My guess is they were in agreement with this policy change. Were there also mineral owners?

Representative Johnson: We had those people in attendance. They did not testify.

Representative Nelson: So this was the preferred method for having that third party. This is an issue we need to address. I don't see that great of an increase.

Chairman Delzer: You say this is voluntary for both sides.

Representative Johnson: Yes. When we heard the testimony there is a legislator from that part of the state that brought this proposal forward.

Chairman Delzer: This was advertised on the radio this summer, I believe. Did you ask the department if it was used?

Ken Junkert, Department of Ag.: I handle fiscal matters for the Department of Agriculture. We received about 25 inquiries from landowners about the program. We did receive one official request for mediation. The oil company on that side turned down the mediation request because there was litigation already involved.

Chairman Delzer: We'll set this aside.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1462
2/17/11
Job #14678

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work--Relating to compensation for members of the credit review board; the agricultural mediation service; the home-quarter fund; and to provide an appropriation

Minutes:

Chairman Delzer: This has to do with agriculture mediation doing some surface location mediation on a volunteer basis between the oil companies and the surface owner. I believe Representative Skarphol caught something about open ended on money. Do you remember where that was on the bill?

Representative Skarphol: This does give the option for either party to choose whether or not to participate. For that reason it is not mandatory on anyone. So the utilization figures are guesstimates at best but I don't think we can do any better. I don't have any great discomfort.

Chairman Delzer: Maybe it was the other bill that had the catch in it

Representative Glassheim: Are you referring to page 9, line 17, where it gives them authority to go to the emergency commission in case the monies are insufficient?

Representative Skarphol: That's probably where it was.

Chairman Delzer: I don't know that that's such a problem. That is what they are there for.

Representative Kreidt: I had a visit with Representative Froseth about this bill. He said the concern they had was the surface owner doesn't really have any place to go. He didn't anticipate that there would be that many people coming to do this. He thought maybe between 5 and 10 people. He thought the cost would be minimal.

Chairman Delzer: As long as it is voluntary for both sides, I don't see a problem with this.

Representative Brandenburg: There is a portion of this bill dealing with GMOs, is that voluntary too?

Chairman Delzer: There's no changes I see in there with the exception of taking the word "agriculture" out to expand it to a mediation board rather than an agriculture mediation board.

Representative Nelson: I move **Do Pass**.

Representative Hawken: Seconded the motion.

A Roll Call vote was taken. **Yes: 21, No: 0, Absent: 0,**

DO PASS carries

Representative Dennis Johnson will carry the bill.

FISCAL NOTE
Requested by Legislative Council
02/09/2011

Amendment to: HB 1462

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$25,000	\$0	\$25,000
Expenditures	\$0	\$0	\$0	\$37,000	\$100,000	\$25,000
Appropriations	\$0	\$0	\$0	\$37,000	\$100,000	\$25,000

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1462 changes the name of AMS to the North Dakota Mediation Service. The bill also expands mediation services to include owners, lessees, or lessors of mineral interests and transfers the remaining balance of the Home Quarter Fund to the agriculture commissioner.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 11 provides an amendment to close the Home Quarter Fund and transfers the remaining funds - estimated at \$100,000 - to the agriculture commissioner.

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.*

NDCC Section 6-09.10-03 provides the Credit Review Board with authority to charge fees for time spent in mediation sessions. Fees are limited to \$25 per hour for each party. We anticipate five hours per session and an increased case load of 100 mediation sessions for the 11-13 Biennium. The revenue is deposited in the agriculture commissioner's operating fund. The Department arrived at the revenue number by using the following: \$25/hour X 2 parties = \$50/hour X 5 hours per mediation session = \$250/session X 100 mediation sessions = \$25,000.

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.*

The expenditures for the 11-13 Biennium reflect the amount of special funds necessary to accommodate the expansion of services. These funds will be used to match federal funds and pay for non-allowable costs under the federal grant. There is an \$100,000 increase in general fund expenditures in the 13-15 Biennium. The Department anticipates that the transferred Home Quarter Funds will be completely expended in the 11-13 Biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and*

appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

The Department is requesting \$37,000 of special fund authority to expend the revenue described in 3A, plus additional authority for the funds transferred from the Home Quarter Fund - or \$12,000 of special fund authority. The Department currently has \$98,000 of special fund authority built into SB 2009 for this program. There is a \$100,000 increase in general fund appropriations in the 13-15 Biennium. The Department anticipates that the transferred Home Quarter Funds will be completely expended in the 11-13 Biennium.

Name:	Kenneth S. Junkert	Agency:	Agriculture
Phone Number:	328-4756	Date Prepared:	02/09/2011

FISCAL NOTE

Requested by Legislative Council
01/25/2011

REVISION

Bill/Resolution No.: HB 1462

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$50,000	\$0	\$50,000
Expenditures	\$0	\$0	\$201,000	\$62,000	\$301,000	\$50,000
Appropriations	\$0	\$0	\$201,000	\$62,000	\$301,000	\$50,000

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1462 changes the name of AMS to the North Dakota Mediation Service. The bill also expands mediation services to include owners, lessees, or lessors of mineral interests and transfers the remaining balance of the Home Quarter Fund to the agriculture commissioner.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 11 provides an amendment to close the Home Quarter Fund and transfers the remaining funds - estimated at \$100,000 - to the agriculture commissioner.

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.*

NDCC Section 6-09.10-03 provides the Credit Review Board with authority to charge fees for time spent in mediation sessions. Fees are limited to \$25 per hour for each party. We anticipate five hours per session and an increased case load of 200 mediation sessions. The revenue is deposited in the agriculture commissioner's operating fund. The Department arrived at the revenue number by using the following: \$25/hour X 2 parties = \$50/hour X 5 hours per mediation session = \$250/session X 200 mediation sessions = \$50,000.

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.*

The expenditures for the 11-13 Biennium reflect the amount of general and special funds necessary to accommodate the expansion of services. These funds will be used to match federal funds and pay for non-allowable costs under the federal grant. The Department requested an optional increase to SB 2009 for 1 FTE and additional salary line funds for temporary salaries and operating funds to accommodate the expansion of services. There is an \$100,000 increase in general fund expenditures in the 13-15 Biennium. The Department anticipates that the transferred Home Quarter Funds will be completely expended in the 11-13 Biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Department requested \$201,000 of optional general funds to accommodate the expansion of services. The Department is also requesting \$62,000 of special fund authority to expend the revenue described in 3A, plus additional authority for the funds transferred from the Home Quarter Fund - or \$12,000 of special fund authority. The Department currently has \$98,000 of special fund authority built into SB 2009 for this program. There is a \$100,000 increase in general fund appropriations in the 13-15 Biennium. The Department anticipates that the transferred Home Quarter Funds will be completely expended in the 11-13 Biennium.

Name:	Kenneth S. Junkert	Agency:	Agriculture
Phone Number:	328-4756	Date Prepared:	01/21/2011

FISCAL NOTE

Requested by Legislative Council
01/19/2011

Bill/Resolution No.: HB 1462

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$100,000	\$0	\$0
Appropriations	\$0	\$0	\$0	\$20,000	\$0	\$0

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1462 changes the name of AMS to the North Dakota Mediation Service. The bill also expands mediation services to include owners, lessees, or lessors of mineral interests and transfers the remaining balance of the Home Quarter Fund to the agriculture commissioner.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 11 provides an amendment to close the Home Quarter Fund and transfers the remaining funds - estimated at \$100,000 - to the agriculture commissioner.

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.*

This bill has no impact on revenues.

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.*

The expenditures for the 11-13 Biennium reflect the amount of special funds necessary to match federal funds and pay for non-allowable costs under the federal grant.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

SB 2009 provides \$97,796 of special fund authority for AMS.

We estimate this bill will require \$20,000 of additional special fund authority for the 11-13 Biennium. The Department requested \$201,000 of general funds to be added to SB 2009 to account for expanded oil mediation services if HB

1462 passes.

Name:	Kenneth S. Junkert	Agency:	Agriculture
Phone Number:	328-4756	Date Prepared:	01/21/2011

PROPOSED AMENDMENTS TO HB 1462

Page 8, line 20, after “agriculture,” insert “land owner.”

Page 8, line 22, overstrike “the negotiator or” and insert immediately thereafter “the administrator of the North Dakota Mediation Service may assign a negotiator or mediator to”

Page 8, line 23, overstrike “mediator shall encourage and”

Renumber accordingly

Date: 2/4/11

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1462

House **Agriculture** Committee

Legislative Council Amendment Number Amendment from ND Ag. Dept.

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Holman Seconded By Representative Boe

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair			Tracy Boe		
Joyce Kingsbury, Vice Chair			Tom Conklin		
Wesley Belter			Richard Holman		
Craig Headland			Phillip Mueller		
David Rust					
Mike Schatz					
Jim Schmidt					
Wayne Trottier					
John Wall					
Dwight Wrangham					

Total Yes _____ No _____

Absent _____

Bill Carrier _____

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

Add "landowner"

February 4, 2011

VR
2/4/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1462

Page 8, line 20, after the first underscored comma insert "a landowner,"

Page 8, line 22, overstrike "negotiator or"

Page 8, line 23, overstrike "mediator shall encourage and" and insert immediately thereafter
"administrator of the North Dakota mediation service may assign a negotiator or
mediator to"

Renumber accordingly

Date: 2/4/11

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1462

House **Agriculture** Committee

Legislative Council Amendment Number 11.0560.02001

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended

☒ Rerefer to Appropriations

Motion Made By Representative Schatz Seconded By Representative Rust

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	X		Tracy Boe	X	
Joyce Kingsbury, Vice Chair	X		Tom Conklin	X	
Wesley Belter		X	Richard Holman	X	
Craig Headland		X	Phillip Mueller		X
David Rust	X				
Mike Schatz	X				
Jim Schmidt		X			
Wayne Trottier	X				
John Wall		X			
Dwight Wrangham	AB				

Total Yes 8 No 5

Absent 1

Bill Carrier Representative D. Johnson

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

Add "landowner"

Date: 2/17
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1462

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Nelson Seconded By Rep. Hawken

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 21 No _____

Absent _____

Floor Assignment _____ D. Johnson

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

REPORT OF STANDING COMMITTEE

HB 1462: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1462 was placed on the Sixth order on the calendar.

Page 8, line 20, after the first underscored comma insert "a landowner."

Page 8, line 22, overstrike "negotiator or"

Page 8, line 23, overstrike "mediator shall encourage and" and insert immediately thereafter "administrator of the North Dakota mediation service may assign a negotiator or mediator to"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1462, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **DO PASS** (21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1462 was placed on the Eleventh order on the calendar.

2011 HOUSE APPROPRIATIONS

HB 1462

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1462
2/15/11
Job #14557

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to compensation for members of the credit review board; the agricultural mediation service; the home-quarter fund; and to provide an appropriation

Minutes:

Chairman Delzer: It looks like this was an 8-5 Do Pass as amended.

Representative Dennis Johnson, District 15: What we have here is the agriculture mediation service. Part of the bill is to change their name to the ND Mediation Service. They want to extend what they are doing now to include people with mineral interests. They would mediate between surface owners and oil companies. The Senate had a bill that was going to create a whole new operation as far as board members. In the House, we extended the duties to the Ag Mediation Service. Part of the expenditures are going to be state dollars. This program has been 70% federally funded and 30% state funded. Five of the committee voted against the proposal because it was going to be the use of the state dollars. Since we had the hearing, the people in the Ag. Dept. would like to rather than have the money attached to this bill to instead have the authorization to expend the money it would generate. It is an estimate at this point because they have not been providing this service. We were given an example, if they charge \$25/hour to both parties which is \$50/hour X about 5 hours per case with about 100 cases so \$5,000 is the estimate they need for this biennium.

The expiration of the Home Credit Act is \$100,000 there with \$12,000 of it going to this fund also. They need the authorization to be able to spend this \$37,000.

Chairman Delzer: That would have to be done in the Ag. Commissioner's budget. The Fiscal Note says the next time (2013-2015) there would be an expenditure of \$100,000 of general fund.

Representative Johnson: We see the elimination of the Home Quarter Act which has the \$100,000. I assume that would be the monies to replace it. Keep in mind this is all estimates. \$25,000 is what we are talking right now. If this program is going to take off like ag mediation did 20 years ago or if it is not used then the income won't be there and there won't be a need for funding the program.

Chairman Delzer: Your understanding of this is it gives them the authority to spend the money they create the \$37,000. If we wanted to put language on here that this must be done within their existing appropriation that would be acceptable.

Representative Johnson: They need the authorization to spend the monies they collect.

Chairman Delzer: \$37,000 is not in the budget.

Representative Johnson: \$12,000 is there from the Home Credit Act. \$25,000 is the guesstimate.

Chairman Delzer: Do they not have continuing appropriation for what they bring in for fees on Ag Mediation.

Representative Johnson: My understanding is, that was part of the Home Credit Act. That pays out in this biennium now. That will be gone.

Chairman Delzer: Becky Keller, Legislative Council, can you check on that?

Representative Skarphol: In your discussions, what is the cost for someone to request mediation process?

Representative Johnson: We were told there is a process of charging \$25 per hour to both parties. The person providing the services gets \$50 per hour, and they can usually resolve an issue within 5 hours of mediation.

Representative Skarphol: I don't think anyone has any idea how many of these will be requested. We are going to be looking at in excess of 1,000 permits per month. If this is available it could get saturated with utilization. I think you are underestimating the utilization of this service.

Representative Johnson: You probably have better insight. These are the numbers they anticipate. This was brought in from a legislator from that part of the state.

Chairman Delzer: Did you ask if there is any other legislation before us that affects this same issue?

Representative Johnson: To my understanding there was legislation in the Senate that created a whole new board that would be a stand-alone mediation service. This bill is just to expand upon the ag mediation service which would be less costly.

Chairman Delzer: Did you find out the status of that bill in the Senate?

Representative Johnson: It's been defeated on the floor.

Representative Kaldor: This seems like a new realm. In ag mediation, the mediator has brought together the two parties that are in dispute and agree to accept the mediation.

Representative Johnson: That's my understanding.

Representative Kaldor: Do we have evidence that surface owners and oil companies are going to come to the same. . . They won't come to mediation unless that is something they already agreed in principle to do.

Representative Johnson: That's exactly why this is all an estimate. This is a new concept. If we can avoid litigation through mediation, save both parties a lot of money, and resolve these issues. We have to start somewhere.

Representative Kaldor: I don't know enough about mineral interests and the circumstances, but I'm a little concerned that in a lending circumstance between a farmer and a lender they have already signed a contract to pay a loan back with interest. Then we've come to a point where that is not possible. In surface owner issues, you don't have that underlying agreement. Did that come up in committee because it seems to be a world apart?

Representative Johnson: With good farm prices the work in the Ag. Dept. has slowed down. These folks have the time and expertise backgrounds. We felt this is a good direction to bring these parties together. If this program doesn't work, we've tried it.

Chairman Delzer: Did you ask them, if you limited the amount that could be done to the \$25,000?

Representative Johnson: The \$25,000 is determined on how many clientele they have. This is figured on 100.

Chairman Delzer: But the issue here is if you have given them authority to do it and it ends up being a lot more than \$25,000 they still have the authority to do it. You could limit it up to that many cases.

Representative Nelson: The surface owners have been around this session. My guess is they were in agreement with this policy change. Were there also mineral owners?

Representative Johnson: We had those people in attendance. They did not testify.

Representative Nelson: So this was the preferred method for having that third party. This is an issue we need to address. I don't see that great of an increase.

Chairman Delzer: You say this is voluntary for both sides.

Representative Johnson: Yes. When we heard the testimony there is a legislator from that part of the state that brought this proposal forward.

Chairman Delzer: This was advertised on the radio this summer, I believe. Did you ask the department if it was used?

Ken Junkert, Department of Ag.: I handle fiscal matters for the Department of Agriculture. We received about 25 inquiries from landowners about the program. We did receive one official request for mediation. The oil company on that side turned down the mediation request because there was litigation already involved.

Chairman Delzer: We'll set this aside.

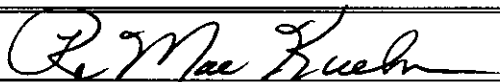
2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1462
2/17/11
Job #14678

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work--Relating to compensation for members of the credit review board; the agricultural mediation service; the home-quarter fund; and to provide an appropriation

Minutes:

Chairman Delzer: This has to do with agriculture mediation doing some surface location mediation on a volunteer basis between the oil companies and the surface owner. I believe Representative Skarphol caught something about open ended on money. Do you remember where that was on the bill?

Representative Skarphol: This does give the option for either party to choose whether or not to participate. For that reason it is not mandatory on anyone. So the utilization figures are guesstimates at best but I don't think we can do any better. I don't have any great discomfort.

Chairman Delzer: Maybe it was the other bill that had the catch in it

Representative Glassheim: Are you referring to page 9, line 17, where it gives them authority to go to the emergency commission in case the monies are insufficient?

Representative Skarphol: That's probably where it was.

Chairman Delzer: I don't know that that's such a problem. That is what they are there for.

Representative Kreidt: I had a visit with Representative Froseth about this bill. He said the concern they had was the surface owner doesn't really have any place to go. He didn't anticipate that there would be that many people coming to do this. He thought maybe between 5 and 10 people. He thought the cost would be minimal.

Chairman Delzer: As long as it is voluntary for both sides, I don't see a problem with this.

Representative Brandenburg: There is a portion of this bill dealing with GMOs, is that voluntary too?

Chairman Delzer: There's no changes I see in there with the exception of taking the word "agriculture" out to expand it to a mediation board rather than an agriculture mediation board.

Representative Nelson: I move **Do Pass**.

Representative Hawken: Seconded the motion.

A Roll Call vote was taken. **Yes:** 21, **No:** 0, **Absent:** 0,

DO PASS carries

Representative Dennis Johnson will carry the bill.

Date: 2/17
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1462

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Nelson Seconded By Rep. Hawken

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 21 No _____

Absent _____

Floor Assignment _____ D. Johnson

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

REPORT OF STANDING COMMITTEE

HB 1462, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **DO PASS** (21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1462 was placed on the Eleventh order on the calendar.

2011 SENATE NATURAL RESOURCES

HB 1462

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1462
March 10, 2011
Job #15258

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to compensation for members of the credit review board; relating to the agricultural mediation service; relating to the home-quarter fund; and to provide an appropriation.

Minutes:

Testimony Attached

Chairman Lyson opened the hearing on HB 1462.

Representative Glen Froseth, District 6, spoke as the prime sponsor of HB 1462. Section 7 on page 7 of the bill changes the name, which will hopefully broaden the scope of what they will mediate. He explained the language about the mediation service that the Ag Dept offers and the expansion of that service. This bill gives surface owners a mediation board to go to rather than courts. \$25.00/hr is a reasonable fee compared to court costs.

Tom Silbernagel, the Agricultural Mediation Service Administrator at the ND Dept. of Agriculture, presented written testimony in support of HB 1462 on behalf of Doug Goehring. See **Attachment #1** and **Attachment #2**.

Senator Hogue: Do you keep track of how many times someone asks for mediation and the other party refuses?

Tom Silbernagel: We have a data base so we could provide you with that information.

Senator Hogue: Where do they meet to do the mediation?

Tom Silbernagel: The mediator arranges the meeting wherever it is the best for both.

Senator Triplett: I applaud the Dept of Agriculture for being willing to take on this extra duty, and I agree that a name change is probably appropriate but is the proposed name making it too broad? Would there be another name that more closely describes what you are planning to do?

Tom Silbernagel: We addressed that issue in the amendment. It says "May provide services" which gives them some discretion to turn down some cases that clearly don't fit with the intent of the law.

Senator Triplett: Just the name may get some interest from parties you don't want. That would put a burden on your reception service. If you name it something that said land mediation service, there wouldn't be that confusion.

Tom Silbernagel: I will bring that to the commissioner's attention

Senator Uglem: Do we have any indication that the oil companies will be willing to come to mediation?

Tom Silbernagel: We will take time to develop some relationships with the energy companies.

Woody Barth, representing ND Farmers Union, spoke in favor of HB 1462. He is serving as the chairman of ND Credit Review Board has been on the board since its inception. The board is appointed by the Industrial Commission. Two members are appointed by the governor, 2 members by the Attorney General, and 2 members by the Ag Commissioner. He was appointed by the Ag Commissioner. Two of the members must have a financial background. The board supports these changes. The name change has been considered. They thought they should take "Ag" out so they can take care of some of the oil related issues. Farm Credit was at first opposed to mediation, now they are on board. This has proven to be very successful.

Myron Hanson, representing the Northwest Landowners, urged a Do Pass on HB 1462. See **Attachment #3**.

Julie Ellingson, representing the ND Stockmen's Association, presented written testimony in support of HB 1462. See **Attachment #4**.

Ron Ness, ND Petroleum Council, stood in support of the bill and agreed with Senator Triplett's comments about the name change. If the bill passes, they hope to do some outreach efforts. The ND Petroleum Council will promote the use of the Ag mediation services.

Sandy Clark, ND Farm Bureau, stood in support of HB 1462. It will facilitate communication. Their membership will also work to promote the mediation service.

Ashley Lauth, Oil and Gas Organizer for Dakota Resource Council, presented written testimony in opposition to HB 1462. See **Attachment #5**.

Chairman Lyson closed the hearing on HB1462.

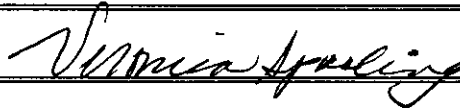
2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1462
March 17, 2011
Job # 15556

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to compensation for members of the credit review board; relating to the agricultural mediation service; relating to the home-quarter fund; and to provide an appropriation.

Minutes:

No Attachments

Chairman Lyson opened the discussion on HB 1462.

Chairman Lyson: Dakota Resource Council is asking us for a Do Not Pass, Farmers Union is asking for a Do Pass, Northwest Landowners Association a Do Pass, Stockmen's Association asking for a Do Pass, ND Petroleum Agency with a Do Pass, ND Farmers Union with a Do Pass.

Senator Triplett: Dakota Resource Council did not consider it a problem, they just felt it was a band aid solution and not a broader solution that they would have preferred.

Senator Uglem: The mediation service in the Ag dept has been working well. If the oil companies choose to participate, it can solve a lot of complaints that are out there.

Senator Triplett: moved a Do Pass and rerefer to Appropriations.

Senator Schneider: Second

Senator Triplett: I was impressed with the level of commitment of the Ag Department. They are willing to step up and put time and resources into this. My only concern was the name chosen was a little generic. If they get inundated with calls, they will probably change the name to more closely reflect their services.

Roll Call Vote: 6-0-1

Carrier: Senator Triplett

Date: 3-17-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1462

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Triplitt Seconded By Schneider

Senators	Yes	No	Senators	Yes	No
Chairman Lyson	✓		Senator Schneider	✓	
Vice-Chair Hogue			Senator Triplett	✓	
Senator Burckhard	✓				
Senator Freborg	✓				
Senator Uglem	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Triplitt

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

REPORT OF STANDING COMMITTEE

HB 1462, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1462 was rereferred to the Appropriations Committee.

2011 SENATE APPROPRIATIONS

HB 1462

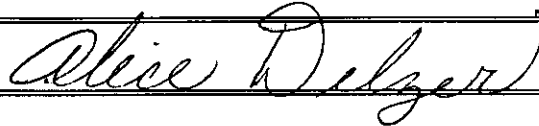
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1462
03-28-2011
Job # 16071

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to compensation for members of the credit review board; to amend and reenact sections of NDCC relating to the agricultural mediation service; to repeal NDCC relating to the home-quarter fund; and to provide an appropriation.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee back to order on Monday, March 28, 2011 at 2:30 pm in reference to HB 1462. Tammy R. Dolan, OMB and Roxanne Woeste, Legislative Council were also present. We have 1462 in front of us.

Ken Junkert, Fiscal Manager for Agriculture Department for Commissioner Goerhing. Rep. Froseth was here and had to leave and asked me to convey his apologies for that. Let me describe what the bill does. HB 1462 does 3 things; it changes the name of the program from the Ag Mediation Service to the ND Mediation Service, the reason the name change is important it will more accurately reflect the services provided by the expanded scope of services. The most important thing that the bill does is expands mediation services to include owners of mineral interests and it also transfers the remaining balance of the Home Quarter Purchase Fund to the Ag Commissioner to leverage federal funds to pay for program expenses. The fiscal note shows an impact in other funds for the 11-13 biennium showing revenue of \$25,000 and expenditures of \$37,000 and an appropriation of \$37,000. We arrived at the \$25,000 number by estimating the number of mediation sessions that we would have if the law was expanded and the scope was expanded to include the oil mediation work. And we had to guess at this. We weren't sure what number to target so we set 100 mediation sessions during the next biennium. We arrive at the \$25,000 because we charge \$25.00 an hour to both parties at the table for mediation. So we figure about 5 hours for a mediation session and that would equal \$250.00 per session, and if you take that times 100 that is how we arrive at \$25,000 of expected revenue that would come in with this expansion of scope. The expenditures are \$37,000. In the Department's budget we have \$88,000 of special fund authority built in for the Home Quarter Purchase Fund and if that is transferred into the Ag Commissioner's operating fund we would require \$12,000 more authority to expend that and if you add the \$25,000 of additional revenue for the fees, that is how we came up with the \$37,000 of expenditures. In the 13-15 biennium following, in the general fund column you'll see \$100,000 of general fund expenditures in Appropriations. We expect that the Home Quarter funds will expire in the next biennium and we would have to come back to the

legislature to request \$100,000 to replace those Home Quarter Purchase Funds. We expect and estimate the same amount of work at the 100 mediation session and that's when we came up with the \$25,000 for the other fund column. That's our fiscal impact and our explanation.

Chairman Holmberg: Anyone else testifying on 1462? There was no one. We will close the hearing on 1462.

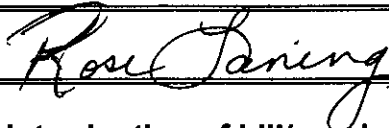
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1462
April 5, 2011
Job # 16375

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to compensation for members of the credit review board; to amend and reenact sections of NDCC relating to the agricultural mediation service; to repeal NDCC relating to the home-quarter fund; and to provide an appropriation.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee hearing to order on HB 1462.

Chairman Holmberg: We have HB 1462 in front of us. Does anyone know anything about genetically modified seed? Senator Wanzek, as one of the sponsors of the bill, we'll give you an opportunity to say hello.

Senator Wanzek: I have an amendment that was handed out. The crux of the bill is to provide a mediation service for surface owners with issues regarding mineral leases and oil development. I know there have been bills to try and address that. I think this approach already takes advantage of the program that we do have within the state. Probably at the moment with agriculture prospering, I'm imagining they have a workload, but not quite as significant as it was over the past 10-20 years. This is an effort to provide that service for the surface owner issues, but I need to recall the amendment.

Chairman Holmberg: Number .02001? It was put on the bill by the Ag Committee.

Senator Wanzek moved Do Pass on HB 1462.

Senator Erbele seconded.

A Roll Call vote was taken. Yea: 12 Nay: 0 Absent: 1

The bill goes back to the Natural Resources Committee and Senator Triplett will carry the bill.

Date: 4.5.11Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1462Senate APPROPRIATIONS Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Wanzek Seconded By Erbele

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann					
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 12 No 0Absent 1Floor Assignment NO Resources Triplett

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

REPORT OF STANDING COMMITTEE

HB 1462, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1462 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1462

COMMISSIONER
DOUG GOEHRING



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ndda@nd.gov
www.agdepartment.com

**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**
STATE CAPITOL
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BISMARCK, ND 58505-0020

**Testimony of Tom Silbernagel
North Dakota Department of Agriculture
House Bill 1462
House Agriculture Committee
Peace Garden Room
February 4, 2011**

Chairman Johnson and members of the House Agriculture Committee, I am Tom Silbernagel, the Agricultural Mediation Service administrator at the North Dakota Department of Agriculture. I am here on behalf of Agriculture Commissioner Doug Goehring in support of HB 1462, which will rename the Agriculture Mediation Service (AMS), change the eligibility requirements for mediation services, repeal the statutory authority for the Home Quarter Fund loan program and transfer the remaining funds to the agriculture commissioner to defray the expenses of AMS. I am also here to offer an amendment regarding eligibility to access mediation services.

AMS Overview

AMS started in 1989. The program grew from the credit counseling program established by the Department of Agriculture in 1984 and the Credit Review Board Home Quarter Loan program put in place by the Legislature in 1985. AMS is a USDA-certified mediation program and leverages federal funds at a "70% federal, 30% state or special funds" when it provides services to eligible agricultural producers.

The Credit Review Board sets policy and provides recommendations to the Industrial Commission regarding farm loan programs of the Bank of North Dakota. Appointments to the Credit Review Board are made by the governor, agriculture commissioner, and the attorney general.

The AMS staff consists of an administrator and a support staff member located in Bismarck, and three mediators located in Garrison, Rugby, and McVile. The majority of the staff members have experience in excess of 20 years. Our mediators have been trained by the Conflict Resolution Center at the University of North Dakota and all have had extensive training in dealing with farm and ranch financial disputes. However, the 1994 changes to 1987 Agricultural Credit Act have given us the authority to mediate disputes in other areas. To date we have mediated public grassland grazing issues with the Forest Service, Natural Resource Conservation Service wetland issues, Farm Service Agency program issues, USDA Rural Development - rural housing issues, and a number of farm family disputes. Since the program's inception, we have received about 11,000 requests for assistance.

Mediation has proven to be a successful dispute resolution tool. AMS records show that agreements are reached in 70 to 80 percent of cases mediated. Mediation is a voluntary, interactive process where a neutral third party, trained to facilitate communications and with negotiation skills, helps all the parties try to reach a mutually acceptable resolution to their dispute. Mediation is less time consuming and reduces costs to parties as it can eliminate the high expenses and fees associated with arbitration or litigation.

Program Name Change

This bill changes the name of the program from the “Agricultural Mediation Service” to the “North Dakota Mediation Service.” The current program name implies a limit of services to agricultural producers. The proposed name clearly indicates that we will also provide mediation services to individuals who are not agricultural producers.

Mediation Eligibility

Energy development in North Dakota has expanded significantly in recent years. This expansion has created disputes between energy companies, surface land owners, and owners of mineral rights. Present AMS law restricts mediation services to agricultural producers or those entities which have received adverse decisions from the USDA. Section 9 of the bill expands eligibility of mediation services to land owners who are not agricultural producers. By broadening the eligibility requirements for mediation services, the program could address most energy dispute issues.

Home Quarter Purchase Fund

The Home Quarter Purchase Fund was created in 1985 and was appropriated \$2 million from the profits of the Bank of North Dakota. The Credit Review Board acted as a negotiator between farmers and lenders. If the Board was unsuccessful in preventing a foreclosure, it attempted to arrange credit for the producer to buy the home quarter using money from the Home Quarter Purchase Fund to buy down the interest rate. The program allowed interest buy down on the first \$50,000 of principal when buying back the home quarter. Only five interest buy down transactions were completed. Bank of North Dakota records show that only \$44,237.50 in

Home Quarter Purchase Fund was used for those five loans. The majority of the funds were expended on the Farm Credit Counseling program. The Credit Review Board began transferring funds to the Department of Agriculture in 2006 to provide match for federal funds and cover non-allowable charges under the federal grant. I anticipate that the Home Quarter Purchase Fund will have a balance of \$100,000 at the close of this biennium.

Proposed Amendment

As mentioned earlier, this bill changes the eligibility requirements for mediation services provided by AMS. The intent of these changes was to make individuals involved in disputes related to energy development eligible for mediation. Present law restricts services to primarily farmers and ranchers. After HB 1462 was introduced, we realized the new language on eligibility requirements may be too broad. With the help of the Attorney General's office, we have created an amendment that will give the administrator of the mediation program some discretion in accepting or denying a request for mediation services.

Chairman Johnson and committee members, Commissioner Goehring asks for favorable consideration of the amendment and urges a "do pass" recommendation on HB 1462.

I would be happy to answer any questions you may have.

#16

PROPOSED AMENDMENTS TO HB 1462

Page 8, line 20, after "agriculture," insert "land owner,"

Page 8, line 22, overstrike "the negotiator or" and insert immediately thereafter "the administrator of the North Dakota Mediation Service may assign a negotiator or mediator to"

Page 8, line 23, overstrike "mediator shall encourage and"

Renumber accordingly

HB 1462

#2
2/4/11

Mr. Chairman and members of the committee:

My name is Myron Hanson. I live and farm west of Souris, ND, and I am the chairman of the Northwest Landowners Association. I am representing our group here today.

The Northwest Landowners Association stands in support of HB 1462.

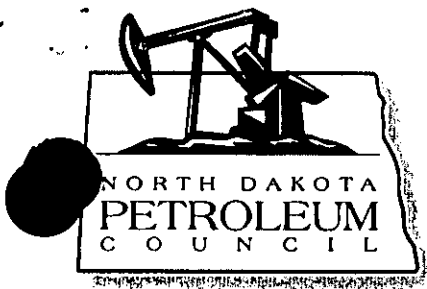
In particular our association supports the language changes in Sections 7 through 13 to expand the services of the mediation board that could help to resolve disputes between mineral development companies and surface owners.

We feel that having a resolution process short of the judicial system would be a significant benefit to the farmers and ranchers of North Dakota.

Currently, the only method to seek relief in such a dispute is through the court system. This can prove to be a costly and protracted process which discourages farmers and ranchers from going down that road. This would provide an attractive first step alternative to that process.

Thank you for your consideration of this matter.

#3



Ron Ness
President

Marsha Reimnitz
Office Manager

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House Bill 1462
House Agriculture Committee
February 4, 2011

Chairman Johnson and Members of the Committee. My name is Ron Ness and I am the president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 260 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952. Our members produced nearly 95% of the 100 million barrels of oil produced in North Dakota in 2010. I appear before you today in support of HB 1462.

This bill is an important piece of legislation that provides an outlet for the parties involved in settling oil and gas surface damages. The amount of the dispute is often a relatively small amount in relation to what it may cost for litigation. Both sides have expenses in litigation, and if a surface owner is awarded more than was offered, their legal expenses ~~also~~ are paid by the operator. However, that is often a negative result where only the law firms are the winners. HB 1462 will provide a better solution and one that we intend to promote heavily among our members. As indicated, many times the money is not as important as the communication. I'm confident the Ag Department can do a great job for all parties and help reduce the disputes.

The Petroleum Council and our members are committed to "doing it right" and working toward positive solutions on key issues. Our Oil Can! Program is an example of our efforts to listen to the public and work to provide education and identify solutions. We plan to support three main target areas to reasonably address these concerns. There are four bills which contain provisions that with some small changes we may support – three in the House and one in the Senate. They include:

- Better communication between the person on the ground and the surface owner (remember – not all surface owners live in ND or are easy to locate.) HB 1324 with modification.
- A mediation option to bring the parties together. HB 1462 ND Mediation Service in the Department of Agriculture.
- Clarification of the law on damages clearly indicating the surface owner can have annual damage payments for loss of future production income. HB 1387.
- A financial benefit to the surface owner to off-set expenses. SB 2368 - provides an income tax credit to the surface owner for each wellhead, the typical well pad uses five acres – surface owners still pay property tax on those acres.

In summary, oil companies and their employees do not want to have a dispute with a landowner that they will be engaging with for potentially the next 20+ years. Many times, the amount being disputed is not that great; it's the emotions and the communications that result in the dispute.

We urge you to support this bill. It's one of several bills that will help improve communication and offer more solutions to the public. This bill is good government.

COMMISSIONER
DOUG GOEHRING



#1
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**NORTH DAKOTA
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL
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**Testimony of Tom Silbernagel
North Dakota Department of Agriculture
House Bill 1462
Senate Natural Resources Committee
Fort Lincoln Room
March 10, 2011**

Chairman Lyson and members of the Senate Natural Resources Committee, I am Tom Silbernagel, the Agricultural Mediation Service administrator at the North Dakota Department of Agriculture. I am here on behalf of Agriculture Commissioner Doug Goehring in support of HB 1462, which will rename the Agriculture Mediation Service (AMS), change the eligibility requirements for mediation services, repeal the statutory authority for the Home Quarter Fund loan program and transfer the remaining funds to the agriculture commissioner to defray the expenses of AMS.

AMS Overview

AMS started in 1989. The program grew from the credit counseling program established by the Department of Agriculture in 1984 and the Credit Review Board Home Quarter Loan program put in place by the Legislature in 1985. AMS is a USDA-certified mediation program and leverages federal funds at a "70% federal, 30% state or special funds" when it provides services to eligible agricultural producers.

The Credit Review Board sets policy for AMS and provides recommendations to the Industrial Commission regarding farm loan programs of the Bank of North Dakota. Appointments to the Credit Review Board are made by the governor, agriculture commissioner, and the attorney general.

The AMS staff consists of an administrator and a support staff member located in Bismarck, and three mediators located in Garrison, Rugby, and McVile. The majority of the staff members have experience in excess of 20 years. Our mediators have been trained by the Conflict Resolution Center at the University of North Dakota and all have had extensive training in dealing with farm and ranch financial disputes. However, the 1994 changes to 1987 Agricultural Credit Act have given us the authority to mediate disputes in other areas. To date we have mediated public grassland grazing issues with the Forest Service, Natural Resource Conservation Service wetland issues, Farm Service Agency program issues, USDA Rural Development - rural housing issues, and a number of farm family disputes. Since the program's inception, we have received about 11,000 requests for assistance.

Mediation has proven to be a successful dispute resolution tool. AMS records show that agreements are reached in 70 to 80 percent of cases mediated. Mediation is a voluntary, interactive process where a neutral third party, trained to facilitate communications and with negotiation skills, helps all the parties try to reach a mutually acceptable resolution to their dispute. Mediation is less time consuming and reduces costs to parties as it can eliminate the high expenses and fees associated with arbitration or litigation.

Program Name Change

This bill changes the name of the program from the “Agricultural Mediation Service” to the “North Dakota Mediation Service.” The current program name implies a limit of services to agricultural producers. The proposed name clearly indicates that we will also provide mediation services to individuals who are not agricultural producers.

Mediation Eligibility

Energy development in North Dakota has expanded significantly in recent years. This expansion has created disputes between energy companies, surface land owners, and owners of mineral rights. Present AMS law restricts mediation services to agricultural producers or those entities which have received adverse decisions from the USDA. Section 9 of the bill expands eligibility of mediation services to land owners who are not agricultural producers. By broadening the eligibility requirements for mediation services, the program could address most energy dispute issues.

Home Quarter Purchase Fund

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Chairman Lyson and committee members, Commissioner Goehring urges a "do pass" recommendation on HB 1462.

I would be happy to answer any questions you may have.

Credit Review Board

Member Name	Work	LD	County	Position	Appt. Date	Term Ends
<u>Barth, "Woody"</u> <u>Elwood</u>	(701) 445- 7318	35	Sioux	Chairman	07 01 03	06 30 11
<u>Burtman, Paul</u>	(701) 539- 2325	02	Williams		07 01 01	06 30 11
<u>Hanson, Barry</u>	(701) 265- 8331		Pembina		07 01 09	06 30 11
<u>Linderman, Ellen</u>	(701) 652- 2267		Traill		07 01 07	06 30 11
<u>Rustebakke, David</u>	(701) 795- 8979	17	Grand Forks		07 01 01	06 30 11
<u>Wald, George</u>	(701) 483- 8282	37	Stark	Treasurer	07 01 01	06 30 11

Mr. Chairman, members of the committee, my name is Myron Hanson with the Northwest landowners. I am here in support of HB1462.

We feel that the changes in the language in sections seven through thirteen that would allow the North Dakota State Ag. Departments mediation service to help resolve conflicts that might arise between surface owners and mineral development companies could prove to be a valuable tool to the states farmers and ranchers.

The utilization of an existing program and staff to resolve these conflicts short of the judicial system will be a significant benefit to all parties involved.

I would urge you to give a do pass recommendation to this bill.

North Dakota



STOCKMEN'S ASSOCIATION

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Fax: (701) 223-2587
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www.ndstockmen.org

#4

HB 1462

Good morning, Chairman Lyson and Senate Natural Resources Committee members. My name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

Our beef industry organization rises in support of HB 1462, which would enhance North Dakota's Agricultural Mediation Service to provide dispute resolution services to surface owners and oil and gas companies.

As we noted earlier, the dramatic increase in oil activity in our state has been a mixed blessing. And, unfortunately, conflicts have arisen, particularly between oil and gas companies and surface owners. Those surface owners often feel like they have little or no bargaining power or ability to appeal decisions that negatively impact their operations.

The North Dakota Agricultural Mediation Service has a positive track record of helping agriculturists and creditors resolve disputes through timely, cost-effective processes. That's what makes us confident that an enhanced program can likewise provide effective mediation in surface owner/oil industry conflicts.

The basic framework for this already exists, so this specialized mediation service can be offered with very few additional resources, yet provide significant help to parties at an impasse in their negotiations.

For these reasons, please give this bill favorable consideration.

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Testimony for Ashley Lauth, Oil and Gas Organizer for Dakota Resource Council, in Opposition to HB 1462
Senate Natural Resource Committee, March 10th, 2011

Chairman and members of the Committee, for the record my name is Ashley Lauth, I am the oil and gas organizer for Dakota Resource Council. I work with farmers, ranchers, landowners, and mineral owners on responsible oil and gas development issues in North Dakota.

Dakota Resource Council urges a 'Do Not Pass' recommendation on HB 1462 because it is a guise for landowner protection and a semblance of the attention that dispute mediation deserves.

Currently, the only viable option for landowners to address oil and gas related problems is litigation. While laws exist that address surface damages, because of the low number of Oil and Gas Division staff for enforcement, and no clear punitive measures to ensure compliance, surface owners are often forced to litigate to resolve surface disagreements. Landowners need more choices than either accepting an insufficient offer or filing a lawsuit. It is unjust for landowners to be forced into years of litigation, at their own expense, simply to recover the damage compensation to which they're legally entitled.

Litigation is financially prohibitive because of the upfront cost and the time spent in court. This puts undue burden on people who depend on good faith offers and honest compensation for damages. Industry has the capacity to cover large legal fees and has the manpower for long-term litigation. It is clear that drawing out court cases is advantageous for oil and gas companies, because there is a higher rate of settlement or dropped lawsuits.

This bill is touted as creating a mediation service for surface disputes. In order to do so, the bill language specifically omits 'agriculture' out of 'agriculture mediation service.' The bill does not address specifically the mechanics of how the service will handle cases, including compensation or compliance.

There is a qualitative difference between the work that Ag Mediation has traditionally done and the task that lies ahead. Ag Mediation deals with mutual agreements. Surface rights mediation is needed when the rights of the mineral owner allow a 'takings' of surface rights from the surface owner.

Additionally, should any party asked to mediate deny the request, mediation *does not* occur and the initiator is directed to litigation. Furthermore, the service has the right to *refuse* cases- because it uses federal funding, the service can rule on what are 'allowable' cases. The bill passed on the House floor.

This is a feeble attempt to address a large and problematic issue, and putting undue burden on an agency that might not be capable of handling the volume of mediation cases. Furthermore, there is no language addressing enforcement.

As one Dakota resource member put it: It doesn't change the current situation. If a company doesn't want to mediate, then landowners are still forced to sue. Plus there's no way of ensuring that the service will choose to help landowners, if they even have the capacity to do so.

Hence, Dakota Resource Council urges a 'Do Not Pass' recommendation on HB 1462 because a true mediation board committed to landowners needs to be instituted.