

2011 SENATE NATURAL RESOURCES

SB 2227

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2227

January 28, 2011

13633

☐ Conference Committee

Committee Clerk Signature

Veronica Spaulding

Explanation or reason for introduction of bill/resolution:

Relating to powers of the director of the game and fish department; relating to the deer proof hay yard program and culpability requirement for unlawfully taking big game; and to declare an emergency.

Minutes:

Testimony Attached

Chairman Lyson opened the hearing on SB 2227.

Senator Terry Wanzek spoke in favor of the bill. He spent summers going to the hayfield and knows that hay is "money in the bank". The deer are getting into the hay. It has been a longstanding problem, but the problem is getting out of hand. The intent of this bill is to allow the farmers to have hunters help them harvest some of the deer. In the second section we are trying to make clear that the depredation funds within the Game and Fish budget are qualified for potential cost-sharing programs. Thirdly, a culpability requirement is added because the way it is now it is a strict liability offense. If you shoot a deer, you have no day in court. The amendment clarifies the cost share program. Some farm organizations are concerned that it does not apply to the crops that have been harvested; therefore the definition has been added.

Chairman Lyson: Would that make it clear that hay harvested or unharvested is a crop?

Senator Terry Wanzek: Yes. He presented the proposed amendment. See **Attachment #1**.

Senator Schneider: I am not familiar with the case. Did the farmer allege that he negligently shot the deer?

Senator Terry Wanzek: It seems unfair that if you shoot a person, you get a day in court; if you shoot a deer, you get no day in court.

Terry Steinwand, Director of the North Dakota Game and Fish Department, presented testimony in support of the bill. See **Attachment #2**. We support the concept but have some concerns. We will work with Senator Wanzek on amendments to this bill.

Senator Hogue: What would be your preference as Director? What do you think of having to take other measures first and only using this as a last resort?

Terry Steinwand: The deer gun hunting season starts the Friday before Veterans Day. That is immediately followed by muzzle loader season. That management scheme is in place. This is more of a targeted effort, in terms of someone needs help with the deer problem and we can direct a number of hunters to them.

Senator Hogue: In the case 3 miles north on River Road, would this bill have been helpful in that situation?

Terry Steinwand: It would have helped somewhat, but overall? No.

Senator Hogue: On the amendments offered, they are re-defining "crops" so Game and Fish would have an obligation to reimburse farmers and ranchers for unharvested alfalfa. Are you in support of that?

Terry Steinwand: It's very hard to know what impact to include or how to measure it.

Terry Steinwand: It is in fact strict liability. We don't have a problem with people having their day in court but we have to make sure the unintended consequences don't come into play.

Harlan Kleppe from Dawson spoke in favor of the bill. He lives across the road from the Dawson Wildlife Management Area. A few deer are Okay, but where there are hundreds it becomes a problem. He has complained to Game and Fish several times over several years with no results. The Ag Department has treated him well. It is the Game and Fish policy to not feed the deer. He feels the Game and Fish have been antagonistic. He feels he was just defending his property. Thirty days later the deer were gone but he had a summons. Most of the hay that was wrecked had been fed. He was told he could not use deer depredation or protecting his property to plead his case.

Bill Adams from Steele, ND spoke in favor of the bill. The problem Harlan Kleppe has is that in the 30's the Game and Fish bought 4 ½ sections of land and planted multiple tree rows around it for a wintering yard for deer. They would put crib feeders out to feed the deer. Harlan lives right across the road from this. In the mid 90's they decided it might cause health problems to have the deer grouped together so they stopped feeding the deer. The deer had been coming there for 70 years and suddenly their feed source was gone. The deer went to the next best feed source. In Kidder County there is nothing on the Game and Fish land for the deer to eat. They go to the next best feed source, the farmer's yard. I have never had a problem with deer until three days ago when 150 of them moved in. A deer eats approximately as much as a sheep. The cost of a cow in a feed lot is \$1.45/day. For 100 deer it cost me \$???/day to feed them. Besides, the deer waste twice as much as they eat. He has pictures of how the deer get onto and ruin the haystacks. See **Attachment #3**. The hay yards do not work. The deer follow you right in. Also you need to keep the area clear of snow so you can open the gate of the hay yard. We have approximately 2300 acres of Federal Refuge. This is land set aside for wildlife. There are no deer or pheasants on the acreage because there is no food source for them. They

should make feed available. If they want nesting habitat and a place for the deer to have their little ones, they need to feed them in the winter there. They won't use it in the winter if there is no food source. It is costly to feed 150 of them when they show up in my yard. Some years we don't have enough hay for our own cattle and we have to buy feed. On their website, the Game and Fish states they want to increase the deer population by 25%. That is their goal for 2010 to 2020.

Larry Kinev from Dawson, ND spoke in favor of the bill as amended. I am one of the guys that won't take the deer fence. In 25 out of the last 40 years we have fed from 250-600 deer. It is costly. The problem with the deer fence is it doesn't cover all the hay. I would need 3 or 4 of those fences and then you have to keep the gates clear to get in and out of them. It was drilled into me my whole life, "If it's hungry, feed it". At 30:30 on the audio tape he gave ideas of how to keep the deer away.

Glen Baltrusch from Harvey presented written testimony in support of the bill with some amendments he suggested. See **Attachment #4**.

Mark Wagner, a cattle producer from Monango presented written testimony in favor of the bill. See **Attachment #5**. Last year the deer destroyed \$10,000-\$15,000 worth of hay in his yard. This winter he has had 500 deer in his yard. He has been offered assistance to wrap his hay, but the deer will do what they have to do to survive. Deer and cows share the same diseases. The deer will eat with the cows. The fact is the deer are not leaving his yard until the weather clears which means they will be eating nose to nose with his cattle. This bill will not fix everything, but it will help to keep the deer herd dispersed.

Julie Ellingson with the ND Stockmen's Association presented written testimony in favor of SB 2227. See **Attachment #6**.

Chairman Lyson: Did your organization come up with a bill?

Julie Ellingson: We worked with Senator Klein, Terry Wanzek, and Terry Steinwand on the drafting of this bill.

Sandy Clark, representing ND Farm Bureau, spoke in favor of the bill and the amendments. Depredation by deer is a serious problem, especially in a heavy snow year. To clarify, the intention of these definitions was not to reimburse for the crop or hay damages. The intention was to have a definite definition so we could determine what exactly constituted depredation. Reimbursement was not the intent.

Chairman Lyson: Is this bill the one that would do it for you?

Sandy Clark: Yes, the best place for the definitions seemed to be at the beginning of it.

Kenny Graner, representing the Independent Beef Association of ND, spoke in support of SB 2227 as amended. He mentioned that there is also turkey depredation going on and he expressed concern about the disease sharing aspect of this problem.

Mike Donahue with ND Wildlife Association spoke in support of SB 2227 as amended.

There was discussion about the definition of crops and whether standing crops would be included.

Senator Hogue: Asked Terry Steinwand what other tools there are to manage this problem.

Terry Steinwand: We respond by phone within 24 hours, within 48 hours on the ground. We put out scare devices such as propane cannons. We have put out motion detectors with a siren. The deer do become habituated. We put up deer proof hay yards but we can't install those at this time of the year. We try to do intercept feeding to prevent the danger of nose to nose feeding.

Opposition

Mike McEnroe, representing the North Dakota Chapter of the Wildlife Society presented written testimony in opposition to SB 2227. See Attachment #7.

Senator Freborg: What is your idea of a bill that would address the issue?

Mike McEnroe: First, we need to determine what exactly we want to accomplish and then quantify it. Then decide which method would do that effectively.

Senator Freborg: I don't think all parties can ever agree. Everything that is done is almost too late. They contact Game and Fish after it is a big problem. I think it has to be a program that keeps them out, or takes care of it quickly, or feed them someplace else.

Mike McEnroe: I don't have a solution.

Senator Freborg: Every few sessions, we hear this problem.

Chairman Lyson: We are putting the burden on the Game and Fish to determine the "severe impact". Wouldn't that be the person who should do it?

Mike McEnroe: What I am saying is what are we going to define as severe impact?

Chairman Lyson: Game and Fish is the expert on this, he and his staff.

Mike McEnroe: What if the landowners don't agree with the Game and Fish determination?

Chairman Lyson: What would you suggest?

Mike McEnroe: One thing I would suggest is we collectively, the legislature, the department, and the landowners develop this program in the spring rather than at a crisis moment.

Chairman Lyson: We did this and came up with this bill. Where were you?

Mike McEnroe: Our group was not invited.

Senator Wanzek: The oversight of not including them was not intentional. He clarified the intention of putting the definitions into the bill was to help make a determination of whether depredation had occurred, not to reimburse. It would apply to standing crops and to harvested crops.

Chairman Lyson: We may have to change the amendment to make it clear.

Senator Wanzek: We are not claiming this is a perfect solution. We just hope to provide some relief.

Senator Hogue: Senator Wanzek, will you address Senator Freborg's comments? Whether the meat is used for human consumption or not, the producers just want to see the problem eliminated. In certain areas maybe we just need to reduce the population in an efficient way. Is there support out there for that?

Senator Wanzek: As an avid hunter, I don't want to see the population decimated so no one can hunt. Yet I understand we should be more proactive. Mr. Adams spoke of food plots, cost share for the food plots, and being strategic in how they are fed. Those are some ideas; there are no perfect answers.

Susan Keller, North Dakota State Veterinarian, responded to a request to speak on the bill. There is research going on nationwide to try to stop the interface between deer and livestock. There are some very ingenious things out there: dogs with underground fences, etc. We need to be proactive so we don't end up with problems of TB being transmitted from the deer to our livestock.

Chairman Lyson: Closed the hearing on SB 2227.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2227
February 3, 2011
13970

☐ Conference Committee

Committee Clerk Signature

Veronica Sparling

Explanation or reason for introduction of bill/resolution:

Relating to powers of the director of the game and fish department; relating to the deer proof hay yard program and culpability requirement for unlawfully taking big game; and to declare an emergency.

Minutes:

No Attachments

Chairman Lyson opened the hearing on SB 2227.

Senator Hogue directed a follow-up question to Terry Steinwand, the Director of ND Game and Fish Department. I understand from your testimony when we heard the bill that the last resort of the Game and Fish is to take some hay and to put it off to some other area so it is not in the hay yards. I am trying to figure out why that would be the last resort. For the farmers that are affected, it seems that would be their first preference. Why does Game and Fish not use that as a first option rather than a last option?

Terry Steinwand: There are two reasons we use that as a last option. The first one is once you start feeding them they congregate, and we want them to go to the wild. The second reason is that once you start feeding them they get habituated to that food source and you have to feed them all winter.

Senator Triplett: I am having a hard time understanding why this is a state obligation to deer proof people's hay yards and not just the cost of doing business. The state didn't try to increase the deer herd. They actually have tried to decrease the herd. Why would it be a state obligation to fix the problem?

Chairman Lyson: Some of the areas that are having trouble are bordering the areas that Game and Fish has set aside for wildlife. The other thing to consider is the Game and Fish can do these things by proclamation rather than us putting it into law. I know the ranchers would say they can't get Game and Fish to do it, so they want us to get Game and Fish to do it.

Chairman Lyson: We had a problem with whether hay was a crop or not.

Senator Uglem: We had a problem with the wording of it because you couldn't hunt on hay land because it hadn't been harvested yet.

Senator Triplett: Made a motion for a Do Not Pass. She felt there was a circular problem even with the amendments and it wasn't worth the effort to fix up this bill.

Senator Schneider: Second

Senator Hogue raised a question about the construction cost-share assistance. If the commissioner has some obligation to provide materials, does he also have an obligation to help with the construction of the hay yards?

Chairman Lyson: You can do that right now without us putting that into law?

Terry Steinwand: We are working with NRCS and our Equip Program that would provide 75% cost share on construction of the hay yard. We are working with an organization called Boots on the Ground which is a sub organization of Union Sportsmen's Alliance which is a nationwide organization and we are in the initial phases of that but we already have about 30 volunteers ready statewide to help. We would provide the equipment and it would be at no cost to the landowner.

Senator Uglem: I think we could solve the problem of grown to be harvested just by exempting hay.

Chairman Lyson: I understand that but, we have a motion on the floor Do Not Pass.

Roll Call Vote: 5-2-0

Carrier: Senator Triplett

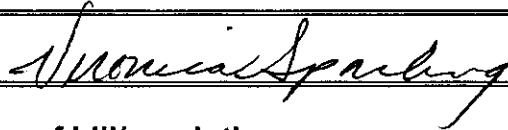
2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2227
February 8, 2011
14216

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to powers of the director of the game and fish department; relating to the deer proof hay yard program and culpability requirement for unlawfully taking big game; and to declare an emergency.

Minutes:

No Attachments

Chairman Lyson opened the discussion on SB 2227: We did have vote on this of 5 to 2 for a Do Not Pass, but we went to the...

Larry Kinev: Director Steinwand and I went through this Section One and crops means any plant that is grown to be harvested. We agreed to strike "is grown to be harvested" and we thought we could probably work with that.

Chairman Lyson: What does that do for this?

Larry Kinev: That takes growing crops out of the equation.

Chairman Lyson: On the amendment Section One cross off the words "grown to be harvested" and also cross off "or that".

There was discussion about how to word the amendment as far as food, feed, or fodder.

Senator Hogue: Did we attach amendment .01002 to the bill before we sent it up to the floor?

Chairman Lyson: No

There was more discussion about the food and fodder wording.

Senator Uglem: Made a motion to Reconsider SB 2227.

Senator Schneider: Second

The motion carried by voice vote.

Senator Hogue: Made a motion to adopt amendment .01002 striking out "is grown . . .", "or that" and adding the words "feed or".

Senator Schneider: Second

The motion carried by voice vote.

Larry Kinev: May I defer to Senator Wanzek?

Senator Wanzek: I talked to these people and to Terry Steinwand. As I look at the culpability requirement, to generalize I want to focus the culpability to those cases that are specific to depredation of property. I don't want to open up an opportunity for those who are poaching.

There was discussion about the use of the word "willfully" in relation to hunting and whether the word does what is intended in this bill.

Senator Schneider: I move to amend the bill so that it does not change current law where it proposes to change current law on page 2, line 6, so essentially remove the underscored language and restore the overstrike.

The motion died for lack of a second.

Senator Hogue: Made a Do Pass Motion as Amended.

Senator Schneider: Second

Roll Call Vote: 6-0-1

Carrier: Senator Schneider

FISCAL NOTE
Requested by Legislative Council
04/19/2011

Amendment to: Reengrossed
SB 2227

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
Expenditures				\$0		\$0
Appropriations				\$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

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).*

This bill designates funds from existing Game & Fish appropriation each biennium for winter management practices to alleviate depredation caused by big game. No additional appropriation has been added.

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.*

The dept. will make available \$1M from its existing appropriation for big game winter management practices including cost share on deer proof hay yards. The dept. will also make available \$100K for food plots on private property.

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.*

none

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.*

none.

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 appropriation for this bill is included in SB2017 and no additional appropriation has been added.

Name:	Kim Molesworth	Agency:	ND Game & Fish
Phone Number:	328-6605	Date Prepared:	04/19/2011

FISCAL NOTE
Requested by Legislative Council
03/28/2011

Amendment to: Reengrossed
SB 2227

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
Expenditures				\$0		\$0
Appropriations				\$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

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).*

This bill designates funds from existing Game & Fish appropriation each biennium for winter management practices to alleviate depredation caused by big game. No additional appropriation has been added.

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.*

The dept. will make available \$1M from its existing appropriation for big game winter management practices including cost share on deer proof hay yards. The dept. will also make available \$100K for food plots on private property. This bill is not issuing any new deer licenses.

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.*

none

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.*

none.

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 appropriation for this bill is included in SB2017 and no additional appropriation has been added.

Name:	Kim Molesworth	Agency:	Game & Fish
Phone Number:	328-6605	Date Prepared:	03/28/2011

FISCAL NOTE

Requested by Legislative Council
01/18/2011

Bill/Resolution No.: SB 2227

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
Expenditures				\$50,000		\$50,000
Appropriations				\$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

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).*

This bill amends the deerproof hay yard program to include the department to provide construction cost-share assistance for establishment of the deerproof hay yard.

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.*

This bill is not issuing any new deer licenses. The only fiscal impact is the construction cost-share assistance to the landowner for deerproof hay yards. Our figures are assuming a 50/50 cost share. We estimated the # of hay yards and the construction cost.

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.*

none

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.*

Our cost is estimated at \$50,000 per biennium. We used an estimate of 25 hay yards each year at an estimated construction cost of \$2,000 each based on a 50/50 cost share. (25 x 2 yr x \$2000 x 50%)

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.*

none

Name:	Kim Molesworth	Agency:	ND Game and Fish Dept.
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Phone Number: 328-6605

Date Prepared: 01/19/2011

Date: 2-3-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2227

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 Triplett 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) 5 No 2

Absent 0

Floor Assignment Triplett

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

Date: 2-8-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2227

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 Uglen Seconded By Schneider

voice vote: carried

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

#1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2227

Page 1, line 1, after "enact" insert "two new subsections to section 20.1-01-02 and"

Page 1, line 2, after the first "to" insert "definitions and"

Page 1, after line 6, insert:

"SECTION 1. Two new subsections to section 20.1-01-02 of the North Dakota Century Code are created and enacted as follows:

"Crops" means any plant that is grown to be harvested or that has been harvested, collected, or stored as food, livestock fodder, fuel, or for any other economic purpose.

"Depredation" means damage to or destruction of private property."

Page 1, line 19, remove the overstrike over "and"

Page 1, line 19, remove the underscored comma

Page 1, line 19, remove "and"

Page 1, line 20, remove "construction cost-share assistance"

Page 1, line 20, after "cost" insert "and construction cost-share assistance"

Page 1, line 21, after "protect" insert "crops."

Page 1, line 21, after the second "hay" insert an underscored comma

Renumber accordingly

Date: 2-8-11
Roll Call Vote # X 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2227

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 Hogue Seconded By Schneider

carried: voice vote

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

01002
delete "is grown
or that
"feed or"

Date: 2-8-11
Roll Call Vote # _____

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2327

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 Schneider Seconded By no second

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

page 2 line 6
Remove underscored language

Date: 2-8-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2221

Senate Natural Resources Committee

Legislative Council Amendment Number 01002

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

Motion Made By Hogue 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 Schneider

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

REPORT OF STANDING COMMITTEE

SB 2227: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2227 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2227: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2227 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "two new subsections to section 20.1-01-02 and"

Page 1, line 2, after the first "to" insert "definitions and"

Page 1, after line 6, insert:

"SECTION 1. Two new subsections to section 20.1-01-02 of the North Dakota Century Code are created and enacted as follows:

"Crops" means any plant that has been harvested, collected, or stored as food, livestock feed or fodder, fuel, or for any other economic purpose.

"Depredation" means damage to or destruction of private property."

Page 1, line 19, remove the overstrike over "and"

Page 1, line 19, remove the first underscored comma

Page 1, line 19, remove "and"

Page 1, line 20, remove "construction cost-share assistance"

Page 1, line 20, after "cost" insert "and construction cost-share assistance"

Page 1, line 21, after "protect" insert "crops."

Page 1, line 21, after the second "hay" insert an underscored comma

Renumber accordingly

2011 HOUSE ENERGY AND NATURAL RESOURCES

SB 2227

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2227
03/10/2011
15287

☐ Conference Committee

Committee Clerk Signature

Emineth

Minutes:

27 "attached testimony."

Rep. Porter: We will open the hearing on SB 2227. We will not close this hearing today. Senator Wanzek is away on business as is Terry Steinwand, they have asked that we keep the hearing open until next Thursday.

Rep. Brandenburg: I am the representative from district 28. I will go through the testimony and the bill (See attachment 1)

Rep. Porter: In section 2 the valid antlerless deer license, is that from the previous deer gun lottery? Or is that a new license that is issued from the director upon learning of depredation to a specific area?

Rep. Brandenburg: There are a lot of people that will go out in the fall to hunt but didn't have a successful hunt. These people could go out and try to fill that tag that they got.

Rep. Porter: Then that would be an unused license from the previous deer season. Would that also include a bow or muzzle loader license?

Rep. Brandenburg: I think it should be open to anybody.

Rep. Porter: If there aren't enough hunters or enough people that have a valid antlerless deer license to step forward can the director issue new licenses to address that?

Rep. Brandenburg: On page 2 line 13, replace "A" with "Except for deer committing documented depredation upon a person's crops a" the actual property owner could then shot the deer.

Harlen Kleppe: I am from Dawson North Dakota. That bill is presented because of what happened to me in court. The game warden came out and asked what I had been doing. I told them I had been shooting deer to keep them from my hay stacks. They came back on March 17, the snow and deer were gone and I didn't take any pictures. They charged me with unlawfully hunting big game. I wasn't hunting the deer were coming into my hay, and then I asked the game wardens "why don't you feed the deer?" they said "we are not to

feed the deer" I live by the refuge in that refuge they don't plant any food plots to feed the deer. There is lots of cover out there but there is not food plots. They took my gun away so I requested permission to feed the deer. The deer I feed are in good shape. Nobody showed up this year. My case is on the docket for the Supreme Court, the way it was is you shot it, there is a dead deer with a hole in it, and you admit it, pay \$350.00 and give me your gun. I didn't even get a chance to explain. (See attachment 2-6)

Rep. Kreun: What did it cost you to feed the deer?

Harlen Kleppe: When I started I decided about 60 bales would be cheaper than losing 12 calves, I kept track on the calendar I put out about 40 bales.

Rep. Porter: How many deer have been hit by cars on Highway 3?

Harlen Kleppe: It has been as bad as last year, about 8 to 10 deer.

Bill Adams: I am from Steele. I have a lot of pictures (see attachment 7-10) these are pictures from all over the state which show depredation problems that everyone is having. In our county there is 298,000 acres and there are probably 18 people that have 100-500 deer on their land. These last pictures are from north of Bismarck. 2 years ago it cost about \$1.45 a day to feed a cow and 5 deer to a cow it cost me \$29.00 a day for the deer in my hay lots. It cost \$870.00 a month and \$3,400.00 for the 4 month period for the 100 deer. That is what they eat; they waste double this that you can't feed so it will cost approximately \$8000.00 to winter 100 deer. This is a big economic loss. If I had a coyote out there and he was going to take a calf I could shoot the coyote because I have protecting my property. All I can do with the deer is watch them eat the hay. The Game and Fish have some hay fences which I don't have one and they also have AG bags that are 250 feet long and 8 feet high for wet feed. If the deer break a hole in the bag it spoils the feed. The real problem is the mismanagement of the deer herd by the Game and Fish Department. They said "you have these trees over here why don't we put 40 acre food plot on it" That sounds like a good way to keep the deer out of my place. But right across the farm is a wildlife refuge why can't they put the food plot on the refuge? If I put the food plot on my land it will take 40 acres from me. They said they can't because we can't work with the federal government. Nobody wants to go out and shoot the deer. I hate to see these deer dying but what can we do? The deer at my place are healthy I must have good hay. If it wouldn't be for the farmers I bet 80% of the deer would be gone in the spring. Across the road from the Kleppe's is 4 sections of land the Game and Fish bought for deer wintering headquarters and if you go out there and look there is not a single thing the deer to survive on in the winter. The game and Fish said if they feed the deer they will congregate. What are the deer doing now? They are congregating on one spot in farmers yards because there is nothing for them to eat I think that is sad.

Mel Fisher: I am from St. Anthony. I have the same problem as this guy, I got pictures but not for all of you. The Game and Fish should have to pay for the deer damage just like we have to pay for our cows when they get out. I don't have hay at home I have to get hay from someplace else. The deer crap all over my hay my cows don't want to eat the hay. The cows are my livelihood. I have 2 deer fences but I need 10. I am short 8 of them. Game and Fish should pay dollar for dollar for the damage.

Rep. Porter: Did Game and Fish tell you that you could only have 2 fences and what was the response?

Mel Fischer: I asked for more they said maybe next year we can get another one. They gave me 1 in 2009 and 1 in 2010. The buzzer doesn't work either The deer stand behind the buzzer. The Game and Fish had some hay land that I was going to cut. I asked if they would do something for deer loss and they said no. Pass the law today that they have to pay for damage just like we have to pay for ours.

Rep. Nelson: What did it cost you to feed the deer?

Mel Fischer: I figure I have \$30,000.00 coming and that would be cheap.

Don Moore: I am from Forbes and a rancher. The pictures are not of deer they are of deer feces taken right outside my door. If you look you can see the house siding you would not have seen that siding last fall. The deer eat the foliage that was growing there. I did call the governor about too many deer eating the feed supply. The deer problem of the feed is the problem. It is not a new problem the problem is at least 20 years old. Over 50 years ago my father wrote to the Game and Fish about the deer. It is my responsibility to feed the cattle and take care of them, if I don't the government is going to come and arrest me and haul me to court and they should. But in the state of North Dakota they don't care we aren't going to feed the deer we will let the farmers do it. There are way too many deer.

Concerning the bill I don't think section 2 is worth the paper it is written on. It is says there that before he can call a season he has to see if something else would work. They have worked for years and not found anything that worked and besides hunters need to know ahead of time when they are going to come because hunters can't come in on a 24 hour notice. With the amount of snow I don't know if they could get to the deer. I don't think it is going to do any good but pass it.

The hay yards where we had the calves we had a problem and we talked about a hay fence and they gave us a hay fence. One size fits all fence it was not big enough for our operation. They came up with a plan that we thought would work but they rejected it. We got a letter that said if we refused the fence we could never ask for another one again. I have the law in front of me there is no such authority in the Game and Fish laws. The contract which they gave us said if we accept a fence then we had to sign that we not post our land for I don't for how long. I was surprised when I read the bill. In section 4 it says "a person may not willfully hunt, harass, chase, pursue, take, attempt to take, possess, transport, ship, convey by common or private carrier, sell barter, or exchange big game." That means under the present law I can't even chase the deer away from my hay. I do propose an amendment I think Rep. DeKrey proposed. On page 2 line 15 after the period accept a person may protect his or her property or any under which he or she has control. I urge you to support that amendment.

Rep. Hanson: Are you having any trouble any trouble with the deer coming from South Dakota?

Scott Moore: In regard to your question we have a unique situation on our ranch we have a south unit where the ranch is and a north unit where the cows are. Up at the north unit it is 6 miles from the state line and I do not believe that they are coming from South Dakota. At the south unit we had approximately 200 deer 2 miles down the road where my neighbor lives there were 350-400 deer and he is only a mile from the South Dakota line.

Rep. Nathe: you talked about the one size fits all hay yards what size in your opinion is the correct size?

Scott Moore: It is not a specific size it is what works for your particular operation. They don't seem to be willing to work with you.

Rep. Nathe: What are some of the factors that would make a hay yard work?

Scott Moore: The area that needs to be protected. It varies from situation to situation. The deer population has increased by about 4 times in the last 20 years. The number of licenses has gone down. The Game and Fish came out this year and put a wrap around some hay and put one spike in it to hold it up. It lasted maybe 24 hours they had to come 4 different times to get enough spikes to hold it and in the end we finally turned some bales to hold the corners up. They want the deer to eat your hay. There has also been a presidents set at Fargo where they had a special season because deer were inside the city limits eating the peoples shrubs why can't we do that out here? I asked Game and Fish he said "that was only a bow season" so I said "let's have a bow season" he said "we can't do that" There are some serious problems out there.

Julie Ellingson: I represent the North Dakota Stockmen's Association. We support SB 2227. You have heard a lot of testimony about some of the challenges that many livestock producers are experiencing with the deer eating on their feed and racking their hay. (See attachment 13)

Ann Ongstad: I am the owner-operator of Whitman Ranch. (See attachment 14) This bill is a band aid for a large wound caused by an extended period of deer overpopulation. I hope it passes.

Wes Klein: I am a producer from Mercer County. We do not have a deer problem per say because there is nine of us in our family. I am in support of this bill. I think what you have before is a state agency that needs some oversight a state agency that is no longer supportive or bending to the needs of its constituents of the state of North Dakota. We heard about issues with the deer fences. One of the issues I want to share with you today is the current Fish Director Terry Steinwand during the last legislative session the Game and Fish Department brought forth a bill to end hunting over bit I believe that the issues of the deer depredation in the state of North Dakota are a direct result of the Game and Fish Department's attitude of not feeding deer in order to justify one individuals opposition to hunting over bit. What we are seeing today is not a situation of deer being baited. We have a situation where you have an agency that is to manage wildlife but is allowing them to starve. Prior to Director Terry Steinwand's tenure we had Game and Fish Directors that actively participated with producers in the state of North Dakota to feed and manage the deer herd in relation to issues of depredation in our rural communities. The attitude of the

North Dakota Game and Fish Department needs to change and it will only change coming from the direction of this legislative body to help them to understand that when you are an agency that is not responsive to the needs of the tax-paying citizens and producers in the state of North Dakota.

Roger Rostvedt: Deputy Director of the North Dakota Game and Fish Department. The bill itself is very good. As time goes on everyone will realize there is not one silver bullet that addresses all things all places for all producers. There are some portions of the bill that are positive for the producers. Section 2 will not work in every situation it allows the director to authorize people who have not filled their tags during the regular season to continue hunting after December 1 in areas where there are problems. I don't anticipate that there would be a lot of areas because that would require that we try to take care of the problem and find out that there is not a quick cost effective solution. It also requires that the landowners want to have hunters on their property

We support section 3 as a cost-share we haven't figured out what type of cost-share. We were contacted by the North Dakota Union Sportsmen's Association which is members of the North Dakota labor unions with a request that they could assist. Their program which is called Boots on the Ground where the Union Members in North Dakota have a take on certain projects like building type projects and thought they could help with the construction of the deer proof hay yards across North Dakota. The Stockmen's Association said "deer proof hay yards not put up isn't doing anybody any good." This year we have requested for 125 more deer proof yards and our deer proof hay yard program has revolved over the years. What we do is let the producer decide how big and where they go because they understand that doesn't mean that they can't change them to fit the particular situation. People have come to the conclusion that the hay yards do work very well. If it worked in every situation we wouldn't be here.

We do have some concern with some parts of the bill. That is in section 4 "not willfully" the section that it would be applied to is 20.10502. It would properly be more appropriate to go into 20.10228, into the deer proof hay yard program. The intent I believe is to allow some justification if he did take matters into his own hands. On page 1 section 1 those definitions might be a little broad and I think the committee should take a look at the things just as for all plans for any other economic purpose.

Rep. DeKrey: That is a major change; are you willing to except doing away with strict liability in a depredation situation as long as we get it in the code?

Roger Rostvet: I said if it is the will of the group. I didn't say the Game and Fish Department was supporting that.

Rep. Anderson: Can we get access to the units and the licenses available and the licenses sold in those units?

Roger Rostvet: Yes I will provide that information.

Rep. Hanson: In section 2 it says "antlerless December 1- March 15" I think about that time everything is antlerless right?

Roger Rostvet: Deer start dropping their antlers after the first of the year. We still have archery season. Yes that would be a concern.

Rep. Hanson: You mentioned 125 people were turned down for the hay fence or that is what you are planning for next year?

Roger Rostvet: 125 orders in that we will be providing.

Rep. Hanson: How much money would you need to give everybody that applies a hay yard?

Roger Rostvet: They run between two and four thousand dollars each.

Rep. Hanson: Would you oppose appropriation of that much money for deer yards?

Roger Rostvet: In the past we have requested \$500,000.00 at that time where we put out a significant amount of hay yards in fact during that program we had a thousand deer depredation complaints and this year we had 300.

Rep. Nathe: There was some discussion earlier about the special season in the bill that we have it from December to March 15. Has there been any discussion with Game and Fish to bow hunters or youth hunters who haven't shot a deer or letting the landowners who have a depredation shot a deer even doe they may have filled their tag in November?

Roger Rostvet: During the shot time that we were working on this bill this looked like it could be one of the once that could be implemented and it would already take into account licenses that have already been issued so there wouldn't be any more administrative cost.

Rep. Nathe: You could pin-point it into that area?

Roger Rostvet: It would be in that farm or associated land and it would have to be voluntary to the neighbor and the landowner because we can't say "we are going to hold a deer season"

Rep. Nathe: You would be open to allowing that?

Roger Rostvet: It is possible, but if you are looking at taking care of the problem one deer

Rep. Nathe: Anything to help the cost.

Roger Rostvet: The committee might make some changes on this bill.

Rep. Hofstad: You tags are built on population. Is there any change that implementing something like this would change the population enough that to increase the tags in the future?

Roger Rostvet: These would be tags that are already anticipated that there would be some portion of harvest. Now would increase it may bump it up. I doubt that it would have a

significant impact on the unit wide population but in that area it would and take is properly what it needed.

Rep. Hunskor: All of these things are only helpful. To get to a complete answer it seems like the you have to go to the hay yard to get control. It has to do with the size of the hay yard is there anything the Game and Fish can do other than the one size fence to accommodate the different needs here.

Roger Rostvet: There is one size fits all anymore. We found out that doesn't work. They are multiple sizes.

Rep. Damschen: We have heard complaints and band aids, Are you guys looking at some long term solutions to the problem?

Roger Rostvet: We have tried every type of method. When you live in a prairie state like North Dakota, I am not making excuses but deer move a long way it is an open country and if you take a look you can go for 50 miles and not see a deer but then in the next place you can see a lot of deer. We need to go to the concentrated areas and do whatever we can to take care of the problem.

Rep. Damschen: It is interesting that you bring that up because not there are more hunters than there has ever been and more deer than there has ever been.

Roger Rostvet: The deer population peaked to an all time high about 5 years ago. We have had 3 hard winters right now and I don't think there are very few spots in the state where the deer numbers are at a low point.

Rep. Hunskor: Do you have the man power and the material to take care of these severe problems in the state what are your plans?

Roger Rostvet: I think you are talking about some unique situations in the area. Having extra tools in this bill would help like the cost shares; more people have put them up or would put them up if we had cost shares.

Rep. Nathe: Does Game and Fish monitor these herds in these areas?

Roger Rostvet: yes we work with them. In some places we have been out there 4-5 times in a short time.

Larry Kenoff: I am from Dawson: I will beat up on Roger for a minute. (See attachment 15 &16) Landowner tolerance is down a bit. The problem is scattered throughout the state. If everyone that has a problem would be at this hearing it would have to be at the civic center. He made reference to the part that says "for any other purposes" We didn't make the hay for the deer to eat. That picture snow on the picture is not from the sunshine. The Game and Fish has in their appropriation request the word depredation tied to 15 million dollars of their total budget which is 23.6 percent. In the deer depredation line there is 12 million alone not one penny pin points that anything will be done for depredation. Most of it is in the plots and habit program, which is 10 million. We have a problem I wrote the resolutions

that go with this it is a start. Who is responsible for the deer? Are they public property? If they are then they are mine. I would like to call attention to the humane treatment of animals.

Laurie Dethloff: I offered my services as a practicing and licensed veterinarian in the state of North Dakota. What can happen with the over population and disease populations but also I hear the voices of the livestock owners because if anybody thinks the Dethloff is familiar it is because my dad is Bill Dethloff and he sounds like the people behind me. They are hard working and it is difficult to make money. The deer are starving and diseased I worked with USDA in the National Animal Disease Center and others. There are a lot of factors that are prevalent in the disease transmission, the higher the population the more likely they are to starve and carry disease. It is easy for these animals to carry to transmit diseases to livestock. There are bunk lines that have feces and urine in them and that is a big concern as a veterinarian. People ask how can deer transmit disease to the cattle. They can by nose to nose transmission, oral or nasal secretion transmission, urine, and feces. One disease that I have a lot of concern for the state of North Dakota because we have had it in surrounding states is tuberculosis. There are so many organisms that can be transmitted from wildlife to cattle. We look for many diseases one that we are trained to look for, one of them is brucellosis etc. You can see why they are passionate about their farms and ranches. I think the deer population has reached very large numbers in certain parts of our farming communities and do need our help in this matter.

Rep. Nelson: When you worked for the government. Was there ever talk about disease in the areas where they don't allow hunting?

Dr. Dethloff: It is something that has been talked about for a number of years.

Rep. Nelson: If there is all of this realization that there is a problem, then why did never take any steps to do anything about it such as harvesting the deer?

Dr. Dethloff: That is a great question I wish they would.

Rep. Porter: Is your address Bismarck?

Dr. Dethloff: Yes.

Rich Mittleider: I am an organic farmer from Tappen North Dakota. My situation is a little different. I am a farmer there and what I saw happen this winter is interesting. I farm a quarter of land by the refuge. I saw something this winter that I never saw before. This winter the deer are starving we need to do something to feed these deer. Look at my picture is across from the refuge (See Attachment 17-22) Picture number 2 there have been about 300-400 deer in this field for the few months they dug down through the snow to eat. Picture 3 and Picture 4 this is what they done in two days time. I lost this crop of rye. In this bill in section 2 it says "crops that were harvested" so it doesn't pertain to the loss of my crop. There are other problems with the deer besides the farmers and ranchers. I contacted the Game and Fish about the deer they sent me crackers. The crackers are a waste of time. I shot my three boxes of crackers and one hour after you shot them they are

back. I asked who is in charge of the animal damage. I called him; he said that is all that we can do.

Tom Bodine: I represent the North Dakota Farm Bureau. We are in support of SB 2227 and Rep. Brandenburg amendment to give the producer the ability to protect their own property. I cover 12 counties as a rep. I heard this discussion in everyone of those counties so I question the being isolated to one area. Every year the deer have to go and look for food in the producers yards and in the small towns.

Alfred Schrenk: I am from North East Kidder County; A lot has been said that I could repeat. The over population of deer has been responsible for the fact that they are no longer really wild because they have to find food where it is available and that is in the farm yard and right now I have 40 to 60 in my yard. Some sleep on my door step. Someone from Game and Fish asked me what I would do to solve the problem. He left with no answer. A solution to this problem would be for 75% of the governing board of Game and Fish be farmers and ranchers those who personally live and operate with the wildlife. I have been dealing with the problem of the deer for 50 years already. 2 years ago 7 deer died in my yard from starvation. I cut one open to feed to the cats, they weren't interested in it because there was nothing but skin and bone. How they lived that long I don't understand. Many around here have lost trees to the wildlife; we spent 40 years taking care of these trees. The deer have eaten the trees all the way up now they are shot. My solution would be that immediately after deer season an organized elimination of $\frac{3}{4}$ of the herd should take place in the areas where they are over populated. The deer harvested should be donated to the needy and food pantries and the Game and Fish would be applauded for the effort and I believe that those that have suffered damages should be paid. The last statement is simply this. My desire is that Game and Fish Management manage in a way that they can be proud of their management and be proud of the animal life and man equally.

Jessie Livingston: I am from Tuttle. For insurance reasons you can only have 400 bales in an area in case of fire. The deer fences don't stop the deer problem. We put up 2000-4000 bales a year so if you put 400 bales in an area that is 10 deer fences. At the cost of what the Game and Fish were says how many fences would they have to supply. That is not the answer. We have a lot of deer in the bunk that is one of the pictures that you have.(See attachments 23-26) to stop that we would have to fence 40-60 acres. I am 28 years and have a lot of years to be involved in this business but with the amount of deer that we are dealing with I don't know that I could stay with this business and have to put up with deer like that for the rest of my life. It is hard to put a dollar amount. One gentleman said he fed between 40 and 50 bales this year bales are costing \$30.00-\$40.00 and that is if you can find the hay and then you have to pay to get the hay home. We have had some abortions this year how many have been caused by the deer? This bill will help us but it is not a solution for the problem. If someone comes to your door we have the right to bear arms if a deer comes in the year we have no means of defense. I know of neighbors that have not called the Game and Fish Department because they are so fed up with them they won't even attempt to talk to them anymore. The Game and Fish have an advisory meeting in the spring and fall I was unaware of this he said if people don't come in and complain they will keep upping the deer population.

Mike Donahue: I represent the North Dakota Wildlife Federation we support the objectives of the SB 2227. We ask that as you do this you coordinate with the House of Appropriations and use general fund dollars for construction and material costs as well. We don't think licensed dollars should be in this factor.

Rep. Porter: Is there any opposition to SB 2227?

David Musch: I live in Morton County. I don't have a deer problem. I have hunted on the Livingston Ranch and on the Melvin's Ranch and we don't have too many deer we too many deer for the habit. These 2 ranchers leave something for the deer but we need Game and Fish to plant something to keep them out there. My solution to say would be to get some habit if you can't, they harvest everything bare the graze it down. It is time to get with the program and take care of the livestock and the landowner.

Rod Livingston: This fall a guy from Game and Fish told us to take snowmobiles and chase them out of our yard so the kids did that. A week later somebody was talking about it and said "you guys are lucky you didn't get caught doing that" some of the problems is that sometimes we can get in trouble for something that we think is legal.

Mike McEnroe: I represent the North Dakota Chapter of wildlife Society my testimony was passed out earlier. (See attachment 27) I don't know that this bill gives the landowners the solutions that they want to achieve. The committee may have to give the direction to the Game and Fish saying thou will go out and feed the deer.

Foster Ray Hager: I represent the Cass County Wildlife Club. This bill is not the answer.

Rep. Porter: We will recess the hearing until next week.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee Pioneer Room, State Capitol

SB2227
3/17/2011
15287

☐ Conference Committee

Committee Clerk Signature

Eminette

Minutes:

1 "attached testimony."

Rep. Porter: We will continue the hearing on SB 2227.

Senator Wanzek: I would like to address or alleviate this problem. I don't if this is one of those issues that you can solve. I all us who are farmers or ranchers understand that we do live in the midst of nature. I do accept a certain percentage loss to my crops in depredation but when it gets to the magnitude that it has in some of these situations we have to give consideration to that too.

Rep. Nelson: Is there something that you want to cover with the word crops that aren't covered with the word hay?

Senator Wanzek: The intent with that language was there seemed to be some confusion as to whether crops gathered and stored on the farm are in fact crops. I read some of the cases where there was a claim make that you cannot claim as depredation because those crops gathered in the yard are not crops in the definition of depredating on crops. This was an effort to try and make clear that the legislative intent is to also assume that those crops gathered for the purpose of feed and fodder for livestock is also considered crops. In my mine they are probably more valuable because of all the labor, time and fuel invested. I would like to offer whatever I can in your subcommittee.

Terry Steinwand: Director of the Game and Fish Department. We do support the concept and have always supported the concept of this. Senator Wanzek and I have worked together to some extent. Deer depredation isn't new to North Dakota. In 1943 with \$9,000 licenses out there we had deer depredation issues. We also recognized that the landscape has changed. We are in the third consecutive hard winter what is different is we didn't have the standing unharvested corn that we did the previous 2 winters. The other part of it is we have seen the landscape change in terms of numbers of ranchers and producers out there.

We do have food plots scattered throughout the state. We have 11,000 acres on wildlife management areas. 1000 acres on private land we need to do better on that. We need to target those areas. I think that's one of the solutions. We like to work with individual landowners or producers out there because one size doesn't fit all. I have heard from the

previous testimony that we only offer one size hay yard and put it up our way or no way. That is not true we work with producers. We want to go to the individual winter deer management plan. We might have to go to a hay buy-back program to provide some of that intercept feeding or some other feeding opportunity. I hate to say this but it is true mother nature is a cruel master. We don't like to see deer starving either. We want to keep those deer away from the producers. I would like to work with the subcommittee.

Rep. Hunsaker: Up in the Towner area I visited with several ranchers who have these problems and they talk about taking feed out and placing it in critical areas just so the animals have something to eat. They do that on their own and it has resolved a lot of issues. Does Game and Fish work on that by putting feed out ahead of time?

Terry Steinwand: That is one thing that I was kind of alluding to but we don't want to do that state wide.

Rep. Keiser: You mentioned that two years ago we had standing corn crops out in the fields that alleviated the problems. Has the department ever thought of an emergency fund where we could pay some of the ranchers and farmers to alleviate some of these problems?

Terry Steinwand: That is what I was talking about on food plots. We will try and get good sized food plots on private land and we currently do that. We give cash rent prices for land use plus operational costs. I believe it is about \$70.00 an acre to put it on and then leave it on. We only have about 1,000 of those acres on private land.

Rep. Nathe: we heard testimony as far as dying deer in yards and not being able to chase those deer away because they would be in violation. Has there been any thought to giving these ranchers that do have this problem the opportunity to shoot the deer that are having this problem?

Terry Steinwand: That is one of the issues that I didn't go into. I have a long list written down that is something we are prepared to talk about with the subcommittee also. Keeping them away is the first item.

Rep. Nathe: Has the department given any thought to a rapid response plan?

Terry Steinwand: No we haven't talked about that. Our response plan is our deer depredation policy at this point. That is an interesting plan I will put that on the list.

Rep. Nathe: I realize that one size does not fit all every winter. How can we address those problems?

Terry Steinwand: We probably haven't been as adaptive as we should have been in the past three years. We need to look at being a little more proactive in the future.

Rep. Nelson: What is the management goal with the deer? Where do you want to the population? How many hunting licenses will you issue?

Terry Steinwand: That is about as loaded a question as I had this session. We want to optimize the opportunity and minimize the impact of the producers. Right now we have a deer management goal and that is in terms of license numbers of 125,000. That is based on public meetings we have held.

Rep. Nelson: How deer vehicle collisions take place in a year?

Terry Steinwand: That has gone down in the last three years. In 2010 I think it was around 3,500 and that is comparable to the 1992 numbers.

Rep. Porter: During the 2011 fall and the discussions of the food plots and targeted food plots and increasing the acres of food plots we need to be thinking about that in about a month or a month and a half. Senator wants to be thinking about it right now because he thinks that he needs to be in the field soon. Do we need the emergency clause so that the availability of funds is there before July because of the expansion of the food plots program?

Terry Steinwand: Yes we do I am meeting with the Governor this afternoon. We have spent about two million dollars on deer depredation this biennium already. We are running out of money. We would like to get the hay yards out to producers in June but if we don't have the money it won't be until after July 1st.

Rep. Porter: The emergency clause is on this act it can be a part of the subcommittee's discussion and a vehicle on how we coordinate with appropriations so that it is going in the right direction.

Terry Steinwand: It will be next week before we get to the subcommittee meeting. I will have an estimate of the extra funding that we will need for those. (See attachment 1)

Rep. Porter: When we think about food plots and the winter forage. Has there been any discussion in using the current NRCS type programs about taking the wheat off and planting beets in September and allowing the beets to grow up and then letting the deer come in and eat those and leave the pulp for producers as compost and use some of those existing of the viability of the land?

Terry Steinwand: We do work with FSA quit frequently; their rules say 5 acres for every 160 acres can be food plots. We have worked with them to go higher than that. We did talk about turnips and beets etc. On a winter like this it is probably gone to be covered up with snow but it is something to open.

Rep. Nelson: You mentioned corn a couple of times. Corn is an incomplete food so do not grow just corn. You need something to balance that ration for those animals.

Terry Steinwand: We have lost I don't know many deer by the gain elevator at Tolna from grain overload. They looked healthy but they died because they didn't have the bacteria in their rumen to digest all of that so they die.

Rep. Nelson: It is not just the bacteria in the stomach and it is just roughage. It is nutritionally incomplete for a rumen and they need other foods in their diet to survive.

Rep. Keiser: If we expend the food plots program are they part of the program automatically?

Terry Steinwand: Yes.

Senator Wanzek: I would like to comment about section 4 on the "not willfully" and what my intent was there. As I understand it the current says "no person may hunt, harass, chase, pursue, take, attempt to take, possess, transport, ship, convey by common or private carrier, sell, barter, or exchange big game animal except as provided in this title." When there is a situation that is unique to someone trying to protect property. I wanted to give the judge a little more flexibility to dig a little deeper and analyze the circumstances.

Rep. DeKrey: How much coordination do you do with the State Game and Fish Department with establishing the deer herd numbers in the state so that we are not opening ourselves up to some kind of a disease overtaking the deer? And do you know what the deer numbers are in the state right now?

Beth Carlson: We are not involved with the process.

Rep. Porter: We will close the hearing on SB 2227 the chair will establish the subcommittee which will be Rep. DeKrey, Rep. Kreun, Rep. Anderson and Rep. Hanson. The chair has chosen to have input the rural and the urban. This bill does not have to be out of here by next Friday.

2011 General Discussion

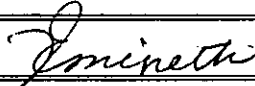
(Check appropriate box)

- ☐ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☐ House Appropriations
- ☐ Senate Appropriations
- x Other

Date of meeting/discussion: 3/24/2011

Recorder Job Number: 15918

Committee Clerk Signature



Minutes:

Rep. DeKrey: We will call the subcommittee on SB 2227 to order. Rep. Anderson, Rep. DeKrey, Rep. Kreun, Rep. Hanson and Chairman Porter were present. After three or four meeting you have the amendment before you that was put together by the subcommittee. Jeff Nelson will go through the amendment and explain it.

Jeff Nelson: Staff Attorney with the Legislative Council. My comments should not be construed as being in favor or opposed to the proposal. My purpose is to review the amendments to re-engross SB 2227 the 03005 version. To make it easier for the subcommittee I have repaired a marked up version for the subcommittee, however this is not an official version of the bill showing the proposed house amendments. This version cannot be amended. We have to go back and work with the amendments. If everything was adopted today this is what the bill would look like if enrolled. (See attachment 1)

Section one of the bill creates 2 new subsections to section 20.1-01-02 of the Century Code. This is the definitional chapter for the Game and Fish Title would define crops as any as any plant that has been harvested, collected or stored as livestock feed or fodder or fuel. The red over struck language is being removed in the amendment.

Depredation, that definition stays the same. Section 2 of the bill is a new subsection 20.1-02-05 of the Century Code that is being created this is the powers and duties section of the Game and Fish Title for the Director of the Game and Fish Department. The Game and Fish Director would be authorized to authorize individuals with valid antlerless deer licenses to take deer on private lands determined by the director to be severely impacted by deer. Before authorizing individuals under this subsection the

Relating to definitions and powers of the director of the Game and Fish Department.

Page 2

director must attempt other measures and determine them to be ineffective. The green underscored language is language proposed to be added by the house and would provide that the landowner that is dissatisfied with the decision of the director under this subsection may submit a decision to the Agricultural Mediation Service for mandatory mediation a decision of an Agricultural Mediation Service Negotiator is subject to review by the credit review board. A decision of the Credit Review Board under this subsection is final. This is an attempt to have mandatory mediation but it would be final upon review of the Credit Review Board and not appealable in the District Court. The reminder of the language of that subsection except for March is being changed to January 15 on line 2 of page 2.

Section 3 of the bill is being added by the committee. This is subsection 17 of 20.10205, the powers of the Game and Fish Director and under subsection 17 the director is authorized to carry out a private land habitat access improvement program, as proposed to add several new subdivisions to this subsection. Moving to line 20 the director can carry out the program by working with livestock producers experiencing chronic deer depredation problems to develop site specific deer depredation plans. The director can carry out the program by giving first consideration to producers impacted by deer foraging on stored winter forage when purchasing winter deer management supplies. The director can carry out the program by making available the sum of one million dollars from each biannual appropriation to be used to provide short term feeding limited to a winter management program to alleviate depredation caused by big game animals. Any unexpended funds up to 2 million dollars are not subject to section 5445.111 and may be carried forward for expenditure in future bienniums. What that section provides is that unexpended appropriations are cancelled at the end of a biennium of we are making an exception to that provision allowing unexpended funds up to 2 million dollars to be carried forward in the future bienniums for this purpose. Subdivision I the director can carry out the program by making available a sum of one hundred thousand dollars from each biannual appropriation to be used for food plots.

Page 3 of the bill draft, section 4 amendments section 201-02-28 this is the deer proof hay yard program. A sentence is being added at the end of that section that would provide for winter management program purposes, a person may not willfully hunt, harass chase, and pursue deer except as provided in this title.

In section 6 amending 20.11-05-02 big game animals are protected. Under current law no person may hunt big game except as provided in this title. As you know that is a strict liability offense there are no extenuating circumstances, affirmative defenses. This is attempting to make an exception for deer for winter management program purposes. It is a high standard but it takes it out of the strict liability arena and does allow an individual if the state's attorney were to make a charge to mount a defense and to make an argument.

Section 5 this is a deer reduction program this is a new section that is being added by the subcommittee to chapter 20.1-02 and would provide that the director or the director's designee may authorize an individual to euthanize injured, sick, or emaciated deer under the conditions authorized by the director. The director may authorize targeted deer reduction programs to alleviate deer depredation.

Section 7 is the existing bill the emergency clause if enacted this bill would become effective upon being signed by the Governor and filed by the Secretary of State.

Rep. DeKrey: Are there any questions from the subcommittee to Mr. Nelson?

Rep. Hanson: Page 2 line 24 the most the dollars could be billed up to for the oncoming biennium would be 2 million is that correct?

Jeff Nelson: I think you could have a two million fund another one million dollars in authorized so potentially you could have 3 millions.

Rep. Hanson: That is what I was thinking.

Rep. Porter: On page 2 the new component sub I talking about the food plots. Because we are putting that inside the private land habits improvement program does the other previous components of that carry down through that piece? The portion in sub B that talks about public access to lease land may not be prohibited so if we have the department and go out and target an 40 acre area by game management and they say "we need to plant a corn plot" and the landowner isn't in full agreement because of the depredation problems do they mandatorily have to allow public access to the food plot? Do we need to clarify it?

Jeff Nelson: Perhaps that should be clarified. That line "public access to leased land may not be prohibited" that stands alone. The assistance under the food plot is the department taking a lease on that land or just providing assistance to the landowner. If they are providing assistance it probably falls outside if they lease that land and record it then it is probably subject to this prohibition that public access cannot be prohibited.

Rep. Porter: I want to be clear that when we were working on sub I it was for winter management feeding and not for the established inside the plots program.

Jeff Nelson: Do you want the plots program and the land that they lease for food plots separated so that when it comes to the public access?

Rep. Porter: What we want to be clear on is that sub I is that if we are planting as the state a food plot for winter management program so that it is not subject to the other conditions of what a normal habitat hunting type food plot would be.

Rep. DeKrey: Do think we need some language in there?

Rep. Porter: I do think that it needs to be clarified on a food plot for winter wildlife management.

Rep. Anderson: when you (not audible) landowner?

Relating to definitions and powers of the director of the Game and Fish Department.

Page 4

Jeff Nelson: After the word food plots on line 31 that we add "on private property for the purpose of providing winter feed" these food plots are not subject to public access consideration.

Rep. Kreun: On page 3 line 19 and 20 it says "the director may authorize targeted deer reduction programs to alleviate deer depredation. Who gets to do that?"

Jeff Nelson: That is a very board authorization; the director may authorize targeted deer reduction programs to alleviate deer depredation programs. What that program might be is up to him.

Rep. Hanson: Is this going to close it down so that an operator can say "I don't want any hunting in there, I thought we wanted to get rid of the deer."

Rep. Porter: What it would do is on those targeted food plots that aren't going out there for game management for wildlife enhancement for the plots program where public access is part of the contract. It would allow the department to go out and have an area where they know that there is a deer depredation problem that they work with the landowner and say "if you plant 20 acres of corn here we will lease your land for \$40.00 an acre and bring the corn seed you plant the corn and that will be the stop from getting the deer in your hay" that program on sub I has nothing to do with access or anything other feeding the deer because of the recognized problem. What I don't want is to have that obligation carry forward on the public access part because it is not part a plots program it is a winter management program. The landowner can decide if they want hunting on that piece or not.

Rep. Hanson: Do you want this as an amendment?

Rep. Porter: I'll work with the subcommittee on the language that little component has to be outside of the current plots program.

Rep. Anderson: Another thing if you have the deer feeding on the hay I don't know if you want to chase them out of there.

Rep. Hanson: I make a motion to move the amendment.

Rep. Anderson: Second.

Rep. DeKrey: The amendment is on line 31 page 2 after the word plots the period would go away "on private property for the purpose of providing winter feed. These food plots are not subject to public access consideration. We have the amendment before us all those in favor. Voice vote taken motioned carried. If we have some landowners out there that don't plant food plots because they don't want to open up their land to public hunting this may entice them to put a food plot in if the Game and Fish will rent their land and then they can manage it however they want the idea is to get rid of deer and that may help get rid of some deer. That is an amendment to the amendment. One of the major concerns we heard from landowners and people that testified was that they had nowhere else to go if they couldn't come to terms with Game and Fish. That is

Relating to definitions and powers of the director of the Game and Fish Department.

Page 5

where the amendment where the mandatory mediation and the final decision comes from. That is at the landowner's request that is not at the Game and Fish's request. F is to work with the producers experiencing chronic deer depredation problems and to develop sights for specific deer depredation management plans. In the Century Code it is hay yards and Game and Fish has a strict way of the way they built a hay yard. This will give them the authority to deviate from that and to be more flexible. G is in there because if you have got deer depredation and you and Game and Fish agree that they are eating more than they should be of your food supply you will be given as a producer the first consideration from them as whom they will buy the feed from. This is already within the Game and Fish Department that is their funds that portion of the bill if it passes through the main committee will have to be re-referred to the appropriations committee. These two are in addition to the what is already in the Game and Fish budget and there are no general fund dollars in that money. This is strictly hunter money. We will close the subcommittee.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2227
3/24/2011
15957

☐ Conference Committee

Committee Clerk Signature

Emmett

Minutes:

no "attached testimony."

Rep. Porter: We will open SB 2227

Rep. DeKrey: This is the amendment .03006 for the deer depredation bill which was passed out this morning. I quickly go over the major points of the amendment. One of the problems that we kept hearing was that the Game and Fish was not responsive and whatever Game and Fish says goes.

The part where the landowner that is dissatisfied under this amendment they would be able to force the issue to the Agriculture Mediation Service in the department of Agriculture. If they were not able to reach an agreement in Agriculture Mediation it can get bumped up to the Credit Review Board. Any discussion by the Credit Review Board would be final. The thinking was if there is a starting point of the dispute there has to be an ending point. Ag. Mediation isn't binding but the Credit Review Board is.

Under F the Game and Fish Department will work with livestock producers experiencing deer depredation problems they will develop site specific deer depredation management plans as we heard during the testimony from both sides, Game and Fish and the producers every situation is different and so we put in here that the producers that are experiencing deer depredation their management plan with the Game and Fish will be site specific. We hope they will have input along with Game and Fish in that can come upon a decision that will work for both of them.

When we talked about the feed that they would have to buy to lure the deer away from a producers place or to try and get them out of the feed yard we thought it was important that the producer that was having the problems should be given the first chance to sell the feed to the Game and Fish Department.

The Game and Fish budget is in appropriations right now and hasn't been passed. This would make available within the budget one million for a biennial operation. In other agencies if the money is not used it goes back into their general fund. In H it caps it at two million dollars and the access funds over into that fund up to two million dollars. That could

possibly give them three million dollars in a bad winter. The years that we get open winters should be rolled into that fund so that they are available on a bad winter.

The language that came over from the Senate that is about taking away strict liability on an offense on the deer feeding management program. It is still illegal to shoot a deer out of the hunting season without a tag. If a producer would do this at least he could explain to the judge or jury why he had instead of just strict liability and that is the end of it.

During the testimony we were asking the Game and Fish why they weren't doing anything in some of these situations like the starving deer? They said they did not have the authority to take those matters into their hands and do something about it. This would give them the authority to do something about it. The director or designee may authorize an individual to euthanize injured, sick, or emaciated deer under conditions determined by the director.

Rep. Anderson: I think this is a workable bill, deer numbers don't expand overnight and the problem won't disappear overnight.

Rep. Kreun: One of our goals was a rapid response; this is one of the situations that gives flexibility to the Game and Fish. It also gives flexibility to the producer who is working with the Game and Fish. It also gives them some flexibility for long term planning with the food plots.

Rep. Hanson: On page 2 F "working with livestock producers" I wonder if we should have something in there about the nursery that may be damaged by the deer.

Rep. Porter: We could make it working with landowners.

Rep. DeKrey: We did have some discussion about that wording in the subcommittee and we felt under the limited resources that we have that it was the livestock producers that we were trying to target.

Rep. Hanson: I think it is a workable amendment to SB 2227 and I support it.

Rep. DeKrey: I move the amendment .03006.

Rep. Nathe: Second.

Rep. Porter: We have an amendment to move it to reengrossed SB 2227. The .03006 amendment, is there any discussion? Voice vote taken motion carried

Rep. DeKrey: I move an Do Pass as amended on SB 2227.

Rep. Kreun: Second.

Rep. Porter: We have a motion for a Do Pass to reengrossed SB 2227 as amended with the rereferral to appropriations.

Rep. Damschen: I would like to make a statement of support for the thought of including the nurseries. It will not stop me from voting for the bill but that is something that takes a number of years to build up and those years could be wiped away in a short order by deer depredation.

Rep. Porter: Roll call taken motion carries

YES 14

NO 0

ABSENT 0

CARRIER Rep. DeKrey

Date: 3-24-11 AM
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2227

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. Hanson Seconded By Rep. Anderson

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					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Rep. Hanson made a motion to move the Amendment.

Date: 3-24-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2027

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 DeKrey Seconded By Kreun

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

Total (Yes) 14 No 0

Absent 1

Floor Assignment DeKrey

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

to move the amendment. 3006 Voice vote taken

VK
3/24/11
1082

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2227

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "20.1-02-05" insert ", and a new section to chapter 20.1-02"

Page 1, line 3, after "reenact" insert "subsection 17 of section 20.1-02-05 and"

Page 1, line 4, after "to" insert "the private land habitat and access improvement program,"

Page 1, line 5, after "program" insert a comma

Page 1, line 11, replace the first "or" with an underscored comma

Page 1, line 11, after the first underscored comma insert "or"

Page 1 line 11, remove ", or for any other economic purpose"

Page 1, line 18, after the underscored period insert "A landowner dissatisfied with a decision of the director under this subsection may submit the decision to the agricultural mediation service for mandatory mediation. A decision of an agricultural mediation service negotiator is subject to review by the credit review board. A decision of the credit review board under this subsection is final."

Page 1, line 19, replace "March" with "January"

Page 1, after line 20, insert:

"SECTION 3. AMENDMENT. Subsection 17 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

17. Carry out a private land habitat and access improvement program by:

- a. Entering cost-sharing, habitat enhancement, and access agreements with landowners or agencies working on private land to help defray all or a portion of their share of local, state, or federally sponsored conservation practices considered beneficial to fish and wildlife.
- b. Leasing and developing fish and wildlife habitat or sport fishing areas on private land. Public~~Except for purposes of subdivision i, public~~ access to leased land may not be prohibited.
- c. Carrying out practices that will alleviate depredations caused by predatory animals and big game animals.
- d. Publishing a brochure on an annual basis describing areas funded from the game and fish department private land habitat and access improvement fund which are open to public access in this state.
- e. Receiving advice from the game and fish advisory board concerning expenditures from the game and fish department private land habitat and access improvement fund.

- f. Working with livestock producers experiencing chronic deer depredation problems to develop site-specific deer depredation management plans.
- g. Giving first consideration to producers impacted by deer foraging on stored winter forage when purchasing winter deer management supplies.
- h. Making available the sum of one million dollars from each biennial game and fish department appropriation to be used to provide feeding and other winter management practices to alleviate depredation caused by big game animals. Any unexpended funds under this subdivision, up to two million dollars, are not subject to section 54-44.1-11 and may be carried forward for expenditure in future bienniums.
- i. Making available the sum of one hundred thousand dollars from each biennial game and fish appropriation to be used for food plots on private property for the purpose of providing winter feed. These food plots are not subject to public access considerations."

Page 2, line 9, after the second period insert "For winter management program purposes of this section, a person may not willfully hunt, harass, chase, pursue, take, attempt to take, possess, transport, ship, convey by common carrier, sell, barter, or exchange a deer except as provided in this title.

SECTION 5. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Deer reduction programs.

The director or the director's designee may authorize an individual to euthanize injured, sick, or emaciated deer under conditions determined by the director. The director may authorize targeted deer reduction programs to alleviate deer depredation."

Page 2, line 13, replace "A" with "Except as otherwise provided in section 20.1-02-28, a"

Page 2, line 13, remove "willfully"

Renumber accordingly

Date: 3-24-11 pm
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2227

House House Energy and Natural Resources Committee

Legislative Council Amendment Number 11.0544.0300L title 04000

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

Motion Made By De Krey Seconded By Nathe

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	✓				
Rep. Keiser	✓	AB			
Rep. Kreun	✓				
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. DeKrey

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

rerefer to appropriations to amendment to reorganize

2011 HOUSE APPROPRIATIONS

SB 2227

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

SB 2227

3/30/11

16169

☐ Conference Committee

Committee Clerk Signature

Julia Gyeffe

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new subsections to section 20.1-01-02, a new subsection to section 20.1-02-05, and a new section to chapter 20.1-02 of the North Dakota Century Code, relating to definitions and powers of the director of the game and fish department; to amend and reenact subsection 17 of section 20.1-02-05 and sections 20.1-02-28 and 20.1-05-02 of the North Dakota Century Code, relating to the private land habitat and access improvement program, the deerproof hay yard program, and culpability requirement for unlawfully taking big game; and to declare an emergency.

Minutes:

Chairman Delzer: Called the committee to order. Roll was called and a quorum was declared. We'll start with SB 2227 which came to us from Natural Resources.

Representative Todd Porter, District 34: SB 2227 came to us dealing with a problem that's been very evident the last couple of winters with deer depredation. We came to the realization that hard winters are tough on landowners, wildlife, and the only way wildlife survives is through the cooperation of the landowners, particularly the ranchers. We came up with a mechanism to increase game and fish's participation in deer depredation programs. We're doing that in a number of different ways. On the bottom of pg 2 we talk about working with livestock owners to have site specific. One of the complaints we had from the one of the individuals was one size does not fit all – don't just drop off a hay yard and leave and tell us you are fixing a deer depredation problem – you need to be site specific. We wanted to make sure that any feed that would be purchased for a stop short feeding program would be first asked of that producer, if they would sell their feed, or some of their feed to do this. We didn't want it to be where they cut a deal with the neighbor down the road and bring the neighbor over and start that whole fight amongst the neighbors. From the standpoint of the actual depredation program where we make available the sum of \$1M to put into a depredation fund and if they don't use it in that biennium, it can double in size to a maximum of \$2M. It can just sit there if there are no targeted depredation problems. On pg 3, we put an additional \$100,000 (PLI) into a food plots program which is designed as a place in between the hay storage and the deer habitat for the deer to basically stop and eat before getting to the hay supplies. The food plots are not subject to public access considerations because that's not what they are for. We are not planting them or working with the landowner to provide a hunting situation. This is their winter food. After April 1, if the producer has that standing corn and it's close to their yard, they can let

their cows eat whatever is left in there. There is a \$50,000 appropriation in section 4, and that is the assistance to construct the deerproof hay yard. Ranchers complain about needing help with putting up poles (10-12 foot poles) and putting up the fence. There was a 3 hour hearing with lots of testimony regarding these targeted areas. This isn't all across the state and the number of complaints is down because of us making hay yards available. One neighbor has a hay yard; the other doesn't. The deer, on these harsh winters, get into big herds (300-400) and they just walk right through the yard. At our operation we have highway 14 that runs through our hay yard and where the deer are wintering. So far this winter, there are 23 dead deer laying on highway 14 trying to cross over and get over into our hay yard. Game and Fish has been helpful in assisting us. The neighbors that had the farm ground across the highway wouldn't allow us to go over and feed the deer. We were more than happy to take our hay across the road and feed the deer, but we couldn't get access to do a short stop feeding program so we were stuck with the deer crossing the road. I would have rather fed the deer on my own conditions rather than have them inside of the storage area where the hay is. Pg 3, line 16 resulted from high profile instances where people just had enough and they took their gun and just starting shooting deer, which is illegal. There is a provision here, for winter management program purposes; the dept may use that as a method of reduction. The director (section 5) can allow that to happen for targeted reduction programs to alleviate that depredation. The next provision goes back to making it illegal to just shooting big game which it currently is, but we just changed the language a bit and tied it back to the deer depredation part. In section 2 on page 1, we did something we thought was a good step in the relationship between Game and Fish and the producers, in allowing someplace so that they felt that they had somewhere to go if the two sides couldn't get together. There isn't any kind of mediation system set up at Game and Fish so if a producer goes out and says, this is what I want to do and Game and Fish says, No, we are not doing that-we don't think it would work. We wanted some place for them to go and have it mutually mediated. We put it into ag mediation which was a suggestion of the dept. They didn't always want to be in the bad guy. If they didn't see the beauty of what the landowner was saying in order to fix the problem, because we again, we go back to the one size doesn't fit all inside of these operations and we were very specific in addressing that, so that they can say, okay, we can't come to terms. We want you to buy our hay; we want a hay yard here, here and here; or whatever programs they want to set up, that they can go to ag mediation. Game and Fish agreed to pay for mediation and hold that as the final solution (that there is no other appeal process), so that the landowner feels that they have a place to go if they disagree with the decision. We worked together with the sub division on the Game and Fish budget and coming together with these plans, so they were kept apprise of the dollar amounts that we were plugging in to these various programs and where the money was coming from. The dept was with us every step of the way, along with all of the farm and ranch groups that represent the producers across the state.

Chairman Delzer: Who makes up the credit review board?

Representative Porter: If you disputed what the Ag Mediation says, the credit review board is the last stop. Mr. Barth could answer who makes up the board.

Chairman Delzer: The question though is do they have any knowledge of deer depredation?

Representative Porter: I'm sure they've experienced it, at the least. Game and Fish is comfortable with that method.

Chairman Delzer: I assume you're taking this out of the reserve fund for the Game and Fish?

Representative Porter: We are.

Chairman Delzer: Is that fund growing?

Representative Porter: We didn't have any deficit spending numbers that came from the subcommittee on that. We have a floor in place (\$15-18M) on that fund, and we are not close to that floor.

Representative Monson: If you have having a problem, do you allow hunters to come in there during the season and thin them out a little bit or do you post your land up tight and then ask the state to come in and help you?

Representative Porter: That's a very good question, and we discussed it a lot. Are we holding out sportsman's dollars to someone who is lazy or doesn't allow any hunting situations? What are we actually doing? I'll go back to the area I am familiar with. You talk to the producers and the one guy is across the road from the Dawson Wildlife management area. Tied into that, is a federal wildlife management area. There's all sorts of hunting and public access, but as the winter gets back, these deer start herding and when you are out hunting, you might see 10 and if the rut's going on, you might see 20 together. As it gets into January and February and you get a couple of feet of snow on the ground, they herd and move as a herd into areas and they're going to survive. Their will to survive is a lot of times greater than the will of the person who put the hay into a pile to feed their cattle. That's where the fight starts. When that ends, those deer dissipate out and you see them in bunches of 2-3. They come in as a mob and as spring comes, they kind of dissipate back out again. This program is really looking at when deer are forced to be into that mob situation because of those harsh weather conditions. We're not saying that because you have your hay sitting out in the middle of field and you didn't bring it home, we aren't going to go out and buy all that hay from you. If you want to bring it home, we will provide you a means of protecting it through a hay yard system so that when it's in your yard and piled up, you won't have deer in there ruining it. There's no way for us to go out and put a little fence around every bail out in the middle of a quarter because you didn't bring it home. There is a fine line between an operator who leaves everything out in the middle of the field to the operator who brings everything home and has it all arranged for their program. We're concerned with that operator that brings everything home.

Chairman Delzer: You didn't change the language that deals with commercial or somebody that posts most of it? It's actually part of section 4.

Representative Porter: That is really dealing with the fence.

Chairman Delzer: This program is separate, though.

Representative Porter: Yes

Representative Skarphol: On page 2, subsection h, I'm assuming in the future if there were less than \$1 million there would be an appropriation made?

Representative Porter: You are correct. Our obligation to that fund, inside of Game and Fish for depredation, is to keep it at \$1M. If there's less than \$1M, there will be money put in and if there is more than \$1M, nothing will happen. They can keep up to \$2M in there. Once it goes over \$2M, then that would be returned back into their holding account or whatever they have.

Representative Skarphol: I'm wondering how you could get up to \$2M in there?

Chairman Delzer: If you went the 3rd biennium and you are trying to put \$2M in, it would cap out at \$2M.

Representative Skarphol: You don't need to put anything in if there's not less than \$1M in. If there's \$1M in there, you wouldn't have to put anything in.

Representative Porter: What the department had in mind is that they would make available \$1M from each biennial Game and Fish dept appropriation. If the fund is sitting at \$1M, they will make available another \$1M and then it's capped at \$2M. If it's at \$500,000, then they would make available \$1M and they would be at \$1.5M.

Chairman Delzer: But if it's between \$1M and \$2M, it's still going to go in there until it's at \$2M. It's triggered at \$2M.

Representative Dosch: in section 4, lines 9-10, how do you define construction cost assistance? Is that paying for half of it? Do Game and Fish provide the labor to help? Is it all hired labor? How do you define what that amount will be?

Representative Porter: It is capped at the \$50,000 appropriation. It was a multitude of things. Game and Fish has summer staff that they hire to do things (work on the Wildlife management areas, spray weeds, plant food plots), who are temporary. They have wildlife volunteer groups that want to improve landowner and sportsman relationships; they're looking at a multitude of solutions. They realize that part of the problem that when someone is identified as a deer depredation area, they put in for a hay fence and they take it out and drop it off and they leave. They know for a fact that there are continued calls from individuals that have a hay fence laying in their yard that have not put it up yet. This is just one more mechanism to get some of those complaints and some of those areas handled.

Chairman Delzer: When you look at the bill, it will probably be decided by the dept. as to what that issue is. They will do that by policy.

Representative Porter: That is correct.

Representative Skarphol: If the reserves drop below the trigger number in the other reserve category, is there any effect on hunting licenses, etc?

Representative Porter: We thought we would go this biennium without looking at raising a deer tag price. We did talk with all the sportsmen's' groups that were available to us during the hearing process and they went back and talked to their members and no one had a problem other than Representative Belter, raising a deer tag up in order to help reduce some of these problems and some of this friction between the management of the resource of deer, the recreation of hunting and producing livestock in the state. I believe, that next session, if this program works and we want to make it a standalone program that we do that with a fee increase to deer licenses.

Representative Skarphol: But you're not going count this in the reserve figure that's used to make that determination?

Representative Porter: Not at this time

Chairman Delzer: further questions?

Representative Porter: We did make this an emergency (the whole bill); the reason being we are getting into planting season with the food plot scenarios and we want to make sure that these funds are available to go out and do the food plot stuff right away so that some of that management can happen for this next winter season.

Representative Williams: Are there fewer deer licenses in the fall augmenting this problem?

Representative Porter: We peaked in our license numbers 2 or 3 years ago with 130,000 licenses. They increased targets in certain areas also where the number of complaints had risen so that a specific zone may have had more doe tags. Now we're back down to about 120,000 tags and they are continuing to bring that down, as they try to find that balance between the hunters, the landowners, and the deer population on how they can survive. They try to manage that best they can, given the circumstances of open and closed winters.

Chairman Delzer closed hearing on SB 2227.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

SB 2227
4/5/11
16337

☐ Conference Committee

Committee Clerk Signature

Meredith Traeholt

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to definitions and powers of the director of the game and fish department; relating to the private land habitat and access improvement program, the deerproof hay yard program, and culpability requirement for unlawfully taking big game; and to declare an emergency.

Minutes:

You may make reference to "attached testimony."

Chairman Delzer: On SB 2227 about deer depredation, are there any amendments? Discussion on the bill?

Representative Skarphol: With the changes that were made in the game and fish budget (SB 2017), I'd be curious to know what it appears the fund level is going to be.

Representative Brandenburg: In this bill, there is no additional funding requested. It makes the \$1 million from each biennium available from the department, from the appropriations of the winter management practices. I'm not supposed to call this deer depredation anymore, it's winter management practices, per Representative Porter. There's \$100,000 appropriated each biennium for the food plots on private lands, this is all part of the land habitat deer depredation line item, which is included in the plots program; SB 2227 simply sets a dollar amount within that line item. It's \$1 million per biennium, and it caps at \$2 million and stops, because they may run into years when it's going to get used and it may not get used.

Chairman Delzer: And it is keyed so if there is less than \$2 million, they will put money in until it hits the \$2 million.

Representative Brandenburg: Yes, that's correct.

Chairman Delzer: I think the question was, what is the level of the game and fish fund, after our appropriations?

Representative Brandenburg: Their ending fund balance is going to be right around \$26 million.

Chairman Delzer: Further discussion about 2227?

Representative Brandenburg: It also gives them the language in there to use the \$50,000 to put up deerproof fences out of their budget.

Chairman Delzer: What are your wishes?

Representative Brandenburg: I move Do Pass.

Vice Chairman Kempenich: Second.

Chairman Delzer: We have a motion for a Do Pass on SB 2227. Discussion? Seeing none, we'll call the roll. Motion carries 20-0-1. We did not change that, so we'll put Representative DeKrey as the carrier on that. Representative Brandenburg, if there are questions on the money, if you would please help him if needed.

Date: 4/5
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2227

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. Brandenburg Seconded By Rep. Kempenich

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		
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) 20 No 0

Absent 1

Floor Assignment Rep. DeKrey

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

REPORT OF STANDING COMMITTEE

SB 2227, as reengrossed and amended: Appropriations Committee (Rep. Delzer, Chairman) recommends DO PASS (20 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2227, as amended, was placed on the Fourteenth order on the calendar.

2011 SENATE NATURAL RESOURCES

CONFERENCE COMMITTEE

SB 2227

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2227
4/13/11
Job #16573

☒ Conference Committee

Committee Clerk Signature

Monica Spelling

Explanation or reason for introduction of bill/resolution:

Relating to powers of the director of the game and fish department; relating to the deer proof hay yard program and culpability requirement for unlawfully taking big game; and to declare an emergency.

Minutes:

No Attachments

Chairman Lyson opened the hearing for the conference committee on SB 2227. Roll call was taken and all committee members were present. Chairman Lyson asked the Representatives on the committee to explain the changes they had made to the bill.

Representative DeKrey: When we got the bill from the Senate it had language that took the strict liability away on the depredation part of the code. We put in agricultural mediation. If a landowner tries to settle it with Game and Fish and if he is not satisfied with the settlement with Game and Fish he can take it to the Credit Review Board. It would be mandatory that the landowner and Game & Fish go to mediation. We also added if the livestock producer had chronic deer depredation problems and Game & Fish agrees to buy some feed, the producer who is being affected has to be given first chance to sell the feed to the Game & Fish Dept. The next part is under the PLOTS program. The House amendment would make it mandatory that \$1M of that would go toward depredation and \$100,000 of that would go to food plots. The additional feature on the \$1M would be that if there were mild winters and it would not be needed, the money would stay in the deer depredation fund up to \$2M. With mild winters, that fund could grow to \$3M. One thing that came out in testimony on the House side was that the director did not have the authority to euthanize emaciated or dying or blind or injured or sick deer. Section 5 gives the director that authority. It also gives authority to the director to have a targeted deer reduction program. It would leave it up to him as far as how to carry it out. After several subcommittee hearings, etc. we had all the ag groups on board, Game & Fish on board, and all the Wildlife organizations on board.

Senator Triplett: On the first page of the 3006 version (line 20-21) where you added the part about the ag mediation service. You have a phrase there "mandatory mediation". In my experience mediation is not a mandatory sort of thing. The whole concept of mediation is that people voluntarily come to the table with the mediator acting like a referee to help them

solve their own problems. What this sounds like is more like binding arbitration especially when you get to the second step when you talk about the decision of the Credit Review Board being final. I would be interested to hear from the ag mediation service, because this is not like any mediation I have been involved with.

Representative DeKrey: We had ag mediation come down to our final subcommittee hearing and this was the language they agreed to. The mandatory part is on the producer. The producer can ask for mandatory mediation. The testimony we heard was that the Game & Fish Dept was not being responsive enough so we put it in the bill that at the landowner's discretion he can take Game & Fish to mandatory mediation. Then after mediation, if the producer or Game & Fish do not agree with the terms, they can bump it up to the Credit Review Board. The mediation service said they don't ever see that happening. In the House we thought it was important that there be an end to it at some place because the testimony said it never ends. They call and call and call and there is never a decision.

Senator Triplett: The meaning of the word mediation is 2 parties coming to the table willing to work out their differences. It is not a mediator's job to make a decision. A mediator invites each to make a proposal. The phraseology doesn't work. You are redefining a basic legal concept and calling it something else. This isn't mediation. This is more like a binding arbitration process. If that is what it is we better call it that or we are just going to cause confusion.

Senator Hogue: Part of the confusion comes in because the name of the entity that's doing arbitrating is called a mediation service. It think what the intent is is to be conducting arbitration, not mediation. To permit a party to appeal from that mediation process doesn't seem to make any sense. I don't know if the people from the North Dakota Mediation Service feel comfortable serving in the capacity of an arbitrator but an arbitrator actually has the authority to make a decision. Both sides come in and present their cases. Under these amendments it goes to the Credit Review Board for a final decision. Considering lines 25-30 on the bottom of page 2, where it mentions making the \$1M available, does that mean they have to put a separate pool of money into an account for this purpose and then spend that money at their discretion so it wouldn't be dedicated to any other purpose?

Representative DeKrey: That would be the House's intention. When we worked with Game & Fish I think they understood it that way. Going back to the discussion about mediation and arbitration, we talked about arbitration on the House side but mediation was the language that the service itself wanted to use.

Senator Triplett: Could we hear from the Ag Service Mediator?

Chairman Lyson requested Tom Silbernagel to step to the microphone.

Tom Silbernagel, administrator of the Ag mediation program: When I met with the subcommittee, I apparently didn't make it clear. Mediation is exactly what Senator Triplett described. The suggestion I made that day was that mediation could be used. If it arrived at an impasse, the decision could be moved to the Credit Review Board. We are a certified mediation program. We have never worked as arbitrators.

Chairman Lyson: If they come to you for mediation and it does not work, then they would have to go to the review board.

Tom: I assume they could. I thought an amendment was going to be brought forward today about taking the Credit Review Board out of the process.

Representative DeKrey: When we visited with you on that subcommittee, the House understood that if we were going to have to have a final decision that it would have to go to the Credit Review Board because everyone that testified wanted finality and that was the only way we could get it.

Tom: The difference here is if it came to an impasse and no agreement was reached the parties could choose to bring it to the credit review board for a decision.

Chairman Lyson: Can we come up with some language that could accomplish that?

Senator Triplett: Has anyone discussed this with the credit review board to know if they are willing to do this?

Tom: I haven't talked to the board but if it is left the way it is we will try to make it work. If I can express an opinion, it should be called arbitration and not mediation. We could train people to do the arbitration. We have that much flexibility in our program. Mediation means coming together to make a mutual decision, not a decision being made.

Chairman Lyson: Representative DeKrey, do you have any problems with what is going on?

Representative DeKrey: No, if that is our only stumbling block we certainly can fix that easily enough.

Senator Hogue: I think you actually could have mediation, followed by a decision by this Credit Review Board. It doesn't necessarily have to be arbitration. It doesn't have to be incompatible. It would give finality.

There was discussion about how to word a possible amendment.

Chairman Lyson: This meeting is adjourned and we will work on an amendment.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2227
4/14/11
Job #16615

☒ Conference Committee

Committee Clerk Signature

Veronica Spaulding

Explanation or reason for introduction of bill/resolution:

Relating to powers of the director of the game and fish department; relating to the deer proof hay yard program and culpability requirement for unlawfully taking big game; and to declare an emergency.

Minutes:

One Attachment

Chairman Lyson opened the hearing on the Conference Committee for SB 2227. All members were present: Senator Triplett, Senator Hogue, Representative DeKrey, Representative Brandenburg, and Representative Hanson.

Chairman Lyson: You all have a copy of the proposed amendments. See Attachment #1.

Representative DeKrey: I make a motion for the House to recede from the House amendments and to amend according to the amendments that have been handed out.

Representative Brandenburg: Second

Representative DeKrey: The amendments have been shown to the mediation service, to Game & Fish, and the representatives from the farm groups and landowners and everyone is in agreement that this solves the problem we had yesterday.

Roll Call Vote: 6-0-0

Motion carries; Senator Hogue and Representative DeKrey will carry the bill to their respective bodies.

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Senate Natural Resources

Bill/Resolution No SB 2227 as (re) engrossed

Date: 4-14-11

Roll Call Vote #: 1

Action Taken

- ☐ SENATE accede to House amendments
☐ SENATE accede to House amendments and further amend
☐ HOUSE recede from House amendments
☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 1221 - 1222

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. De Krey Seconded by: Rep. Brandenburg

Senators	<u>4/13</u>	<u>4/14</u>	Yes	No		Representatives	<u>4/13</u>	<u>4/14</u>	Yes	No
Senator Lyson	✓	✓	✓			Representative DeKrey	✓	✓	✓	
Senator Hogue	✓		✓			Rep. Brandenburg	✓	✓	✓	
Senator Triplett	✓	✓	✓			Rep. Hanson	✓	✓	✓	

Vote Count: Yes 6 No 0 Absent 0

Senate Carrier Hogue House Carrier De Krey

LC Number 11.0544.03008 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2227, as reengrossed: Your conference committee (Sens. Lyson, Hogue, Triplett and Reps. DeKrey, Brandenburg, Hanson) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1221-1222, adopt amendments as follows, and place SB 2227 on the Seventh order:

That the House recede from its amendments as printed on pages 1221 and 1222 of the Senate Journal and pages 1134 and 1135 of the House Journal and that Reengrossed Senate Bill No. 2227 be amended as follows:

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "20.1-02-05" insert ", and a new section to chapter 20.1-02"

Page 1, line 3, after "reenact" insert "subsection 17 of section 20.1-02-05 and"

Page 1, line 4, after "to" insert "the private land habitat and access improvement program,"

Page 1, line 5, after "program" insert a comma

Page 1, line 11, replace the first "or" with an underscored comma

Page 1, line 11, after the second underscored comma insert "or"

Page 1, line 11, remove ", or for any other economic purpose"

Page 1, line 19, after the underscored period insert "A landowner dissatisfied with a decision of the director under this subsection may submit the decision to the North Dakota mediation service for mediation. If the parties to the mediation are unable to reach a negotiated settlement, the credit review board may issue a final, nonappealable, decision."

Page 1, line 20, replace "March" with "January"

Page 1, after line 21, insert:

"SECTION 3. AMENDMENT. Subsection 17 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

17. Carry out a private land habitat and access improvement program by:
 - a. Entering cost-sharing, habitat enhancement, and access agreements with landowners or agencies working on private land to help defray all or a portion of their share of local, state, or federally sponsored conservation practices considered beneficial to fish and wildlife.
 - b. Leasing and developing fish and wildlife habitat or sport fishing areas on private land. Public~~Except for purposes of subdivision i, public~~ access to leased land may not be prohibited.
 - c. Carrying out practices that will alleviate depredations caused by predatory animals and big game animals.
 - d. Publishing a brochure on an annual basis describing areas funded from the game and fish department private land habitat and access improvement fund which are open to public access in this state.
 - e. Receiving advice from the game and fish advisory board concerning expenditures from the game and fish department private land habitat and access improvement fund.

- f. Working with livestock producers experiencing chronic deer depredation problems to develop site-specific deer depredation management plans.
- g. Giving first consideration to producers impacted by deer foraging on stored winter forage when purchasing winter deer management supplies.
- h. Making available the sum of one million dollars from each biennial game and fish department appropriation to be used to provide feeding and other winter management practices to alleviate depredation caused by big game animals. Any unexpended funds under this subdivision, up to two million dollars, are not subject to section 54-44.1-11 and may be carried forward for expenditure in future bienniums.
- i. Making available the sum of one hundred thousand dollars from each biennial game and fish department appropriation to be used for food plots on private property for the purpose of providing winter feed. These food plots are not subject to public access considerations."

Page 2, line 9, after the second period insert "For winter management program purposes of this section, a person may not willfully hunt, harass, chase, pursue, take, attempt to take, possess, transport, ship, convey by common carrier, sell, barter, or exchange a deer except as provided in this title.

SECTION 5. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Deer reduction programs.

The director or the director's designee may authorize an individual to euthanize injured, sick, or emaciated deer under conditions determined by the director. The director may authorize targeted deer reduction programs to alleviate deer depredation."

Page 2, line 13, replace "A" with "Except as otherwise provided in section 20.1-02-28, a"

Page 2, line 13, remove "willfully"

Renumber accordingly

Reengrossed SB 2227 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2227

#2

TESTIMONY ON SB 2227
NORTH DAKOTA GAME AND FISH DEPARTMENT
Terry Steinwand, Director
January 28, 2011

The North Dakota Game and Fish Department supports the concept of SB 2227. It provides another tool in our 'tool box' for deer depredation across the state. While we support the concept there are some concerns in the language contained in SB 2227.

First, the language on page 1, lines 9 and 10, would authorize individuals to take deer on private land determined by the director to be severely impacted by deer. This may seem innocuous enough but we want to make sure the landowner still has the ability to control who is or is not on his or her land.

Second, regarding the overall context of Section 1, it states 'the director must attempt other measures and determine them to be ineffective' but states nothing of the landowner or affected individual accepting those measures or attempts. As an example, we've offered some individuals deer proof hay yards but they've declined. Would this be considered an ineffective measure in that circumstance? There are also terms used in this section that can be interpreted differently by different individuals. What is 'severely impacted'? What is considered 'ineffective'? I would hope reasonable people can work these out but emotions often take the place of reason in stressful times.

On the issue regarding cost share of hay yards (page 1, lines 19-21), the language is confusing and somewhat contradictory in that it states 'cost share..at no cost'. We believe we understand the intent and are exploring a number of possibilities to assist landowners on this issue and believe by spring we'll be able to have something in place.

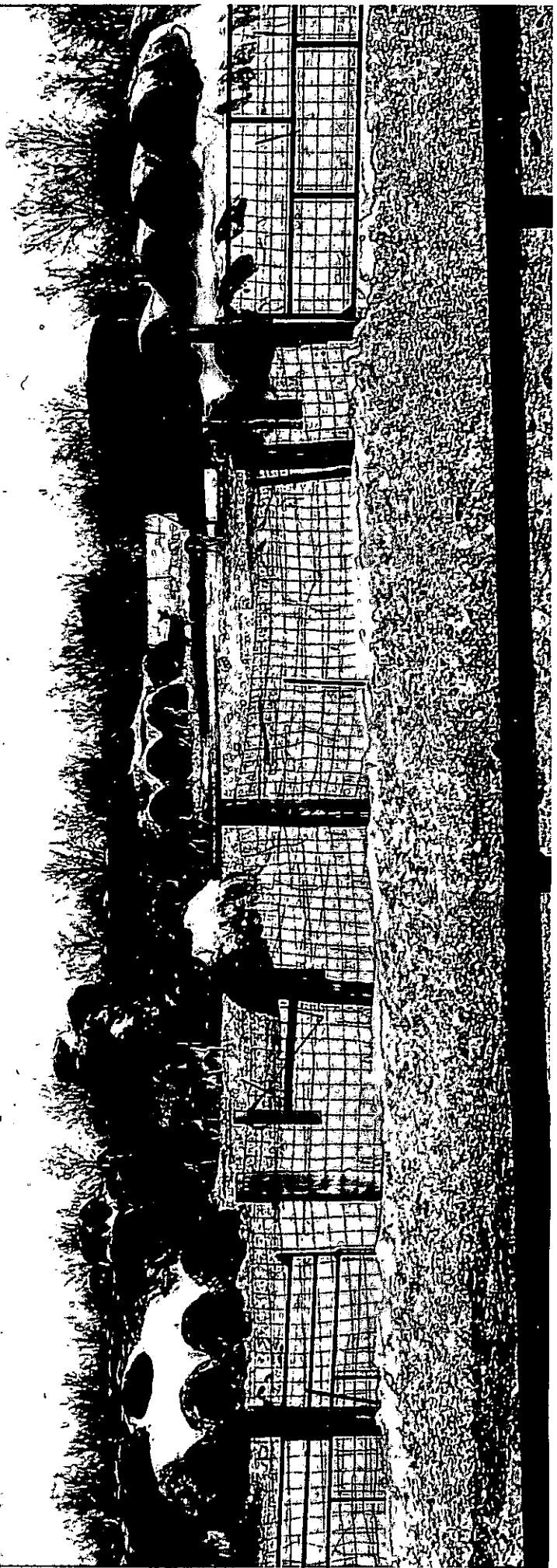
The final issue lies on page 2, line 6 of the bill. The addition of 'not willfully' may present some challenges and is a substantial change in the law. The definition of 'willfully' in Century Code is that the individual engages in the conduct intentionally, knowingly, or recklessly, and each of these terms are also defined. We would ask this section language remain as existing language.

As stated in the opening statements, we support the concept of SB 2227.

#3

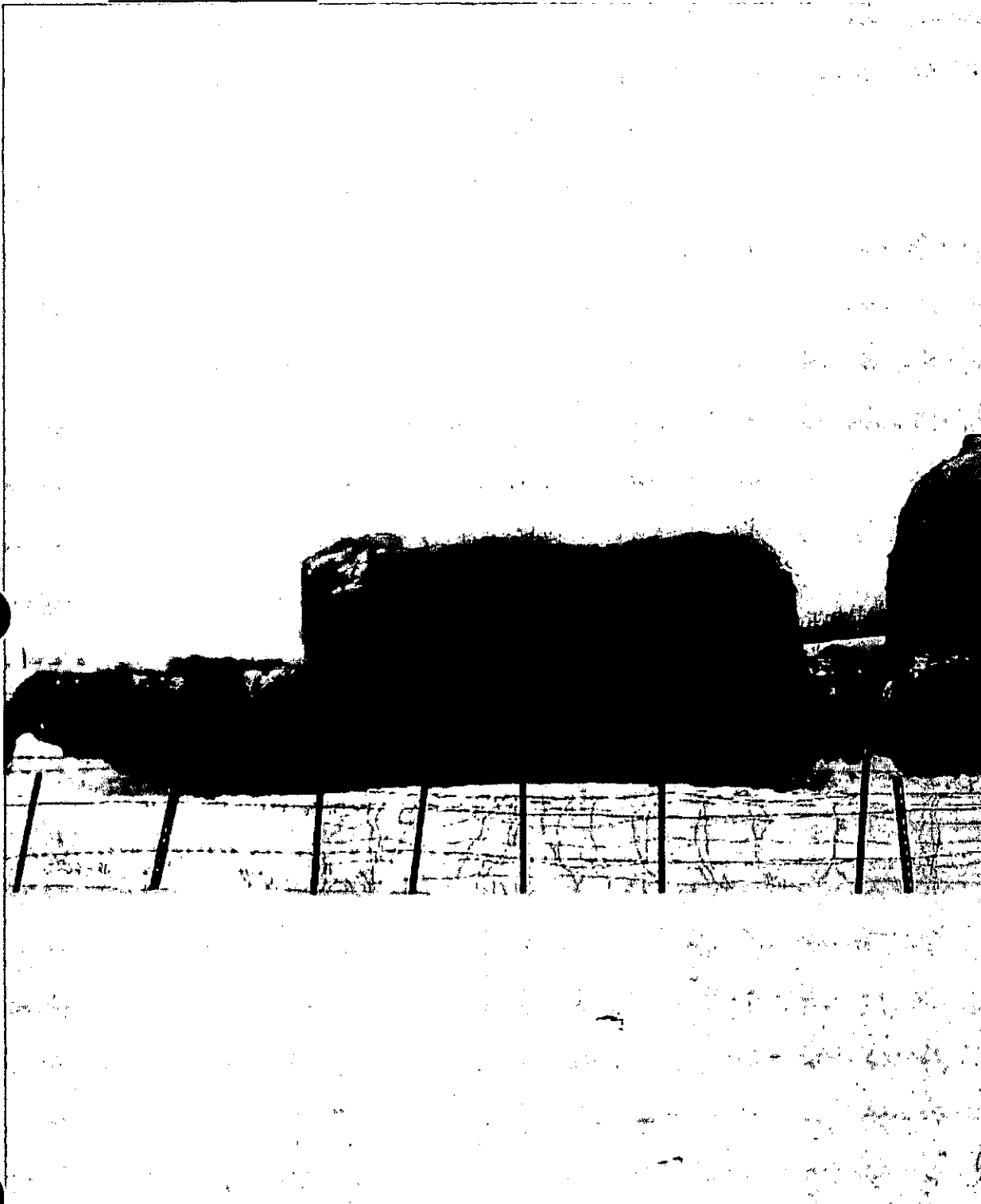
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Date: 1/27/2011 8:38:45 P.M. Central Standard Time
From: loko@bektel.com
To: chisum4525@aol.com



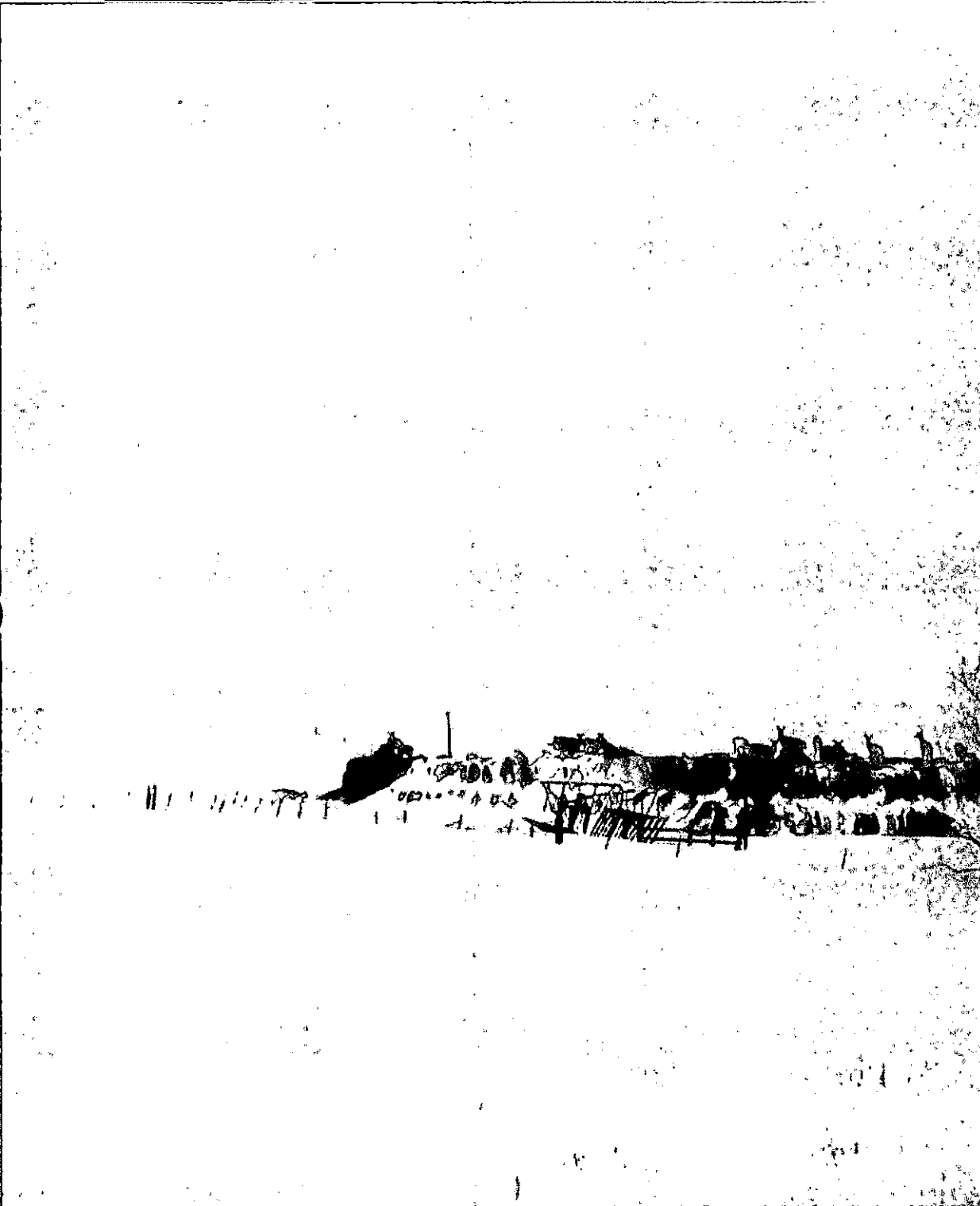




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Date: 1/27/2011 8:34:22 P.M. Central Standard Time
From: loko@bektel.com
To: chisum4525@aol.com



Subj: (no subject)
Date: 1/27/2011 8:38:10 P.M. Central Standard Time
From: loko@bektel.com
To: chisum4525@aol.com

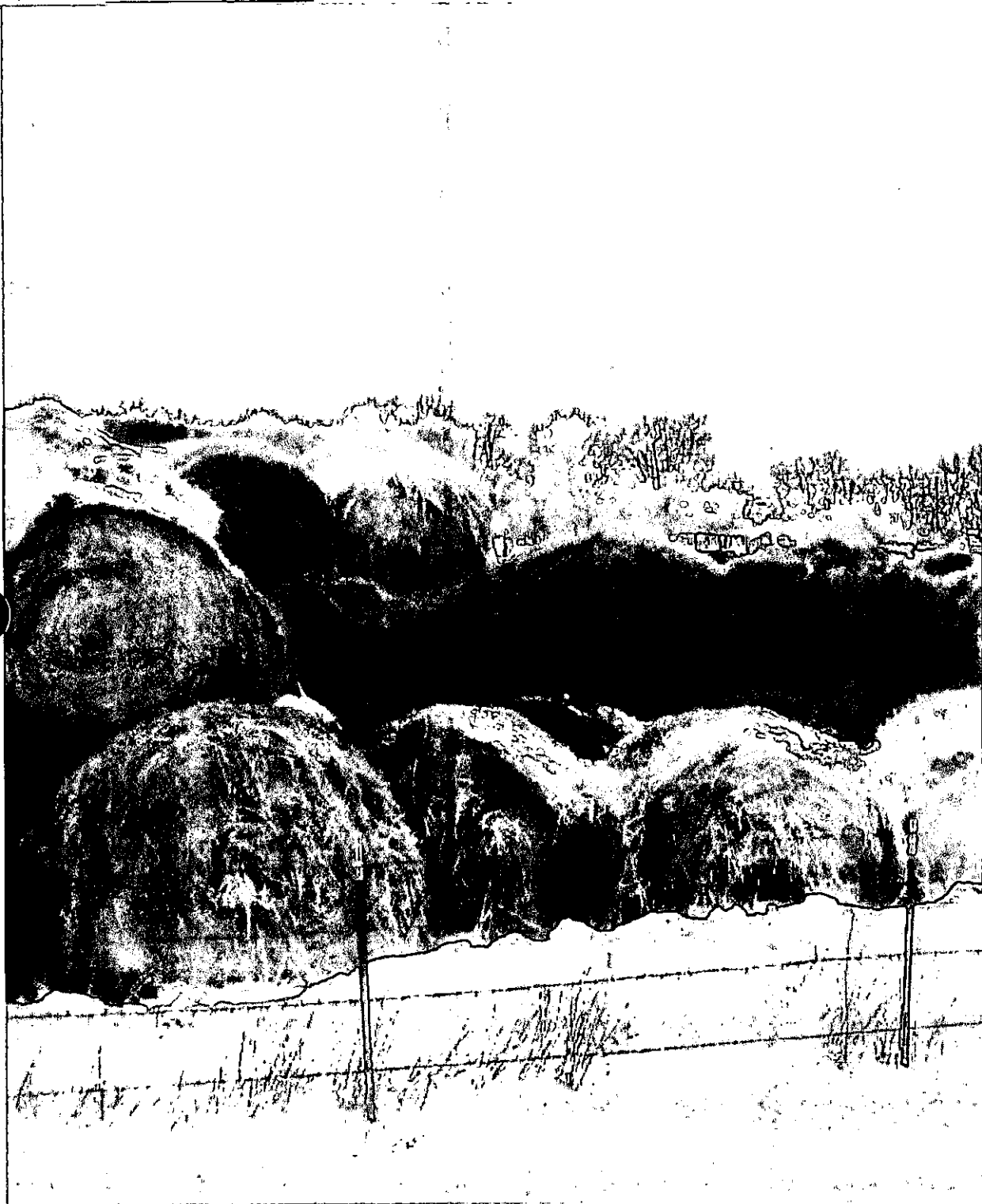


Subj: (no subject)
Date: 1/27/2011 8:36:54 P.M. Central Standard Time
From: loko@bektel.com
To: chisum4525@aol.com



Thursday, January 27, 2011 AOL: Chisum4525

Subj: (no subject)
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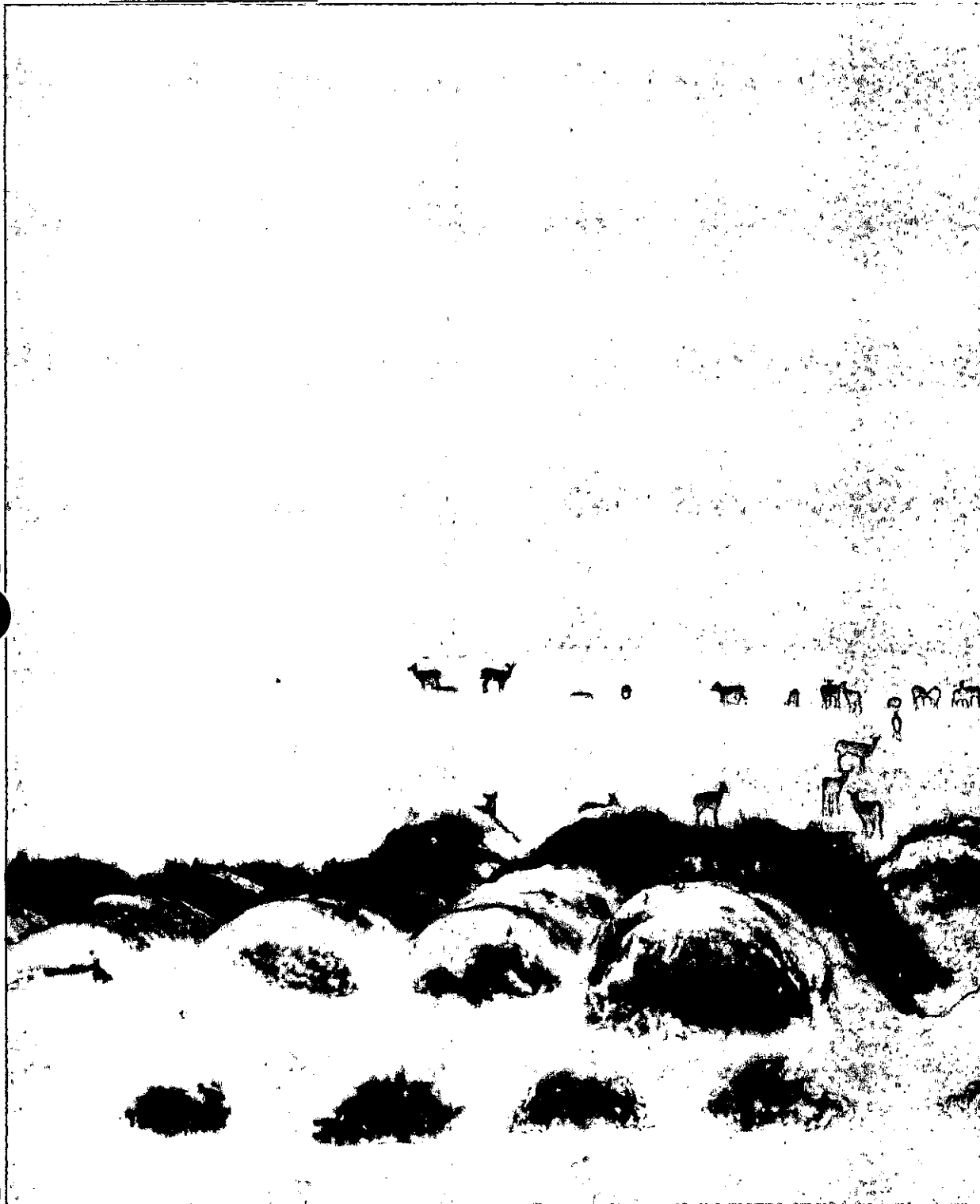


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To: chisum4525@aol.com



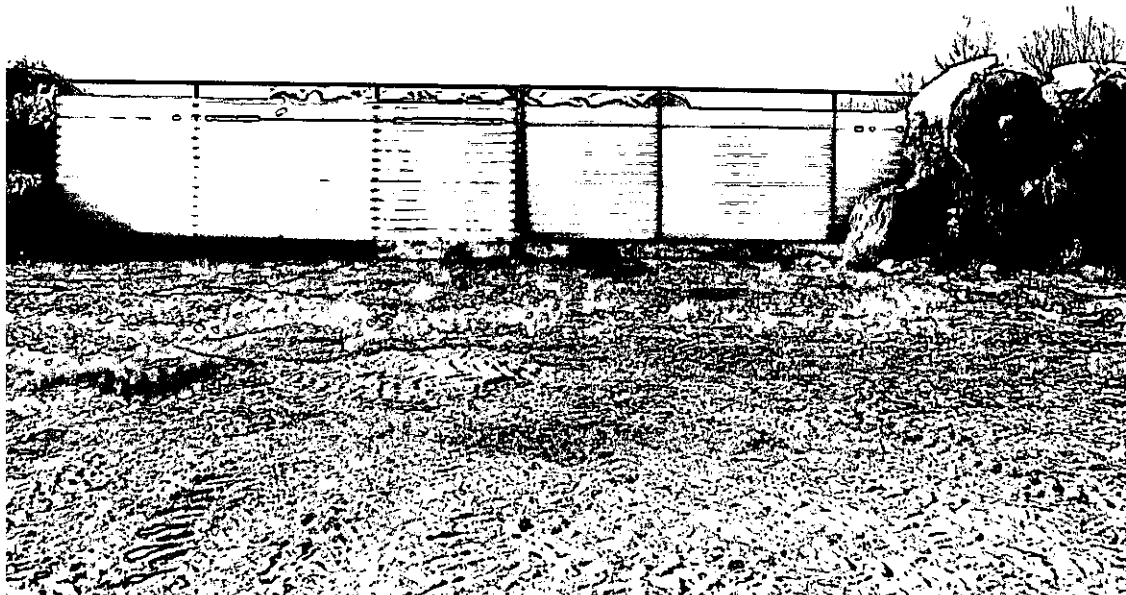
Thursday, January 27, 2011 AOL: Chisum4525

Subj: **2263**
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From: loko@bektel.com
To: chisum4525@aol.com



Subj: (no subject)
Date: 1/27/2011 8:25:51 P.M. Central Standard Time
From: loko@bektel.com
To: chisum4525@aol.com





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#4

SENATE BILL 2227
Before the Natural Resources Committee
January 28, 2011 at 9:00 A.M.
Submitted by Glen E. Baltrusch

Good morning Chairman Lyson and committee members,

My name is Glen Baltrusch. I was born and raised in the great state of North Dakota, and I reside in Harvey, North Dakota, which is in District 14. I stand before you today in support of **Senate Bill 2227** and respectfully request that this committee unanimously agree to a "DO PASS" recommendation to the floor of the Senate after this hearing is completed.

Mr. Chairman, committee members, I believe **SB 2227** will be of benefit to the farmer / rancher, to the hunter, and to the North Dakota Game and Fish Department. I believe **SB 2227** is a good of piece legislation; but should be amended as currently written, to create a better piece of legislation that would be beneficial to afore mentioned parties.

Part of the language in Section 2 needs to be amended back to the language of current law. I am not alone in the belief that when ND G&F provides the materials and supplies at no cost to landowners to deer proof the hay yard, the landowner should be able to provide the means to construct or erect said materials and supplies to protect their own hay. Therefore I offer the following amendments for consideration and adoption:

Page 1, line 19, remove the overstrike over "and",

Page 1, line 19, remove ", and"

Page 1, line 20, remove "construction cost-share assistance"

Chairman Lyson, committee members, I wish to bring to your attention the fact that since the legislature amended, created, and repealed the guide and outfitter law(s) several sessions back, there were a number of landowners that were unknowingly taken advantage of by unscrupulous outfitters and guides; including the illegal posting of property which yet continues to this day. The reactions to their acts have caused hundreds, or should I say, thousands of acres of land

being posted and closed to hunters; including farmland which had never been posted until recently. Now if you wish to hunt legally on this land, the person(s) must now make contact to legally hunt or set foot on said land(s); or pay to hunt big game – a natural resource. While I support the right of property ownership, I personally prefer having the consent or permission of the landowner when hunting or trapping so as to prevent unintended consequences.

I, like others, believe that if any person who allows commercial hunting and / or prohibits big game hunting, then that person(s) should be ineligible for the deer proof hay yard program with funds from the North Dakota Game and Fish Department. Therefore I offer the following amendments to Section 2 for consideration and adoption:

Page 1, line 22, overstrike "a majority of"

Page 1, line 23, overstrike "a majority of"

Therefore, I request that this committee adopt the submitted amendments then report a unanimous **"DO PASS"** recommendation on **SB 2227** to the full Senate for consideration on the floor as amended or with the afore mentioned amendments.

Chairman Lyson, committee members, thank-you for your time and consideration in this pertinent matter. If you have any questions, I will try to answer them for you.

Senate Natural Resources Committee:

I, Mark Wagner of Monango, a cattle producer, am here today in support of Senate Bill 2227 that will decrease the pressure that certain areas of the state feel from deer herds.

In our area, we have felt a great deal of pressure this year. Our deer numbers are in the multiple hundreds...and seem to be increasing with each passing snow storm. We have tried, rather unsuccessfully, to exhaust all legal avenues that have been open to us. We are less-than-satisfied with the results thus far.

The deer are not only destroying our hay that we sell to others and the feed that we make available to our own cattle, but they are bringing with them the threat of disease and predators, just as we are entering our most critical season, calving.

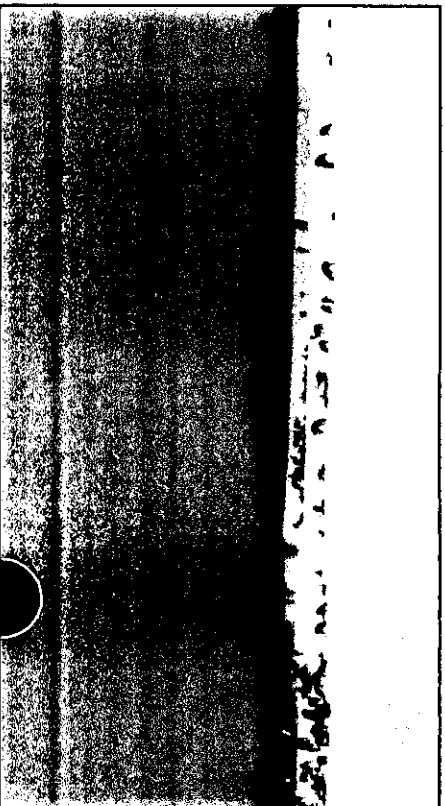
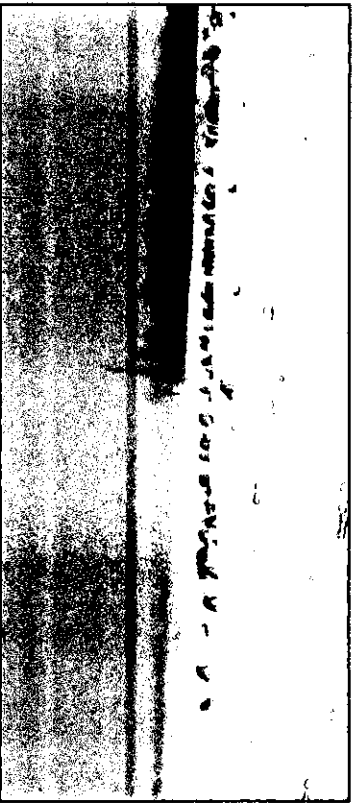
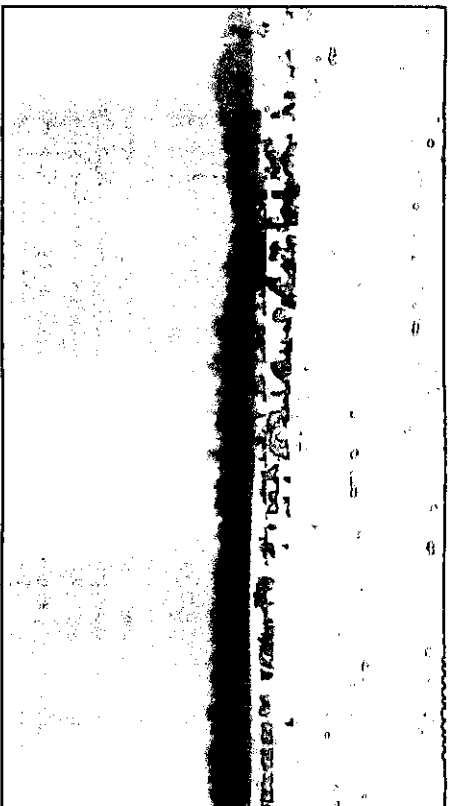
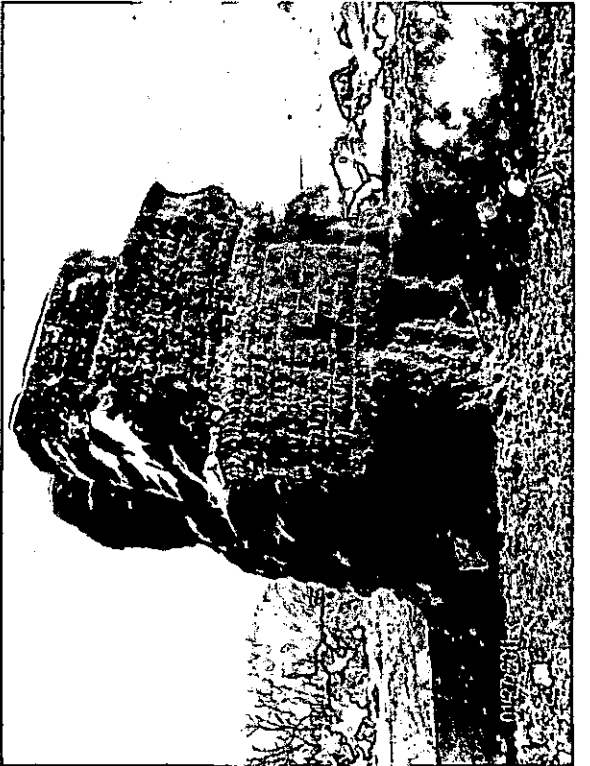
With the large amount of snow that we have this year, combined with multiple major snow events and drastically low temperatures, the deer pressure has been enormous for those of us producers left in the area. The herds are growing to unmanageable sizes, and the

devastation they leave behind is impressive.

We have informed Game and Fish Officials regarding our predicament, and they have been on the premises several times in the last few weeks. Much to our dismay, they seem reluctant to use any measures that would be useful for this year, and have discredited several ideas that I have given as possible short-term solutions.

I have been in contact with local law enforcement, local veterinarians and near-by producers, all who agree that there is a problem, but several that feel as if Game and Fish has been less than effective in assisting with the situation.

I find it extremely disheartening that when someone tries to follow the letter of the law, and is in need of assistance from the damages caused by wild game, there are so many obstacles in the way. This proposed bill will add one more tool into the tool box that can be used to assist producers that find themselves with these same troubles in the future. Although more tools are still needed, every step taken is one in the right direction.



North Dakota



STOCKMEN'S ASSOCIATION

407 SOUTH SECOND STREET
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#6

SB 2227

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

We all know Mother Nature is socking it to us again in 2011, with cold temperatures and widespread, heavy snowfall for the third year in a row. Just as this extreme winter challenges us, it is also challenging wildlife populations, which are taking up refuge on many farms and ranches, feasting on the hay we worked hard to grow and harvest so we would have an ample supply for our herds; and, generally; making messes of our stored feedstuffs as they congregate around sileage piles and chopped hay.

And just as the weather has worn on, so have the calls we have received about deer depredation problems. I know there are several producers here today who likely will be testifying to illustrate their personal stories and their personal challenges with the deer.

SB 2227 is designed to help address this issue and enhance the North Dakota Game and Fish Department's ability to respond to serious situations, when other, more conventional, tools have been rendered ineffective.

Section 1 affords the Game and Fish director the ability to call in the troops, so to speak, and have lay people help harvest problem deer for a very specified area from Dec. 1 through March 15. Of course, while it is assumed that this arrangement would

only occur if the landowner grants the Agency permission to do so, it would be advisable, we think, to specify that in Code for future generations.

Section 2 expands the Game and Fish Department's deerproof hay yard program to include cost-share assistance for landowners to construct a deerproof hay yard. We contend that, while many hay yards are up and functioning, many others are still merely a stack of materials lying in a pile. That's because putting up a deerproof hay yard takes time and money, which both are short commodities. We think that a cost-share program set up similar to one like the Natural Resources Conservation Services' Environmental Quality Incentive Program (EQIP) projects, for instance, would allow some producers to enlist the help of others to convert that supply pile to a functioning hay yard that can assist in keeping the deer out of the yards. An amendment should be drafted to clarify that this is either a cost-share program or a no-cost program, because both ideas are conveyed in the same sentence on Page 1, Line 20, but we know it can't be both.

We also support the suggested amendments to add definitions of "depredation" and "crops" at the beginning of this chapter, so it is clear what kind of impacts this bill is referring to. In a resolution passed at our convention in September 2010, our members supported a change to the State Century Code to designate that crops include stored or stockpiled crops, such as hay or grain, as well as unharvested crops standing in the fields. We are pleased to see this qualifying language being added into the bill.

North Dakota



STOCKMEN'S ASSOCIATION

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Likewise, the emergency clause is appropriate in this case, since it appears we have a whole lot of winter left – and, unfortunately, a whole lot of reasons for the deer to continue to pose a problem by invading our space.

In summary, we see this bill as a way to provide some additional tools to the deer depredation toolbox and ask for your favorable consideration of it.

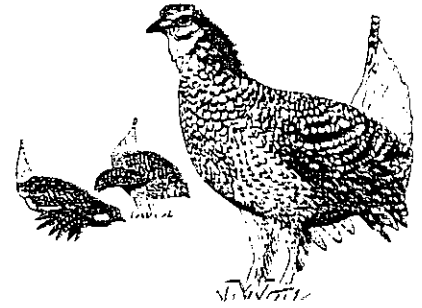
Thanks again for this opportunity to appear before you.



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 SB 2227
SENATE NATURAL RESOURCES COMMITTEE
JANUARY 28, 2011**

Chairman Lyson and members of the Senate 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 is opposed to SB 2227. While we understand the intent and can sympathize with landowners who have deer depredation problems, we believe this bill is too confusing to provide a solution.

SB 2227 does not define "severely impacted" by deer. Does that mean 10, 50, or a 100 deer damaging haystacks, or a doe and two fawns eating rosebushes? Severe impact varies from landowner to landowner or from one's perspective.

It requires the Director to attempt other measures, but it does not describe those measures. It requires the Director to determine that these other measures have not been effective, but does not define "ineffective". Is a reduction in the number of deer depredating feed supplies from 100 deer to 25 effective? Does being effective mean "no deer"? Or is "ineffective" left to the landowner to define or accept?

Section 2 of the bill states the Director shall provide deerproof hay yard materials and a "construction cost-share" at no cost to the landowner. I have concerns about a "no ~~share~~ cost-share" but also suggest that the landowner has some responsibility to assist or help with the problem.

Section 3 changes the strict liability requirement for the big game protection statute, to a willful intent. This places a wildlife law enforcement officer in the almost impossible position of proving intent by a potential violator of the big game statute.

Finally, the logistics of managing a depredation hunt on an individual farm or ranch are not effective. Will the landowner be agreeable to one or several individuals with one or several antlerless deer tags coming out to the farm or ranch and shooting one or a couple of deer each weekend? Shooting deer off the haystack is still a one or two animals per "shoot" operation. Then one must wait for the herd to return and shoot one or two more. This does not magically reduce a herd of 50 or 100 animals to none or 5 or 10, or some acceptable number in the course of a couple days.

The Chapter would support a depredation bill that address deer depredation issues, but believes this bill fails to do that. We urge a "Do not Pass" recommendation on SB 2227. Thank you for the opportunity to provide comments. I will answer any questions the committee may have.

Testimony on SB 2227 — /

By Senator Terry M Wanzek

Chairman Porter and Representatives of the House Natural Resources Committee, I am Senator Terry Wanzek from District 29. SB 2227 is an effort addressing the issue of deer depredation. The issue becomes highlighted during these kinds of tough winters. You will hear from a number of livestock producers, they do not mind when a few deer come to their yards, but when it becomes hundreds of deer it is a problem. Citizens should have the right to protect their property from destruction and should get help from the state for deer depredation resulting in destruction to their personal property, considering the deer are a natural resource belonging to all the people in ND.

The first section's intent is to clarify that crops include crops harvested and collected and stored on farms for feed or fodder or other economic reasons. There has been some confusion as whether hay or silage harvested, collected in farmyards is considered a crop of value when considering depredation problems. I would argue that it is of "more value" because of the labor invested into the harvesting, etc. The point is to make sure the law recognizes that feed and fodder harvested and collected and piled in farmyards are crops of value.

The second section authorizes the Game & Fish Commissioner to allow individuals with valid antlerless deer licenses to take a deer from December 1st through March 15, only after attempting other measures to alleviate deer depredation and which turn out to be ineffective. This would be a special hunt in those areas identified as being heavily impacted by deer depredation. This is an opportunity to bring hunters into the equation to help harvest some of these deer, rather than watching them starve. It is an opportunity for hunters to assist in helping ranchers deal with this problem.

Section 3 clarifies that the Game & Fish can participate in a cost share program to assist in the construction of a deer proof hay yard. Currently they can provide for a deer proof hay yard but it is not clear as to cost sharing in the construction of the hay yard. This will clear that up.

Section 4 adds the words "not willfully" to the big game animal's protection law. I would refer to an article in the Bismarck Tribune where a judge states in a case regarding shooting of deer in a depredation of personal property situation as "having empathy for these landowners, but it is a strict liability offense". The intent of this change is to allow the judge to have more judicial flexibility in considering a case of this nature, where someone is protecting their property. I do

not intend to make it a legal option to shoot deer in a case like this, but only rather provide an opportunity for a judge to at least consider some of the extenuating circumstances when a person is in the act of protecting his personal property from animal destruction. When you think of it, many people saw the individual shoot Congresswomen Gabby Giffords and others, but he will still get a day in court. Why should someone who is only trying to protect his property at least not get a day in court!

I understand that this last section may go beyond my original intent. It could also provide that same protection, for instance, to large game poachers and other types of offenders. That was not my intent, and I am working on an amendment to narrow the scope to allow more judicial flexibility only in those cases where someone is protecting their property. I will continue to work on those amendments and will provide them to the committee.

Finally, the last section is the emergency clause to allow this to become law immediately upon signature of the Governor.

In summary, this may not be the silver lining to answering all the deer depredation problems, but they are an attempt to provide some additional well-thought out solutions, or tools, to achieve a balance between protecting a great natural resource and providing some relief to our state's livestock producers in helping them protect their property from destruction from our deer.

FRIDAY, JANUARY 7, 2011

Dakota

Farmers who
limit losses to get
insurance refunds

an:
operate

PAGE 2B

PAGE 5B

COM

SECTION B

Sentenced in deer killing

Burleigh County man could serve four days in jail for dead animals

By JENNY MICHAEL
Bismarck Tribune

A Burleigh County man who pleaded guilty to killing deer on his feedlot could end up spending four days in jail for 17 Class A misdemeanor.

However, South Central District Judge Bruce Haskell won't make William Dethloff serve the sentence he handed down on Thursday until he has a chance to appeal the case to the North Dakota Supreme Court.

Dethloff entered a conditional guilty plea in October to eight counts of unlawful taking of big game and nine counts of unlawful possession of big game. He has admitted to shooting numerous deer on his feedlot near the Missouri River over the past 20 years but says he did so to protect his feed from hungry deer during winter time. Dethloff also says the North Dakota Game and Fish Department knew he was killing deer for years and did not adequately help him protect his feed from the animals.

A conditional guilty plea means a defendant could take back the plea if a higher court agrees with him over legal issues involved in the case.

Haskell sentenced Dethloff to one year in prison with all but four days suspended and two years of unsupervised probation. He ordered him to pay \$8,500 in restitution for the deer and \$1,350 in court fines and fees. The judge also stripped Dethloff of hunting, fishing and trapping privileges for three years. Haskell granted a stay of exe-

cution of sentence pending appeal, meaning Dethloff will not have to serve the sentence until after an appeal is resolved.

Dethloff was charged after neighbors called the Game and Fish department in February 2010. Game wardens found some dead deer in plain sight and others buried in snow.

Dethloff, who was fined \$200 in 1997 for shooting 56 deer, said Game and Fish wardens knew he was shooting deer to protect his

Continued on 6B

Deer killing

Continued from 1B

feed supplies but did nothing about it. However, Game and Fish wardens said they had no evidence of Dethloff shooting deer until February 2010, though a Bismarck-area warden said she regularly stopped to check in with the Dethloffs since the 1997 case.

After the 1997 case, the Game and Fish department gave Dethloff materials to fence in a hay yard, but he and his daughter, Julie, said the yard would have been too small so they tried to use the materials in other ways to keep deer out. After the February incident, the department gave the Dethloffs items designed to scare deer by making noise, but Julie Dethloff said they only worked for a few days before deer caught on, and neighbors called the sheriff's department over the noise created by them.

The Dethloffs said they offered over the years to haul the deer to Game and Fish land or kill and process deer on their land and donate the meat to people in need. Haskell said he was sentencing Dethloff to serve time in jail due to his previous conviction for the same thing, the "sheer number" of animals killed and the fact that the deer were killed and left to rot.

Haskell had ruled earlier that Dethloff could not use the defense of protecting his land and feed from deer because the offenses were "strict liability" crimes in which the state only had to prove that Dethloff had shot the deer. His attorney, Daniel Oster, has indicated that is what will be appealed to the Supreme Court.

"I'm certainly not unsympathetic to landowners who have these issues," the judge said. (Reach reporter Jenny Michael at 250-8225 or jenny.michael@bismarcktribune.com.)

testimony 2

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF KIDDER

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 22-10-K-018

State of North Dakota,

Plaintiff,

vs.

Harlan Kleppe,

Defendant.

Order Granting Motion In
Limine and Denying Request
for Mistake of Law Jury
Instruction

Background: Defendant requests the Court to charge the jury with the Mistake of Law Jury Instruction. The Court is provided no other information as to why this instruction applies to this case other than providing NDCC 20.1-07-04 the Depredating fur-bearing animals statute. The State brings a motion In Limine to exclude testimony from the Defendant regarding his shooting at deer eating his stored crop. From the facts provided by the State it appears Defendant admits from February 15th thru the 17th of 2010, to shooting at the direction of deer eating his harvested crop and game wardens found multiple dead deer in the area. The shooting was done without a license and not during the big game season.

The Defendant was charged on March 17, 2010, with Unlawfully Hunting & Shooting Big Game in violation of NDCC 20.1-05-02.

Findings: NDCC 20.1-05-02 is a strict liability offense as no culpability requirement is included in the statute. As the offense does not fall under Title 12.1 and

does not include a culpability level the offense is a strict liability offense.

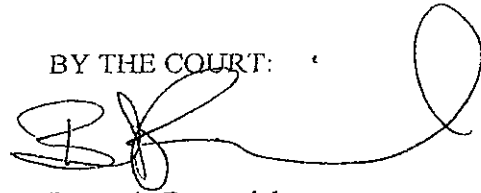
The Mistake of Law defense is ordinarily not applicable when the governing statute does not contain a culpability requirement. *State v. Eldred*, 1997 ND 112.

As the offense charged is a strict liability offense the Mistake of Law defense is not applicable.

Order: The Defendant's request for a "Mistake of Law Defense" is denied. The States motion In Limine is granted. Any testimony regarding the Mistake of Law defense is excluded..

Dated August 17, 2010.

BY THE COURT:



Bruce A. Romanick
District Judge

xc: Bolinske
Tufte

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF KIDDER

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,

Plaintiff,

Case No. 22-10-K-018

vs.

Harlan K. Kleppe,

Defendant.

**NOTICE AND MOTION IN LIMINE TO
EXCLUDE ALL EVIDENCE RELATING TO
ANY DEFENSE OF DEPREDAATION OR
DEFENSE OF PROPERTY**

PLEASE TAKE NOTICE that the State of North Dakota, by and through Kidder County State's Attorney Jerod E. Tufte, does hereby move the Court *in limine* to exclude all improper evidence and argument (including cross-examination) relating to any defense relating to defense of property or depredation. The law does not provide for such a defense in the context of big game and any evidence or argument on this subject will distract the jury and introduce numerous factual issues not relevant to the charged offense. Further, any testimony or evidence relating to defending property from big game would be offered in an attempt to induce jury nullification.

This motion is made pursuant to N.D.R.Ev. 103(c) & 402.

RELEVANT FACTS

The Defendant has admitted to shooting deer on his property under circumstances that were not within the bounds of legal hunting but rather because he was angry that the deer were eating and otherwise destroying feed for his cattle. The first admission was to two game wardens, the second was published in a letter to the editor in the local newspaper. All facts sufficient to make out the charged offenses are admitted and corroborated by physical evidence.

LAW AND ARGUMENT

Only relevant evidence may be admitted at trial. N.D.R.Ev. 402. Whether evidence is relevant or irrelevant is determined by "whether or not it would reasonably and actually tend to

prove or disprove any matter of fact in issue." *State v. Haugen*, 448 N.W.2d 191, 195 (N.D. 1989), *rev'd on other grounds*, 449 N.W.2d 784 (N.D. 1989). The Defendant does not appear to be contesting the facts of the offense but seemingly trying to make out a new defense of property justification to a big game offense, which justification is not supported by current law or a reasonable extension of current law. There is a defense of depredation in current law, but this defense is not applicable to big game. A landowner or tenant is permitted to take wild animals committing depredations in certain limited circumstances not applicable here:

A landowner or tenant or that person's agent may catch or kill any wild fur-bearing animal that is committing depredations upon that person's poultry, domestic animals, or crops, except a landowner or tenant or that person's agent shall notify and obtain the approval of the director before catching or killing a black bear. A landowner or tenant or that person's agent may not commercialize in, sell, or ship an animal or the pelt or any part of an animal caught or killed under this section if caught or killed during the closed season. A person catching or killing a black bear or mountain lion under this section shall report the capture or killing to the department within twenty-four hours and the entire animal must be turned over to the department.

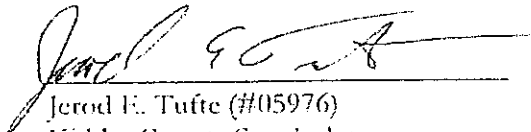
N.D.C.C. § 20.1-07-04. Depredation did not occur here because a deer is not a "fur-bearing animal" and because the depredation alleged to have occurred here was not "upon [Kleppe's] poultry, domestic animals, or crops."

A "fur-bearer" is defined in § 20.1-01-02(15) as including "mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, mountain lions, black bears, and red or gray foxes." In contrast, although they have fur and are in a very loose, literal sense fur bearing, deer are "big game" subject to a separate regulatory scheme. "Big game" means "deer, moose, elk, bighorn sheep, mountain goats, and antelope." N.D.C.C. § 20.1-01-02(5). The depredation alleged, namely the eating and other destruction of baled hay by deer, is not a depredation on poultry, domestic animals, or crops. The legislature set out specific criteria for when the game and fish laws may exempt producers from the generally applicable hunting laws. This exemption is aimed squarely at predators such as coyotes

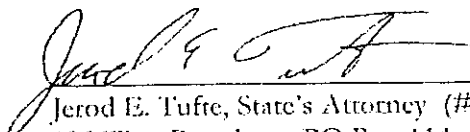
and foxes. The inclusion of "crops" should not be construed to include feed that might once have been called a crop but is being kept for feeding livestock. Such a reading would also encompass a pile of corn stored on the ground next to a full grain bin and potentially create a gaping hole in the state's game and fish regulations allowing producers to put a pile of grain out as bait and then shoot any deer that come to feed on it. Similarly, if deer eating stored hay constituted depredation, deer grazing on hay growing in the field would also logically be a depredation subject to the same exemption. That is not the meaning or the intent of the law in North Dakota.

WHEREFORE, the State respectfully requests this Court preclude Defendant from referring to, or in any way suggesting to the jury that shooting deer in defense of property constitutes a defense to the charged offense.

Dated: August 9, 2010.


Jerod E. Tufte (#05976)
Kidder County State's Attorney

The undersigned hereby certifies that on the 9th day of August 2010, a copy of the above document was served upon the Defendant by email to the Defendant's attorney of record, Robert Bolinske, Jr., at the following address: rbolinskej@msn.com as well as to the clerk of court at bsteinke@nd.gov with a courtesy copy to Judge Bruce Romanick at BRomanick@ndcourts.gov.


Jerod E. Tufte, State's Attorney (#05976)
106 West Broadway, PO Box 114
Steele, ND 58482
701-475-5202(tel) 701-203-4053(fax)

STATE OF NORTH DAKOTA

COUNTY OF KIDDER

IN DISTRICT COURT

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,

Plaintiff,

vs.

Harlan K. Kleppe,

Defendant.

Case No. 22-10-K-018

**TRIAL MEMORANDUM
AND REQUESTED JURY INSTRUCTIONS**

FACTS

1. On or about January 10 through February 16, 2010, the defendant Harlan Kleppe hunted, harassed, or took one or more deer. No legal hunting season was then in effect.

2. Warden James Myhre examined four deer he found on Kleppe's land near Kleppe's farmstead. Each had apparently been shot with a rifle.

3. Harlan Kleppe admitted to Warden Myhre and Warden Supervisor Erck that he had shot 8 or 9 deer over the course of the winter through February 18th and at least 20 deer the previous winter.

4. Kleppe stated that he would fire into a group of deer when they were on his hay or in his field, not taking precise aim at a particular deer.

5. In the June 16, 2010, edition of the Steele Ozone and Kidder County Press, a letter to the editor from Harlan Kleppe was published. The letter is stated as written May 23, 2010, and in the letter Kleppe admitted shooting deer allegedly because they were in his hay.

STATE'S WITNESSES

1. Warden James Myhre.

ISSUES FOR TRIAL

Because Harlan Kleppe has admitted the essential elements of the offense, both orally to Wardens Myhre and Erck and in writing to the paper of record for Kidder County, there would seem to be no genuine issue regarding the facts sufficient to make out the charged offense.

STATE'S REQUESTED JURY INSTRUCTIONS

The State Requests the following jury instructions be given in addition to the typical instructions given at a criminal jury trial:

1. BIG GAME ANIMALS PROTECTED. No person may hunt, take, attempt to take, or possess any big game animal except as provided by law. NDCC § 20.1-05-02.

2. BIG GAME SEASON. A person having a big game hunting license may take, kill, and transport, during the open or lawful season, one big game animal in this state. NDCC § 20.1-05-03.

3. POSSESSION OR CONTROL OF WILDLIFE. Possession or control by any person of any wildlife, or any part thereof, the killing, taking, or possessing of which is unlawful, is prima facie evidence the wildlife was caught, taken, or killed in this state in violation of this title. NDCC § 20.1-01-14.

4. DEPREDAATION. A landowner may not catch or kill any big game animal that is committing depredations upon his property. NDCC §§ 20.1-07-04, 20.1-05-02.

[This instruction is requested should the State's contemporaneous motion in limine be denied.]

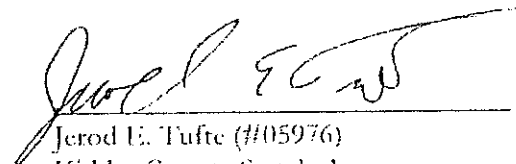
ESSENTIAL ELEMENTS OF OFFENSE

The State's burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

1. On or about January 10 through February 16, in Kidder County, North Dakota, the defendant hunted, harassed, took, attempted to take, or possessed a big game animal.
2. The big game animal was not killed or taken by the Defendant pursuant to the terms of a valid hunting license.

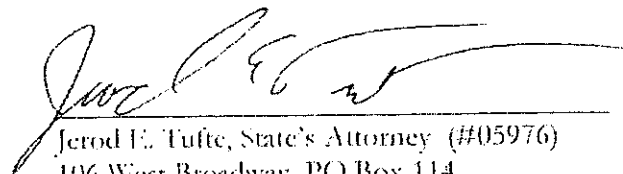
NDCC 20.1-05-02.

Dated: August 9, 2010.



Jerod E. Tufte (#05976)
Kidder County State's Attorney

The undersigned hereby certifies that on the 9th day of August 2010, a copy of the above document was served upon the Defendant by email to the Defendant's attorney of record, Robert Bolinske, Jr., at the following address: rbolinskejr@msn.com.



Jerod E. Tufte, State's Attorney (#05976)
106 West Broadway, PO Box 114
Steele, ND 58482
701-475-5202(tel) 701-203-4053(fax)

I have deer problems most every year, because I live across the road from Dawson Wildlife Management area.

In the late 70's, 1979 I think I had real bad deer problems. We had all good 2nd cutting Hay stored at my place. We were wintering the young heifers + old cows there. When we calved them out we lost 8 out of 60 hd to premature abortions. The cows we had at home we lost, 1 out of 250 hd. The 60 hd had better protection from weather, best Hay, and smaller group. In the spring of that year, Sid Breasen (not sure of last name)

came out from the Game + Fish. He was manager of Dawson Wildlife Management Area. We made a deal. I would farm stubs, get them seeded to alfalfa. I would cut the hay + Game + Fish would get a share to feed the deer. This arrangement worked out good for both of us. Sid was managing till mid 80's. The new manager didn't want us in there. My Brother Lloyd took over and rented my land from 1984 to 1998. He had trouble with deer. The Game + Fish give him materials + he built a Hay fence for the Hay yard. In 1996 - 1997 the G + F fed the deer in refuge. During a bad winter and it helped. In about 2004 Randy Kreil called me to load out Hay for a guy from out west. I had problems that year with deer in my hay. And thought if they would feed some of this hay, the deer would stay away -

2007 was a very bad year. Deer were coming in. I had extra Hay and when they worked on a bale, I took it across the road and fed it to the 1 bale would keep deer away for about 3 days. That year at calving time, I had lots of trouble several abortions, alot of early calves and some still born, I went to B + F and complained. I told them had to start feeding them, to keep them out of my yard. They said they didn't feed the deer any more because they didn't want them getting disease. That disease is what I was putting up with. At the end of my conversation Randy Kreil said someone would come out and see what they could do about the problem. No one has ever showed up. That was the third time I complained to B + F and got no results. 2008 winter was worse. The deer got into the hay yard fence, on top of the good hay, I thought I would have about 250 extra bales of hay in the preceding fall. I ended up feeding it all. The deer completely wrecked the west side of the feed yard fence. (8ft fence is now only 4ft high) In the fall - winter of 2009 - 2010 I saw Randy Kreil on TV and he said farmers are pretty tolerant of wildlife depredation, that didn't. He was the same guy who said someone would be in to see me, and no one showed.

I bought 5 boxes of shells, within the next week and started Hammer in.

I had to buy 84 bales of Hay to get thru the winter this year for my cows.

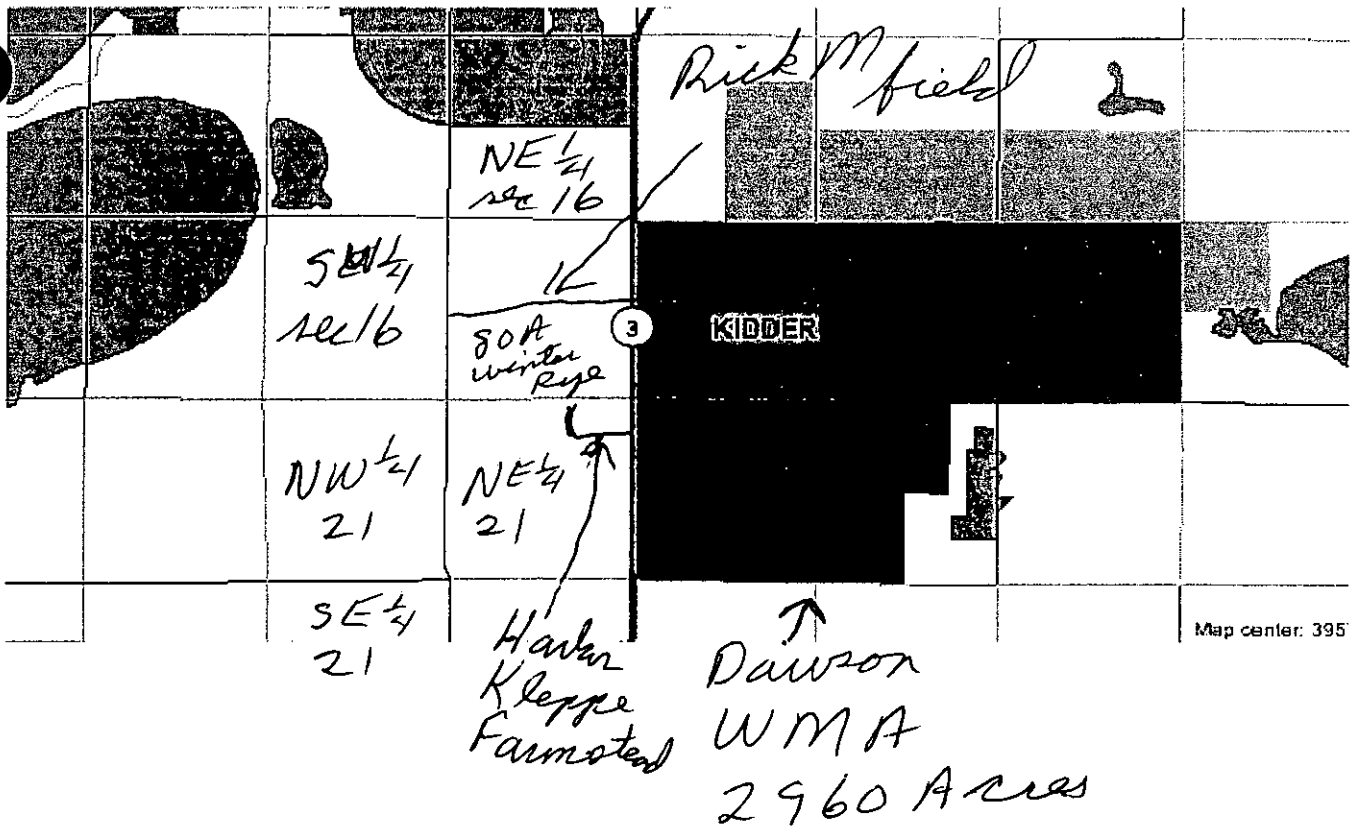
I used up 200 bales more of hay in 2008. I lost calves to disease (2 different times) Ben Kleyge had same problem this year. And it's more than coincidence financial cost to me if I would of kept track, would be over \$30,000 on a rough conservative estimate.

Harlan Kleyge

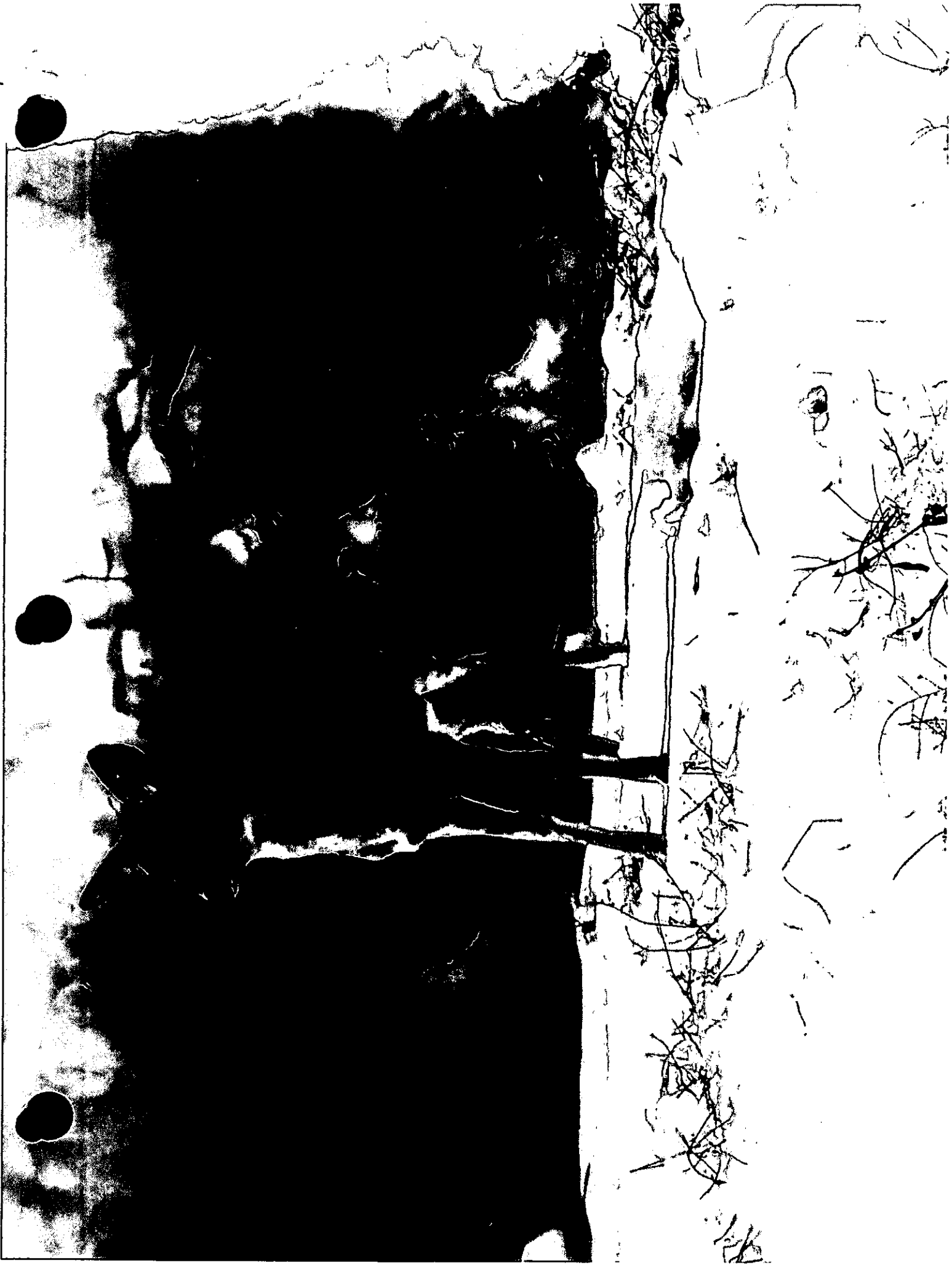
This letter is written to the best of my memory now. 5/23/2010

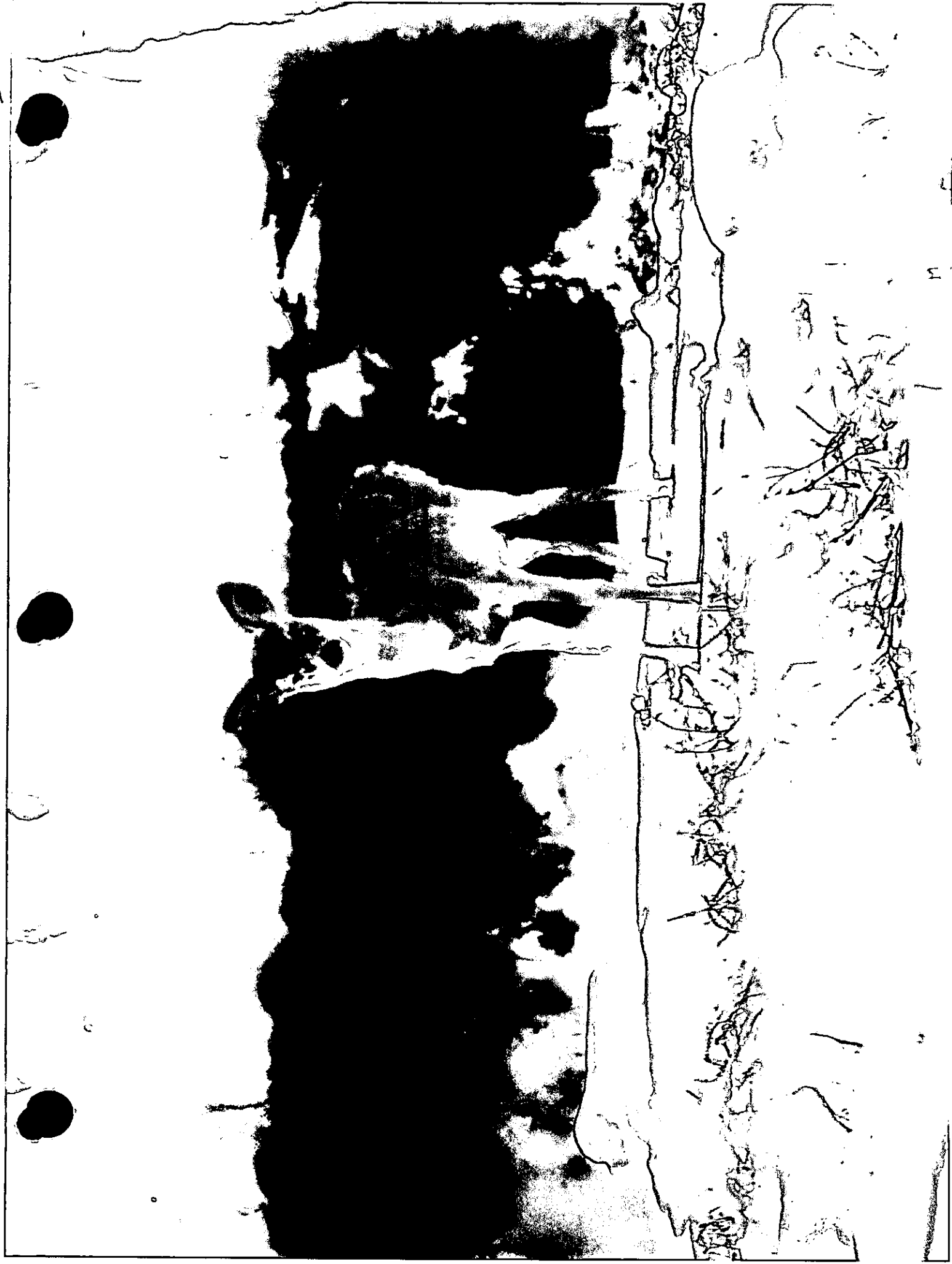
P.S: The Wildlife Management Area across the road from me is almost 6 sections.

3500 hundred acres. More than 3 times the land I have, and the G + F doesn't plant any food plots. The starving deer have only to cross the road to my yard.









Game + Fish Dept
Rules of Agency

Article V ND State Constitution

Chapter 20.1-02 ND Century Code

Circled items pertain to
deer depredation

documents say what

Game Wardens are
supposed to do according
to the LAW.

For deer depredation

Game & Fish Dept. rules of agency

ARTICLE 30-01

GENERAL ADMINISTRATION

Chapter
30-01-01

Organization of Department

CHAPTER 30-01-01 ORGANIZATION OF DEPARTMENT

Section
30-01-01-01

Organization and Functions of the Game and Fish
Department

**30-01-01-01. Organization and functions of the game and fish
department.**

1. Organization of department.

- a. History. The first game and fish laws were established in Dakota Territory in 1861 but it was not until 1893 when the superintendent of irrigation and forestry was designated as game commissioner that a game and fish department was formed. In 1909 the game and fish board of control was established. The board continued to function as the agency controlling fish and game until 1929 when legislation was passed providing for a single commissioner charged with certain duties and powers to administer a game and fish department. The title commissioner was changed to director in 1991.
- b. Divisions. The department consists of the following five divisions:
 - (1) Administrative services.
 - (2) Enforcement.
 - (3) Fisheries.
 - (4) Conservation and communications.
 - (5) Wildlife.
- c. Director. The director is appointed by the governor. The director holds office for four years beginning on the first day of July after the governor's election and until a successor is appointed and qualified.

The director shall appoint a deputy director who may be removed at the director's pleasure. The director may also appoint a chief game warden, district game wardens, biologists, and technicians

to enforce the game laws and to perform duties specified by the director.

The director is charged with fourteen statutory duties and has twenty-seven specific powers relating to the department and the resources it must manage. In addition to these specific duties and powers spelled out in North Dakota Century Code sections 20.1-02-04 and 20.1-02-05, the director has additional authority and power given by various sections of North Dakota Century Code title 20.1.

- d. Game and fish advisory board. There is an eight-member game and fish advisory board, each appointed for a four-year term by the governor. The board has the authority to advise the director regarding any policy of hunting, fishing, and trapping regulations, and may make general recommendations regarding the operation of the department and its programs which the director may carry out.
- e. Orders and proclamations of the governor. After investigation and recommendations by the director, the governor may open seasons for hunting, fishing, and trapping. The governor may determine in what manner, the numbers, the places, and at what times game, fish, or fur-bearers may be taken.

2. Functions of department divisions.

- a. Administrative services division. The division of administration is divided into four programs - accounting and basic operations, data processing, licensing, and planning.
 - (1) Accounting and basic operations. The program is responsible for accounting and general office and facility management.
 - (2) Data processing. Coordination and technical support is provided for department personal computers and state mainframe computer activities.
 - (3) Licensing. All fishing, hunting, and boating licensing is handled as part of this program.
 - (4) Planning. The planning program is responsible for establishing goals, objectives, and strategies for the department. It is a cooperative effort with the other divisions and is coordinated by a game and fish planner.

- b. Enforcement division. The law enforcement program enforces game and fish laws and rules and regulations necessary for proper management of fish and game resources. Enforcement

officers called district game wardens have districts averaging approximately two thousand six hundred square miles [673396.92 hectares]. In addition to their enforcement activities, they must carry out education programs, and assist other divisions during busy periods of the year. One of their major nonenforcement activities concerns alleviation of wildlife depredations on farmers' crops and feed supplies.

- c. Fisheries division. The fisheries division is divided into three programs - fish management, sport fisheries research, and lake/stream management.
 - (1) Fish production. Fish are provided for North Dakota waters through fish hatcheries and by trapping and moving fish from one area to another.
 - (2) Sport fish research. The program is responsible for all research and survey work connected with sport fishing. It gathers information about the status of lakes and fish populations and carries out management practices on lakes.
 - (3) Lake/stream management. The lake management program provides public use facilities, lake improvement systems, watershed development, lake and pond construction, and other developments on public fishing waters.
- d. Conservation and communications division. This division has three major sections:
 - (1) Conservation section. Many state and federal agencies have programs that affect fish and wildlife habitat. The efforts of this section are directed toward compensation, alleviation of losses, or possibly enhancement of fish and wildlife by working with these agencies. Staff in this division also operate the department's nongame and endangered species programs.
 - (2) Communications section. The section is divided into four programs - public information resource specialists, department webmaster, North Dakota Outdoors magazine, and videography - production of department videos.
 - (3) Outreach section. This section includes hunter education, project wild, aquatic education, becoming an outdoor woman, boating education, and public information outreach staff located statewide.

- e. **Wildlife division.** The wildlife division is divided into three programs - lands and development, game management, private land habitat programs.

- (1) **Lands and development.** The lands and development program is responsible for all habitat development, and management and maintenance on wildlife management areas. The program involves tree plantings, herbaceous cover and food plantings, road construction, weed control, signing, water developments, and any other activity that might enhance these areas for wildlife, the hunter, and the outdoors person who enjoys hiking, photography, and nature study.
- (2) **Game management.** Staff carry out population surveys that are used to determine annual hunting seasons on various species of game. Research is done with the objective of providing optimum hunting opportunities for the people of the state.
- (3) **Private land habitat program.** A private land habitat improvement program is funded from moneys derived from the interest earned on the game and fish fund, habitat stamp sales, and game and fish operating funds. The program involves annual leasing and development of fish and wildlife habitat and hunting access on private land, entering into cost-sharing agreements with landowners to help defray a portion of their share of conservation practices which benefit fish and wildlife. The program also carries out practices which will alleviate big game and predatory animal depredation.

3. **Inquiries.** General inquiries regarding the game and fish department may be addressed to the:

North Dakota Game and Fish Department
100 North Bismarck Expressway
Bismarck, North Dakota 58501-5095

Specific inquiries about division functions may be addressed to the chief of the division involved.

4. **Personnel roster.** A roster of personnel with the department may be found in the monthly issue of North Dakota Outdoors or on the department's web page.

History: Amended effective February 1, 1982; September 1, 1983; December 1, 1985; January 1, 1992; March 1, 2002.

General Authority: NDCC 20.1-02-04(2)

Law Implemented: NDCC 20.1-02-04(2)

*enforcement
authority*

This comes from The budget request of Game & Fish in 2009 Legislative Session

PROGRAM NARRATIVE

Bill # HB 1017

Page 26

720 GAME AND FISH DEPARTMENT

Enacted 7/1/09

Date: 12/17/2008
Time: 14:56:11

Program: WILDLIFE

Reporting Level: 00-720-700-00-00-00-00000000

PROGRAM PERFORMANCE MEASURES

- High hunter satisfaction and hunting quality as a result of sufficient populations of big game, waterfowl, upland game, and furbearer species.
- Reasonable access to quality hunting opportunities on both private and public lands of North Dakota.
- High hunter recruitment and retention with relatively low level of conflicts with private landowners associated with wildlife damages, noxious weeds, and hunters.

PROGRAM STATISTICAL DATA

Over 150,000 user days are spent hunting big game, resulting in annual expenditures of over \$6 million. About 80,000 deer hunters will harvest over 100,000 deer. About 140 moose permits, 560 elk permits and 4 bighorn permits will be issued annually. The pronghorn season involves about 1,600 permits. In 2006, 49,000 waterfowl hunters spent 361,600 days and \$15 million harvesting 279,000 ducks and about 203,000 geese. About 80,000 upland bird hunters will spend over \$6.5 million and over 360,000 days harvesting an estimated 80,000 gray partridge, 150,000 sharp-tailed grouse and about 800,000 pheasants each year. In an average year fur sales total about \$4 million, but prices are low and this number is expected to continue to decline. Full and aggressive implementation of the private land initiatives will help maintain or increase recreational opportunities. About 1,315,000 days are spent hunting each year, generating direct expenditures of \$27.9 million annually.

This program includes habitat development, management and enhancement of state-owned or leased Wildlife Management Areas totaling 230,000 acres. The land is managed for optimum wildlife production, particularly for game species, and provides high quality habitat for game and nongame species. The program includes staff that conduct wildlife surveys and make recommendations for hunting seasons and conduct research to determine management methods to improve recreational opportunities. Private Lands Section staff make contacts with landowners, conducting an evaluation of each farm or area as requested by the landowners for suitability as wildlife habitat. Technical assistance or financial agreement terms are negotiated and established. Short-term agreements are developed that provide annual compensation or one-time payments for use of private land to produce wildlife. The deer depredation fund is used to construct "deer-proof" hay yards and feed deer that are causing depredation problems on private lands.

EXPLANATION OF PROGRAM COSTS

SALARIES:

- Includes salaries for regular staff and for seasonal temporary workers.

OPERATING EXPENSES:

- Travel - State Fleet and travel related expenses are the largest operating expense item for this division. Staff does many wildlife population surveys from motor vehicles. They also travel to and work on department lands throughout the state.
- Lease/Rental-Equipment - Consists mainly of rental costs/sharing of aircraft for aerial wildlife surveys. Some construction equipment is also rented.
- Dues & Prof. Development - To provide staff training in supervision, performance appraisals, fire management, safety, computer use and other items.
- Operating Fees and Services - Research and special contract fees, such as payment for bird production, and various purchases using the state credit.
- Professional Services - Veterinary services, laboratory services and miscellaneous professional services.

ARTICLE V

EXECUTIVE BRANCH

Section 1. The executive power is vested in the governor, who shall reside in the state capital and shall hold the office for the term of four years beginning in the year 2000, and until a successor is elected and qualified.

Section 2. The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a labor department, the powers and duties of the officer administering that department must be prescribed by law.

Section 3. The governor and the lieutenant governor must be elected on a joint ballot. Each vote cast for a candidate for governor is deemed cast also for the candidate for lieutenant governor running jointly with the candidate for governor. The joint candidates having the highest number of votes must be declared elected. If two or more joint candidates have an equal and highest number of votes for governor and lieutenant governor, the legislative assembly in joint session at its next regular session shall choose one pair of joint candidates for the offices. The returns of the election for governor and lieutenant governor must be made in the manner prescribed by law.

Section 4. To be eligible to hold an elective office established by this article, a person must be a qualified elector of this state, must be at least twenty-five years of age on the day of the election, and must have been a resident of this state for the five years preceding election to office. To be eligible to hold the office of governor or lieutenant governor, a person must be at least thirty years old on the day of the election. The attorney general must be licensed to practice law in this state.

Section 5. The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The elected state officials shall serve until their successors are duly qualified. Terms of office of the elected officials except the public service commissioners are four years, except that in 2004 the agriculture commissioner, attorney general, secretary of state, and tax commissioner are elected to a term of two years. The terms of the public service commissioners are six years, so arranged that one of them is elected every two years. The terms of the governor and lieutenant governor begin on December fifteenth following their election.

If two or more candidates for any executive office other than for governor and lieutenant governor receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

Section 6. The elected state officials and the chief executive officers of the principal departments shall hold office in the state capital.

Section 7. The governor is the chief executive of the state. The governor shall have the responsibility to see that the state's business is well administered and that its laws are faithfully executed.

The governor is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and the governor may mobilize them to execute the laws and maintain order.

The governor shall prescribe the duties of the lieutenant governor in addition to those prescribed in this article.

The governor may call special sessions of the legislative assembly.

The governor shall present information on the condition of the state, together with any recommended legislation, to every regular and special session of the legislative assembly.

The governor shall transact and supervise all necessary business of the state with the United States, the other states, and the officers and officials of this state.

The governor may grant reprieves, commutations, and pardons. The governor may delegate this power in a manner provided by law.

Section 8. The governor may fill a vacancy in any office by appointment if no other method is provided by this constitution or by law. If, while the senate is recessed or adjourned, a vacancy occurs in any office that is filled by appointment with senate confirmation, the governor shall make a temporary appointment to the office. When the senate reconvenes the governor shall make a nomination to fill the office. Except on request of the senate, no nominee rejected by the senate may again be nominated for that office at the same session, nor may the nominee be appointed to that office during a recess or adjournment of the senate.

Section 9. Every bill passed by the legislative assembly must be presented to the governor for the governor's signature. If the governor signs the bill, it becomes law.

The governor may veto a bill passed by the legislative assembly. The governor may veto items in an appropriation bill. Portions of the bill not vetoed become law.

The governor shall return for reconsideration any vetoed item or bill, with a written statement of the governor's objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it, along with the statement of the governor's objections, must immediately be delivered to the other house. If, by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill becomes law.

While the legislative assembly is in session, a bill becomes law if the governor neither signs nor vetoes it within three legislative days after its delivery to the governor. If the legislative assembly is not in session, a bill becomes law if the governor neither signs nor vetoes it within fifteen days, Saturdays and Sundays excepted, after its delivery to the governor.

Section 10. A governor who asks, receives, or agrees to receive any bribe upon any understanding that the governor's official opinion, judgment, or action shall be influenced thereby, or who gives or offers, or promises the governor's official influence in consideration that any member of the legislative assembly shall give the member's official vote or influence on any particular side of any question or matter upon which the member may be required to act in the member's official capacity, or who menaces any member by the threatened use of the governor's veto power, or who offers or promises any member that the governor will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give the member's official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly, or who threatens any member that the governor will remove any person or persons from office or position with intent in any manner to influence the action of that member, must be punished in the manner now, or that may hereafter be, provided by law, and upon conviction thereof forfeits all right to hold or exercise any office of trust or honor in this state.

Restains to
Page
HB 1017
appropriation
for Game
fish

ND Century Code

**CHAPTER 20.1-02
GAME AND FISH DEPARTMENT**

20.1-02-01. Director of the game and fish department - Office to be maintained - Appointment - Term - Removal. The governor shall appoint the director of the game and fish department. The director holds office for a term of four years beginning on the first day of July after the governor's election and until a successor is appointed and qualified. The director is subject to removal by the governor for cause only.

20.1-02-02. Oath of director. Before entering upon that individual's duties and within ten days after the date of appointment, the director shall take and file the oath prescribed for civil officers.

20.1-02-03. Compensation and expenses of director - Audit and payment. The salary of the director must be within the amount appropriated for salaries by the legislative assembly. The director must be reimbursed for the necessary expenses incurred by the director in the performance of the director's duties. The director's salary and expenses must be paid out of the game and fish fund and must be audited and paid in the same manner as the salary and expenses of other state officers.

20.1-02-04. Duties of director. The director shall:

1. Maintain an office in Bismarck.
2. Adopt rules necessary to the conduct of the department.
3. Keep an accurate record of all the transactions and expenditures of the department and submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.
4. Enforce state laws involving wildlife.
5. Collect and distribute statistics and information germane to this title and publish information and reports, including a monthly bulletin, for the education of the public in conservation matters.
6. Examine all waters of the state and, wherever suitable waters are found, arrange to plant, stock, or deposit available fish, spawn, or fry.
7. Cooperate with the United States fish and wildlife service, or any other appropriate federal agency, and make applications for fish, spawn, and fry, to apportion and deposit in waters of the state.
8. Cooperate with and assist clubs and individuals in stocking the waters of this state with fish.
9. Remove or take from any public waters containing a surplus of fish any reasonable quantity of fish for stocking other public waters, hatching or propagating purposes, or exchange with other states and countries.
10. Control, construct, mark, designate, manage, and have charge of all state fish hatcheries, state game farms, game refuges, and game reserves owned, leased, or controlled for the propagation and protection of game birds, game animals, and fish.
11. Supervise the breeding, propagation, capture, distribution, and preservation of game birds, game animals, and fish as the director deems advisable.

*New sign & dated
Statement By Director
if he refuses to enforce*

North Dakota

10



STOCKMEN'S ASSOCIATION

407 SOUTH SECOND STREET
BISMARCK, NORTH DAKOTA 58504
Ph: (701) 223-2522
Fax: (701) 223-2587
e-mail: ndsa@ndstockmen.org
www.ndstockmen.org

SB 2227

Good afternoon, Chairman Porter and members of the House Energy and Natural Resources Committee. My name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

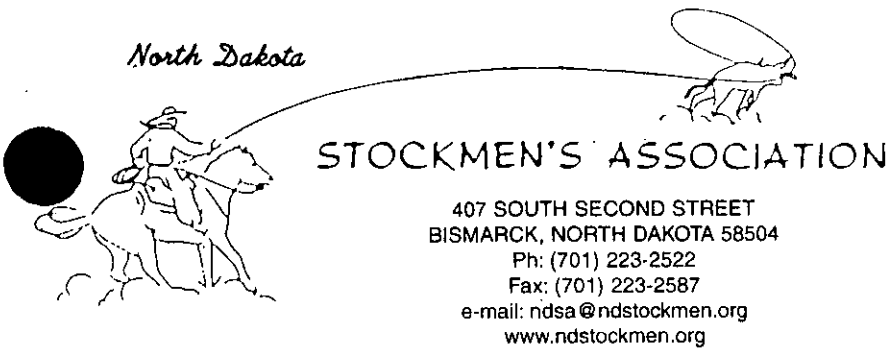
Mother Nature has been socking it to us again in 2011, with cold temperatures and widespread, heavy snowfall for the third year in a row. Just as this extreme winter challenges us, it also challenges wildlife, which are taking up refuge on many ranches, feasting on the hay producers have worked hard to grow and harvest and, generally, making messes of stored feedstuffs as they congregate.

And just as the weather has worn on, so have the calls we have received about deer depredation problems. I know there are producers here today who will be testifying to illustrate their personal stories and challenges.

SB 2227 is designed to help address this issue and enhance the North Dakota Game and Fish Department's ability to respond to serious situations, when other, more conventional, tools are ineffective.

Section 1 affords the Game and Fish director the ability to call in the troops, so to speak, and enlist lay people to help harvest problem deer in a very specified area from Dec. 1 through March 15. Of course, while it is assumed that this arrangement would only occur if the landowner grants the Agency permission to do so, it would be advisable, we think, to specify that in Code for future generations.

North Dakota



Section 2 expands the Game and Fish Department's deerproof hay yard program to include cost-share assistance for landowners to construct a deerproof hay yard. We contend that, while many hay yards are up and functioning, many others are still merely a stack of materials lying in a pile. That's because putting up a deerproof hay yard takes time and money, which both are short commodities. We think that a cost-share program set up similar to one like the Natural Resources Conservation Services' Environmental Quality Incentive Program (EQIP) projects, for instance, would allow some producers to enlist the help of others to convert that supply pile to a functioning hay yard that can assist in keeping the deer out of the yards.

We also support adding the definitions of "depredation" and "crops" at the beginning of this chapter, so it is clear what kind of impacts this bill is referring to. In a resolution passed at our convention in September 2010, our members supported a change to the Century Code to designate that crops include stored or stockpiled crops, such as hay. We are pleased to see this qualifying language included in the bill.

Furthermore, we support Rep. Brandenburg's amendment to Section 4, and believe the revised language more appropriately and effectively captures the sponsor's intent.

In summary, we see this bill as a way to provide some additional tools to the deer depredation toolbox and ask for your favorable consideration of it.

Mel Fischer

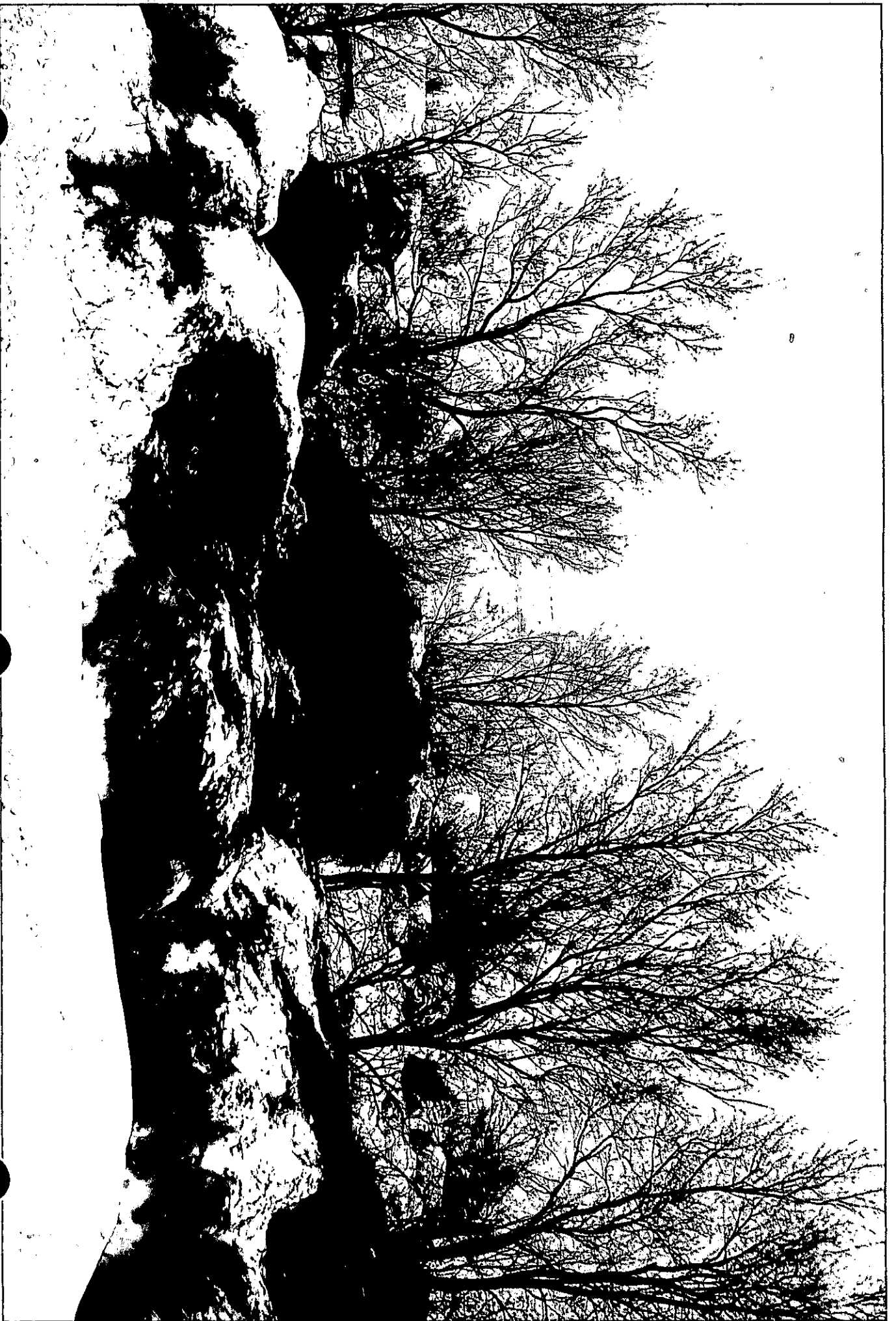
Attachment 11



Mel Fischer



Mel Fischer



Zac Peterson
701-693-5590

North Dakota



STOCKMEN'S ASSOCIATION 13

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BISMARCK, NORTH DAKOTA 58504
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In summary, we see this bill as a way to provide some additional tools to the deer depredation toolbox and ask for your favorable consideration of it.

②

Whitman Ranch

3013 20 St SE

RAVENS, ND 58479

03/09/2011

Whitman Ranch
3613 20 St SE
Robinson, ND 58478

2



I'm Anne Ongstad , owner operator of Whitman Ranch at Robinson, ND. I have a 500 cow herd and finish the calves for different specialty markets. I employ four full time people and another six people in the summer. The beef I sell is traceable from the consumer back to me.

The ND Health Department, the Natural Resource Conservation Service and the specialty markets I sell to want me to feed the cattle on fields instead of in feedlots. The 200 plus deer that winter at the ranch make it impossible to find a spot to feed that doesn't have deer manure on it, which could infect the cattle with diseases that may be traced back to my herd. These excess deer have been a problem for 20 years, not just the last three snowy years.

I like everyone to get along. I have cooperated with North Dakota Game and Fish, I think in every opportunity they have offered to control deer. Boomers, zingers, fences. They have sent extra deer hunters whom I have welcomed above and beyond the parts men I invite when I'm in Bismarck getting repairs and the neighbors and friends that are welcome.

Some hunters may say there are less deer. Hunting should include skill and effort. We should not expect deer to pop out in front of the pickup after we drive around the section four times. Trophy deer were taken at the ranch this year and there are more out there.

Picture one shows a deer fence that I hired extra people to help put up. It is 8 feet high. Great lengths of it are under snow so the deer can walk in.

Picture two shows a deer fence with the snow pushed back and the spaces the deer have made in the net wire to go through. You can see the deer hair on the cross wire 1/3 of the way up if you look closely. The net wire is not heavy enough to keep the deer from going through.

Picture three shows deer manure in the feed. The urine doesn't show up. I did not attempt to show the amount of manure in the fields surrounding our ranch, but you are welcome to come visit.

This bill is a band aid for a large wound caused by an extended period of deer over population. I hope it passes. I will carefully cooperate with North Dakota Game and Fish to see if some relief will come of it.

Do you have any questions for me?

Cell: 701-226-6888

The Official Website of the North Dakota Game and Fish Department
Serving the Citizens of North Dakota

2010 Deer Management Goals

Every five years, North Dakota Game and Fish Department biologists establish a benchmark for deer licenses in the state – a number that will guide management decisions for several years.

The five-year goal is an effort that involves biological information from deer surveys and hunter-harvest figures, plus observations and input from game wardens, hunters, landowners and others who have a stake in North Dakota deer management. For this 2010 five-year plan, Game and Fish presented draft goals at the spring advisory meetings, and made numerous changes based on public input received.


The new five-year goal is for a statewide deer population that would provide 124,800 deer gun licenses. Within this total, outlined in the information that follows, are license objectives for each of the 38 hunting units.

It is important to understand that unit and statewide goals will not necessarily match the number of licenses Game and Fish will issue each year. The goal is an ideal number given consistent winter weather and habitat conditions. As the variables change, however, the number of licenses will likely go up or down every year, based on whether harvest needs to increase or decrease to move toward the goal the following year.

For instance, the 2010 deer gun license allocation was about 116,000, with a major reduction in antlerless licenses from the previous year in most units, which will promote deer population growth in those units, at least until the number of licenses can increase to match unit goals. If the population gets too high, Game and Fish may have to greatly increase the number of licenses in order to move deer numbers back down toward the goal.

The new five-year goal is about a 25 percent increase over the goal established in 2005 of 100,000 licenses. Since that plan was developed, through input from hunters, landowners and others, Game and Fish wildlife managers determined that a somewhat higher deer population could still strike a balance between hunter interest, landowner tolerance and public acceptance.

Game and Fish welcomes input on this five-year plan, as preparations for the next plan in 2015 are already beginning. To pass along your comments, send us an e-mail at ndgf@nd.gov; call us at (701) 328-6300; or write North Dakota Game and Fish Department, 100 N. Bismarck Expressway, Bismarck, ND 58501.

Get the  2010 Deer Population Information and Unit Goals for North Dakota (5.4Mb PDF) - To view document requires Adobe® Acrobat® Reader™. Download it at free at <http://get.adobe.com/reader/>.

government entities. This division also includes the nongame wildlife program. It is supported by an income tax check off. \$1,300,000 is included in grants for the State Wildlife Grant Program. This federally funded program works primarily with wildlife species that are not hunted. The match is normally provided by the grant recipient.

5. Wildlife Division - This budget includes private land habitat and ~~deer depredation~~ programs, operating costs for Department managed lands, wildlife surveys and investigations, and grants to organizations on cooperative projects. This division's budget increased about 11% from 2009-11. Salaries are increased to support current staff. \$800,000 is included for land acquisitions of small tracts near wildlife management areas, possibly in-holding or round-outs that may come up during the biennium. \$880,000 is included for grants with wildlife groups and organizations on cooperative projects and wildlife research projects conducted through universities. The grants budget also includes \$200,000 to reimburse the State Veterinarian for costs related to oversight of farmed wildlife producers and the administration of wildlife propagation permits. \$768,800 is in the Wildlife Services Line Item to support Wildlife Service's animal damage control work. Both the Wildlife Services and State Veterinarian budgets are continued at the same level as 2009-11. \$600,000 is requested for the Noxious Weed Control Line Item for work on Department lands.

Lonetree Funding - A \$1,749,065 appropriation is requested to operate the Lonetree area. The Lonetree area consists of over 30,000 acres of land managed for wildlife purposes. The North Dakota Game and Fish Department manages and provides technical services for this area for the State of North Dakota as laid out in the Garrison Diversion Reformulation Act. The budget for this line increased 5% from 2009-11. 100% of the funding for this budget comes from the Bureau of Reclamation. The budget continues to include funding for 5 staff, operating, equipment, maintenance and development for this area.

Private Land Habitat and ~~Deer Depredation~~ Line - A \$12,054,686 appropriation is requested to operate this special line. This line is commonly called the Private Land Initiative (PLI) line. This line is not just for our PLOTS program, it also includes ~~deer~~ ~~depredation~~ and administrative costs for the PLI line. The budget increased approximately 9% from 2009-11. Of the total line, the budget for the PLOTS Program is \$10.1 million of which \$7.7 million is landowner payments. We have been able to maintain our 1 million acre goal for the PLOTS program. The line also includes \$677,000 in grants for the Voluntary Public Access and Habitat Incentive Program also known as the Open Fields grant which is used for public access payments to landowners.

3

373

2,054,586

10,000,777

12,054,686

10,000,100

2,054,586

CHAPTER 36-21.1
HUMANE TREATMENT OF ANIMALS

16

36-21.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Abandoned animal" means an animal that is or reasonably appears to have been deserted by its owner or keeper. The term may include an animal that is running loose on property other than that of its owner or the owner's agent if the animal bears no identification indicating the owner or the owner's agent and the owner or owner's agent is not known to the sheriff, police officer, licensed veterinarian, or investigator taking custody of the animal under this chapter.
2. "Adequate care" means normal and prudent attention to the needs of an animal, including wholesome food, clean water, shelter, and health care, as necessary to maintain good health in a specific species of animal.
3. "Animal" includes every living animal except the human race.
4. "Commissioner" means the agriculture commissioner.
5. "Cruelty" or "torture" means any act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted. The term does not include:
 - a. Any activity that requires a license or permit under chapter 20.1-03;
 - b. Any activity that is usual and customary practice in production agriculture;
 - c. Any scientific research conducted at a public or private facility or laboratory by or under the direction of a qualified researcher;
 - d. Any show, fair, competition, performance, or parade;
 - e. A rodeo;
 - f. A wagon or buggy ride;
 - g. Trail or pleasure riding; or
 - h. Any activity that involves the training or teaching of animals.
6. "Investigator" means any person approved by the board to determine whether there has been a violation of this chapter.

36-21.1-02. Overworking, mistreating, or abandoning animals.

1. No person may overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when unfit for labor.
2. No person may deprive any animal over which the person has charge or control of necessary food, water, or shelter.
3. No person may keep any animal in any building, room, cage, or pen without adequate care.
4. No person may abandon any animal.

5. A person shall reclaim an animal within forty-eight hours of the agreed-upon time for termination of a boarding contract and pay all charges for boarding the animal.
6. No person may allow any maimed, sick, infirm, or disabled animal of which the person is the owner, or of which the person has custody, to lie in any street, road, or other public place for more than three hours after notice.
7. No person may willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.
8. No person may cage any animal for public display purposes unless the display cage is constructed of solid material on three sides to protect the caged animal from the elements, and unless the horizontal dimension of each side of the cage is at least four times the length of the caged animal. This subsection does not apply to the North Dakota state fair association, to agricultural fair associations, to any agricultural display of caged animals by any political subdivision, or to district, regional, or national educational livestock or poultry exhibitions. Zoos which have been approved by the health district or the governing body of the political subdivision which has jurisdiction over the zoos are exempt from this subsection.

36-21.1-03. Cruelty in transportation. No person may carry, or cause to be carried, any live animals upon any vehicle or otherwise, without providing suitable racks, cars, crates, or cages, or other proper carrying container, nor may a person carry an animal, or cause an animal to be carried, in any other cruel manner.

36-21.1-03.1. Unattended dog or cat in motor vehicle. No person may leave a dog or cat unattended in a stationary or parked motor vehicle in a manner that endangers the animal's health or safety. Any person who violates this section is guilty of an infraction.

36-21.1-04. Poisoning animals. No person may unjustifiably administer or expose any known poisonous substance or noxious drug, whether mixed with meat or other food or not, which may be eaten by any domestic animal.

36-21.1-05. Animal with infectious disease. No person owning or having charge of any animal, knowing the animal to have any infectious or contagious disease, or to have recently been exposed thereto, may knowingly permit such animal to run at large or come into contact with another animal, or with another person without the person's knowledge and permission.

36-21.1-06. Exposure of animals - Authority of officers.

1. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of and care for any animal unjustifiably exposed to cold or inclement weather or not properly fed and watered. Any sheriff or police officer may use reasonable means to enter a motor vehicle and remove an animal that has been left in the vehicle in violation of section 36-21.1-03.1.
2. A sheriff, police officer, licensed veterinarian, or investigator may care for the animal until it is redeemed by the owner or authorized agent of the owner and when necessary may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink.
3. If the owner or the owner's agent is known, the individual must be immediately notified. If the owner or the owner's agent is unknown, notice must be given by publication in the manner prescribed by law. The notice must inform the owner or the owner's agent that the animal may be sold, or otherwise disposed of, pursuant to court order if the animal is not redeemed within five days from the date of the notice.
4. The sheriff, police officer, licensed veterinarian, investigator, or whoever has custody of the animal has a lien on the animal and that lien is superior to any other claim or

lien, for the animal's care and keeping, the reasonable value of the food and drink furnished, and the expenses of notifying the owner or the owner's agent. If the lien is not discharged and satisfied by the owner or the owner's agent within five days after receipt of the notice, the person holding the claim may apply to the district court for an order to sell the animal and discharge the lien.

5. Upon order of the court, the animal may be sold at a public market to pay the charges for its keeping, and the title to the animal passes by the sale.
6. The court may award costs and reasonable attorney's fees to the person bringing the action to enforce the lien, arrange for the adoption of the animal, or arrange for the destruction and disposal of the animal if no market exists for the animal or if the animal is a companion animal.
7. If the animal is sold, the lienholder is entitled to the proceeds of the sale to the extent of the lien and the remainder, if any, must be paid over to the owner or the owner's agent, if known. If the owner or the owner's agent is not known, the remainder must be deposited in the county general fund. If no purchaser is found, the animal, at the discretion of the commissioner, may be offered for adoption or disposed of consistent with the law.
8. Before the animal is returned to its owner, the court shall determine whether the owner or the owner's agent can provide adequate care for the animal. The court has ten days within which to make this determination. The owner shall pay the cost of taking the animal into custody before the animal is released to the owner or the owner's agent.

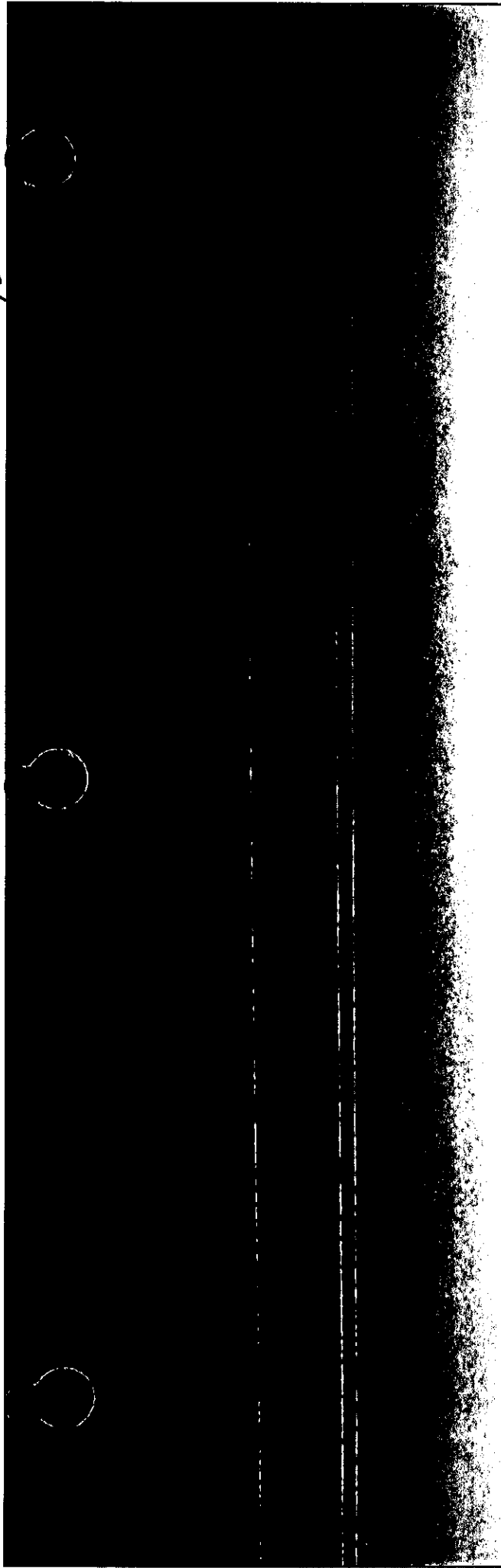
36-21.1-07. Cockfights, dogfights, and other exhibitions prohibited - Penalties.

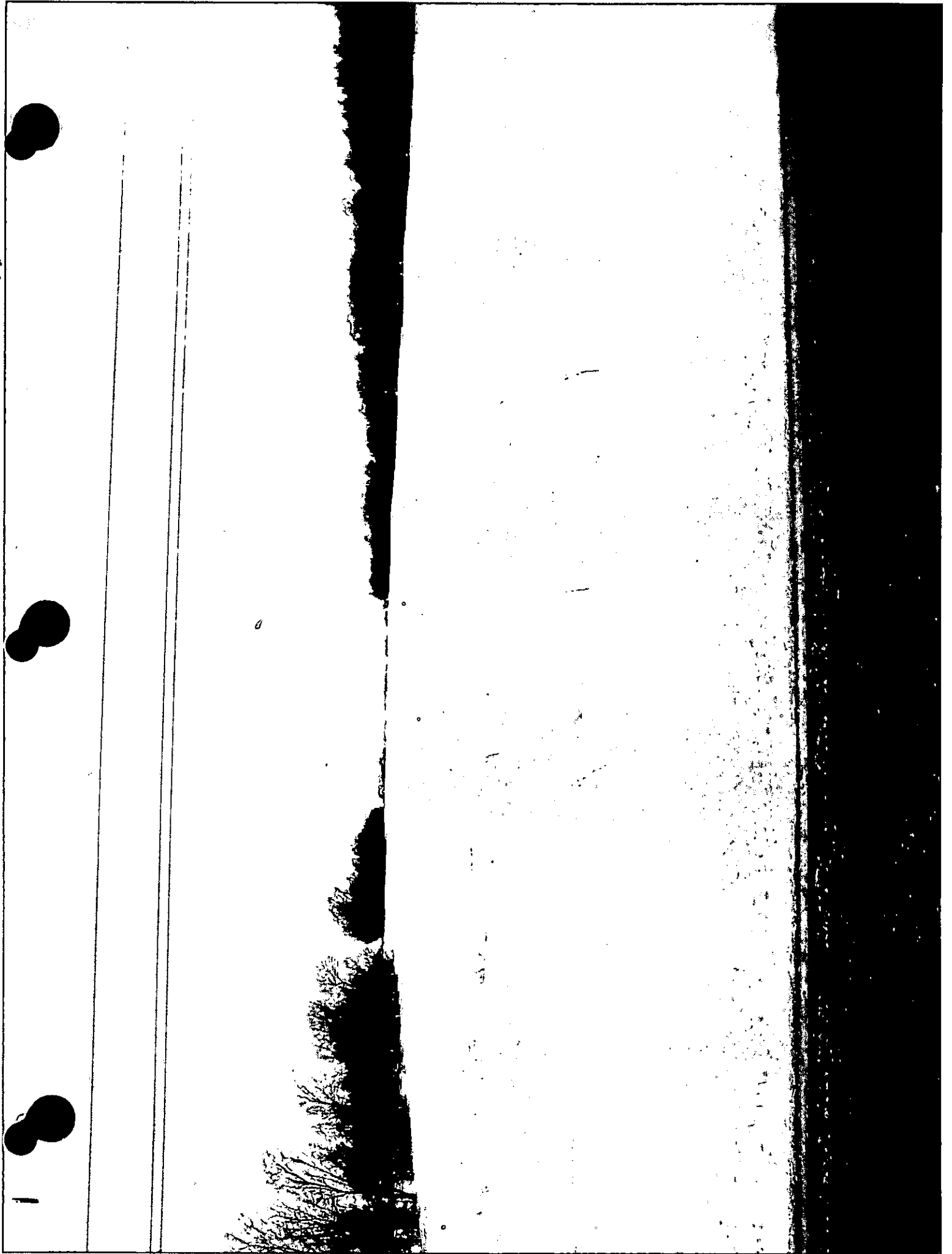
1. No person may engage in or be employed at cockfighting, dogfighting, bearbaiting, pitting one animal against another, or any other similar cruelty, such as bear fighting, kangaroo boxing, or similar activity, to animals; nor may a person receive money for the admission of any person to any place used, or about to be used, for any such purpose, nor may a person willfully permit anyone to enter or use, for any such purpose, premises of which that person is the owner, agent, or occupant; nor may a person use, train, or possess a dog or other animal for the purpose of maltreating any domestic animal. Any person who violates this subsection is guilty of a class C felony.
2. No person may knowingly purchase a ticket of admission to, be present at, or witness the activities prohibited by subsection 1. Any person who violates this subsection is guilty of a class A misdemeanor.

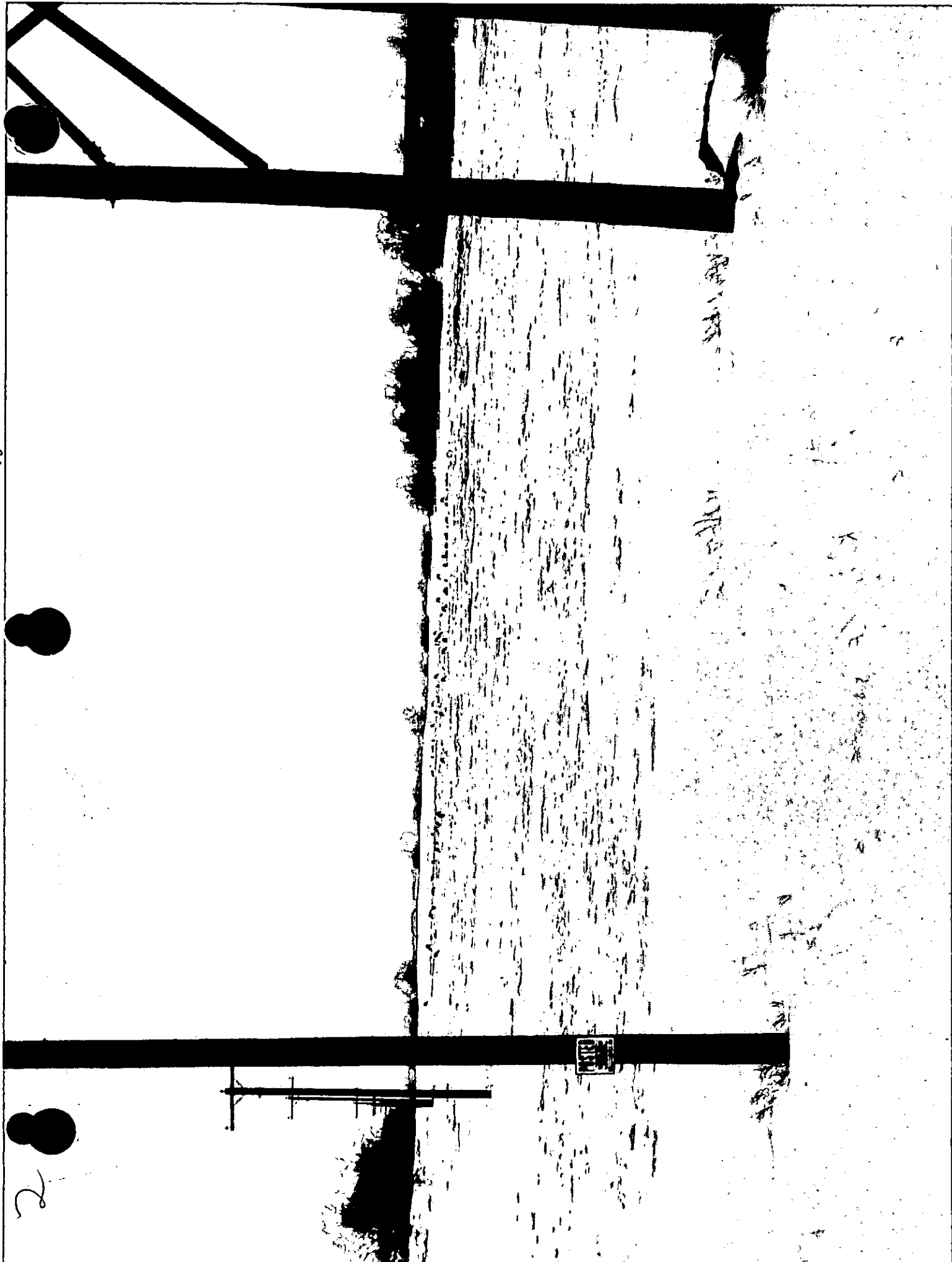
36-21.1-08. Artificially colored animals - Sale. No person may sell or offer for sale, raffle, offer, or give as a prize, premium, or advertising device, or display in any store, shop, carnival, or other public place, a chick, duckling, gosling, or rabbit which has been dyed or otherwise artificially colored.

36-21.1-09. Use of certain birds as advertising devices - Use of live beef or dairy cattle as raffle prizes - Gifts of animals.

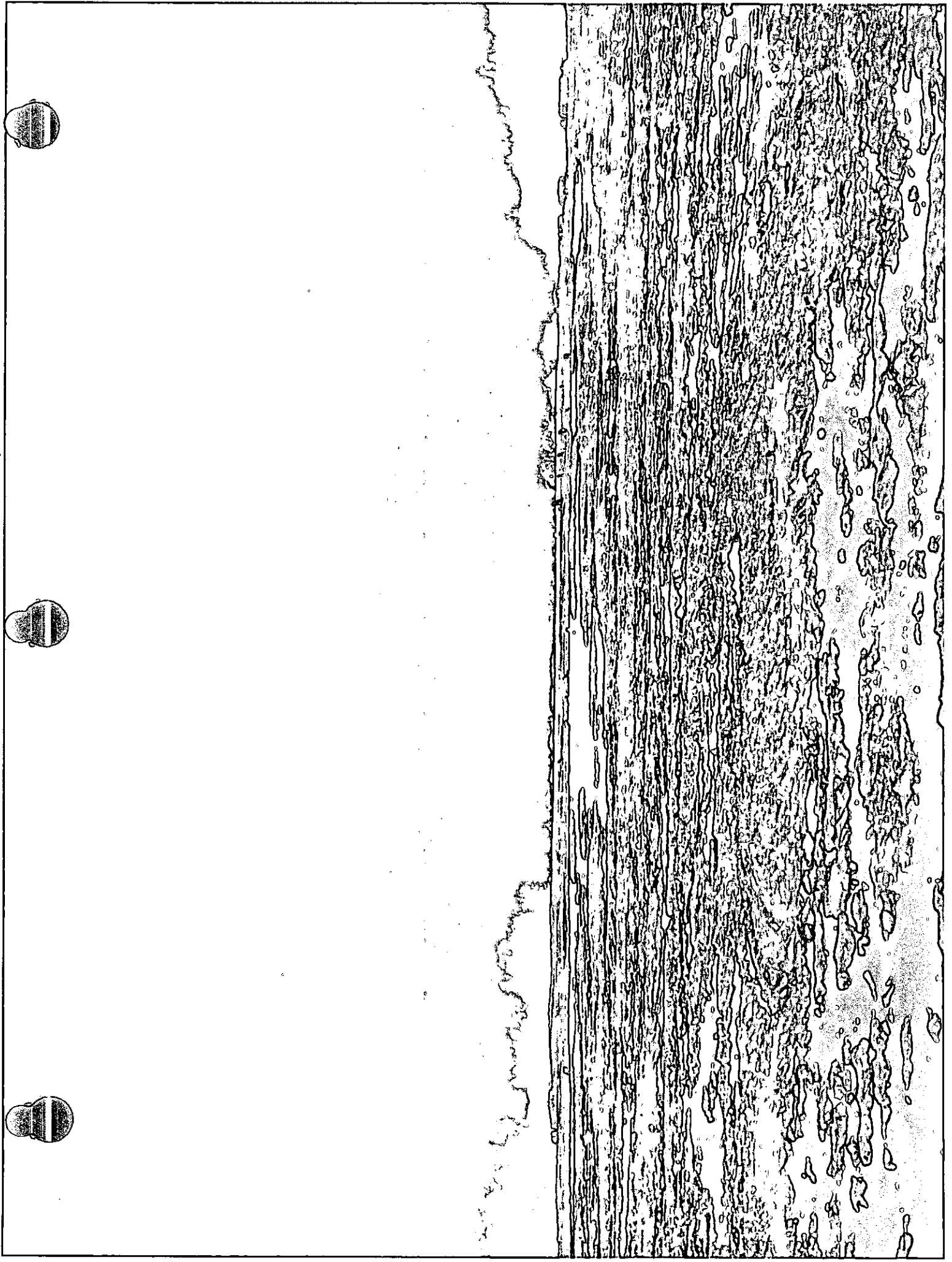
1. No person may sell, offer for sale, raffle, offer, or give as a prize, premium, or use as an advertising device, chicks, ducklings, or goslings younger than four weeks of age in quantities of less than twelve birds to an individual person. Persons engaging in the business of selling chicks, ducklings, or goslings for agricultural or wildlife purposes are exempt from the provisions of this section, but only when selling for such purposes.

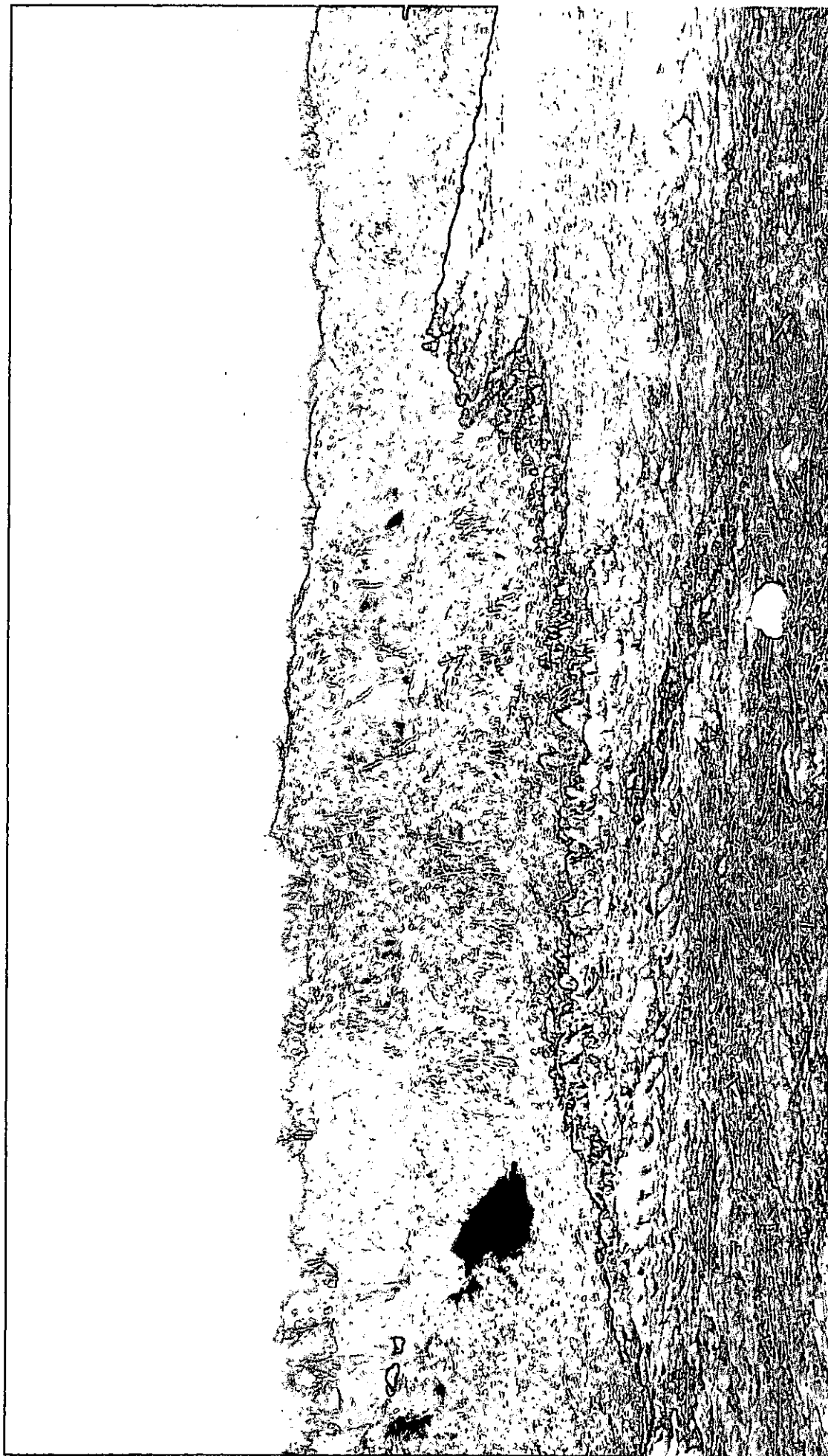


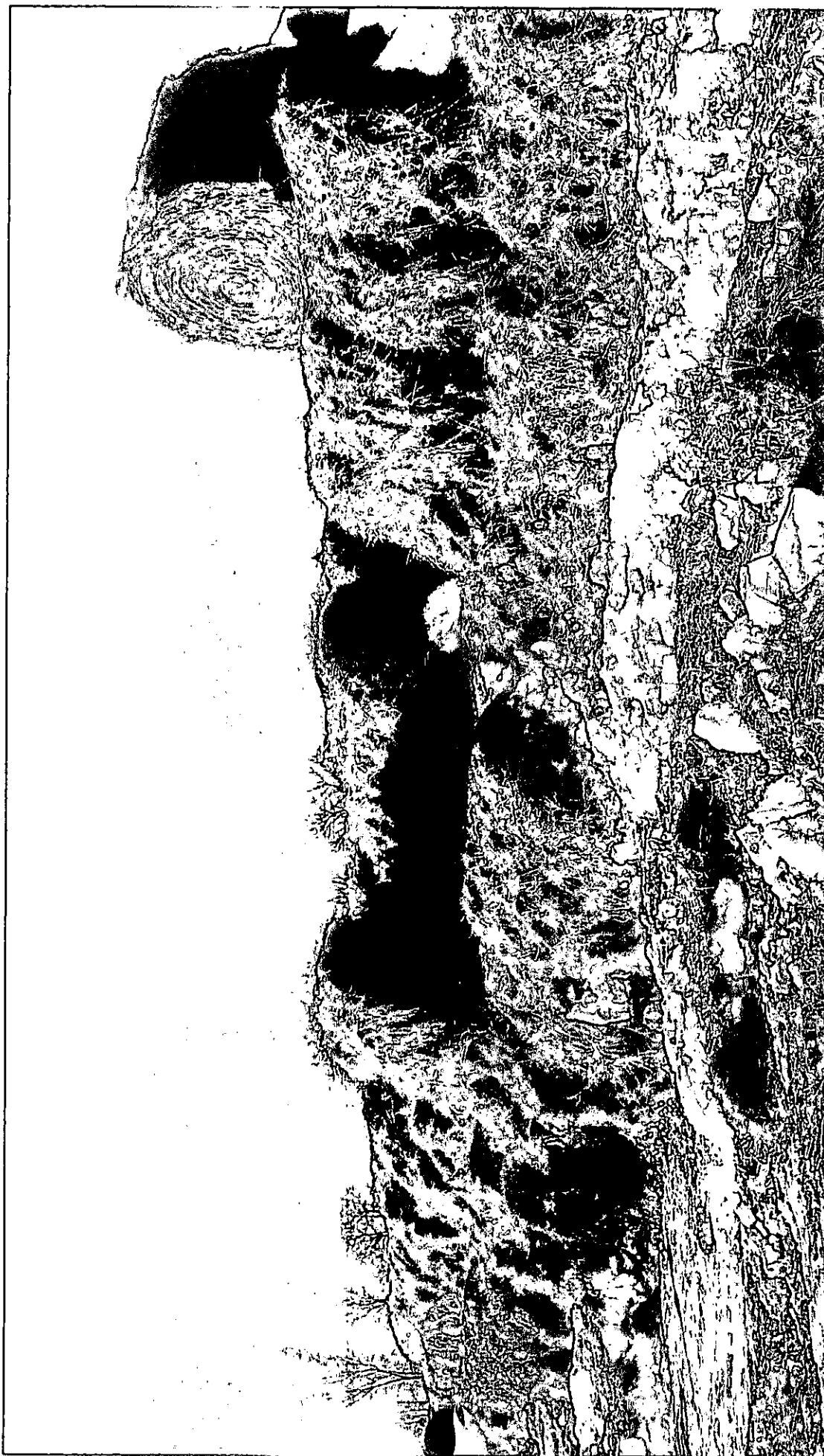




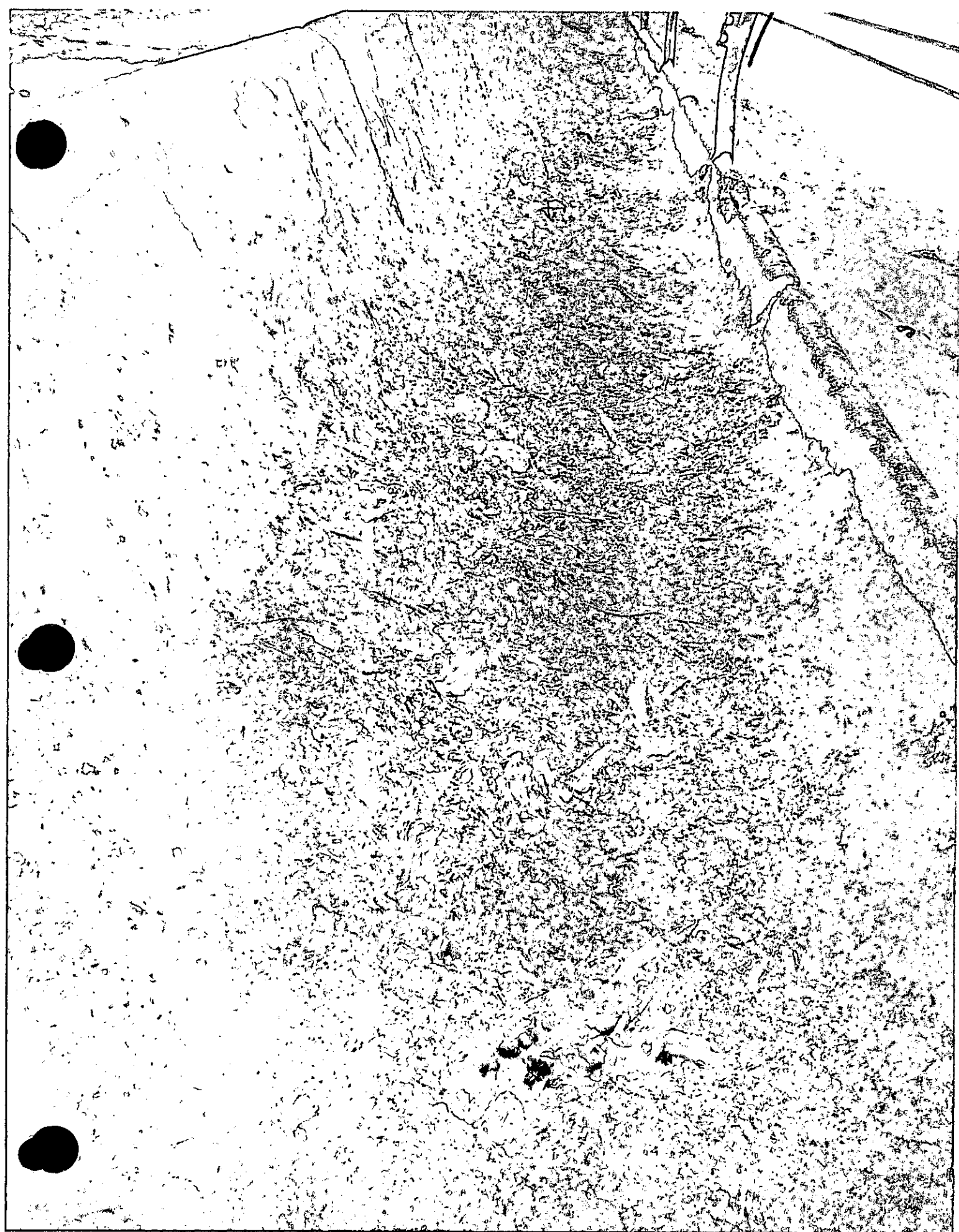
Rich. 19













2. An eligible organization authorized to conduct games of chance under chapter 53-06.1 may raffle live beef or dairy cattle, bison, sheep, horses, and pigs, provided each raffle ticket contains a statement that the person who wins the animal may convert that prize to a cash prize. The animal to be raffled may be donated to or purchased by the organization. The donor or seller of the animal shall determine the market value of the animal. If the person who wins the animal desires a cash prize instead of the animal, the organization shall pay the player a cash prize that must equal the lesser of the market value of the animal or the maximum single cash prize amount allowed under section 53-06.1-10.1.
3. A person may not give away any live animal, other than those authorized under subsections 1 and 2, as:
 - a. A prize for, or as an inducement to enter any contest, game, or other competition;
 - b. An inducement to enter a place of amusement; or
 - c. An incentive to enter into any business agreement where the offer was for the purpose of attracting trade.
4. The provisions of subsection 3 do not apply to a person or organization that gives away an animal:
 - a. As a project for the promotion of the equine and livestock industry of North Dakota;
 - b. As a project for the promotion of conservation of animals and wildlife in North Dakota; or
 - c. Which is intended for slaughter.

36-21.1-10. Care of animals used as advertising devices. Every person who sells, offers for sale, raffles, offers, or gives as a prize, premium, or advertising device, chicks, ducklings, or goslings to the public, shall provide and operate brooders or other heating devices necessary to maintain the chicks, ducklings, or goslings in good health, and shall keep adequate food and water available to the birds at all times.

36-21.1-11. Penalty. Any person knowingly and willfully violating any rule adopted by the board or violating any provision of this chapter for which a specific penalty is not provided is guilty of a class A misdemeanor.

36-21.1-12. Duties of board and commissioner. The board shall adopt rules to effectuate this chapter. The board by rule may restrict the importation into the state, and restrict the sale or other distribution within the state, of all domestic animals or animals wild by nature which the board may have reason to believe may be a threat to the health and well-being of the human or animal population of the state, or both, unless the importation or sale is for bona fide scientific or educational purposes. The board shall establish reasonable qualifications for approved investigators and the commissioner shall maintain a current listing of all approved investigators. Employees of the commissioner may be assigned as investigators. The commissioner may by injunctive procedure without bond or other undertaking proceed against any person or persons for a continuous violation of any provision of this chapter. No liability may accrue to the board, the commissioner, or any authorized representative in proceeding against any person or persons pursuant to this section.

36-21.1-13. Abandoned animals - Assumption of custody.

1. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of and care for any animal found abandoned. The individual taking custody shall take reasonable steps to determine the ownership of the abandoned animal.
2. A sheriff, police officer, licensed veterinarian, or investigator may care for the animal until the animal is redeemed by the owner or the owner's agent or may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink.
3. Notice must be given by publication in the official newspaper of the jurisdiction. The notice must provide that the animal may be sold, placed for adoption, or otherwise disposed of if the animal is not redeemed within five days from the date of the notice.
4. The person having custody of the animal has a lien on the animal for the animal's care and keeping, the reasonable value of the food and drink furnished, and the expenses of notifying the owner or the owner's agent. The lien is superior to any other claim or lien. If the lien is not discharged and satisfied by the owner or the owner's agent within five days after publication of the notice, the person holding the claim may sell the animal and discharge the lien.
5. The court may award reasonable attorney's fees to the person bringing the action to enforce the lien and may award costs, which include the costs of arranging for the adoption of the animal or the costs of the destruction and disposal of the animal.
6. If the animal is sold, the lienholder is entitled to the proceeds of the sale to the extent of the lien and the remainder, if any, must be deposited in the county general fund.

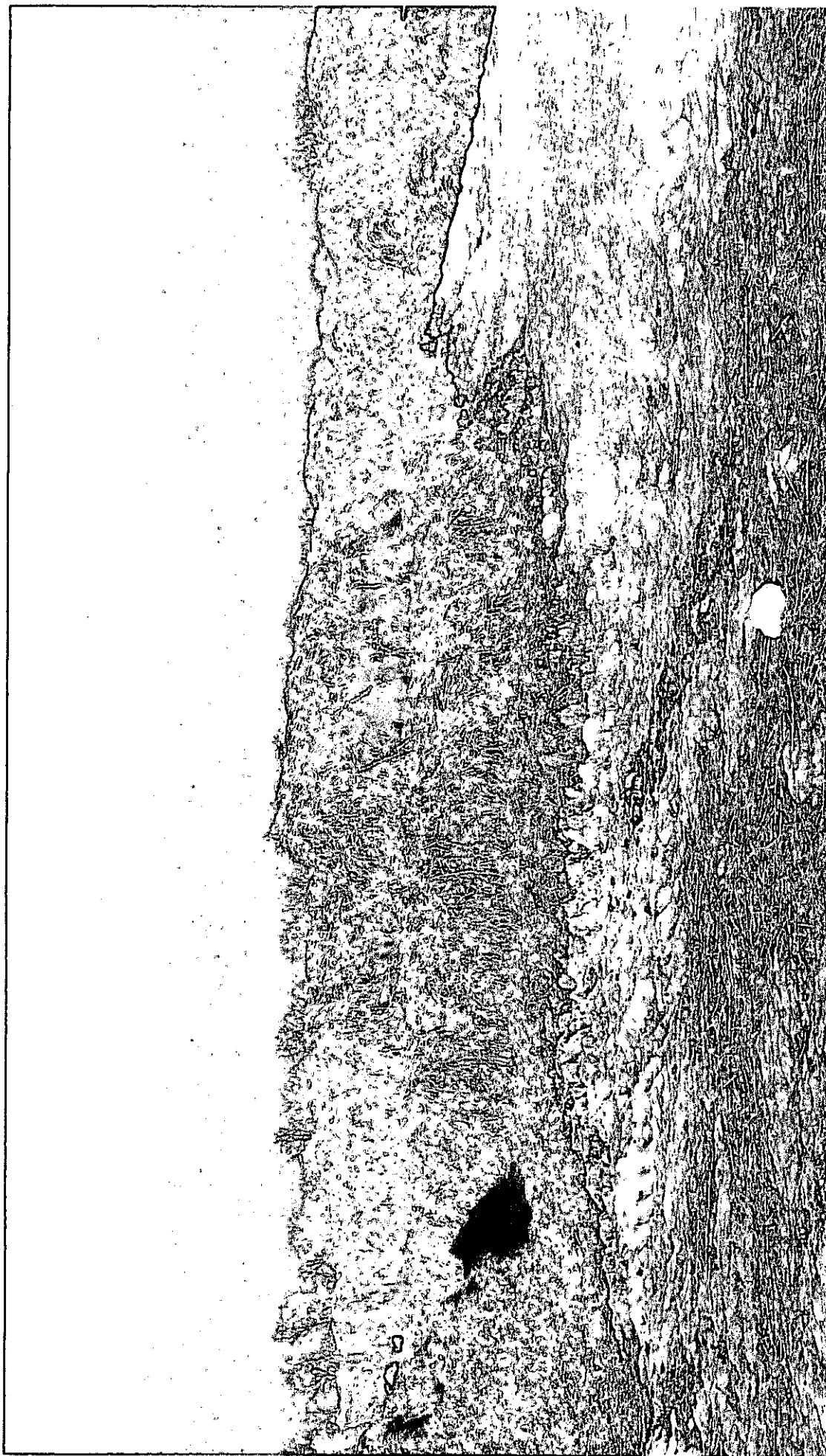
36-21.1-14. Assumption of custody - Immunity from liability. Any sheriff, police officer, licensed veterinarian, investigator, or person who has custody of an animal under this chapter and who is acting in an official or professional capacity and making a good-faith effort to comply with this chapter is immune from any civil or criminal liability for acts taken or omitted while attempting to comply with this chapter.

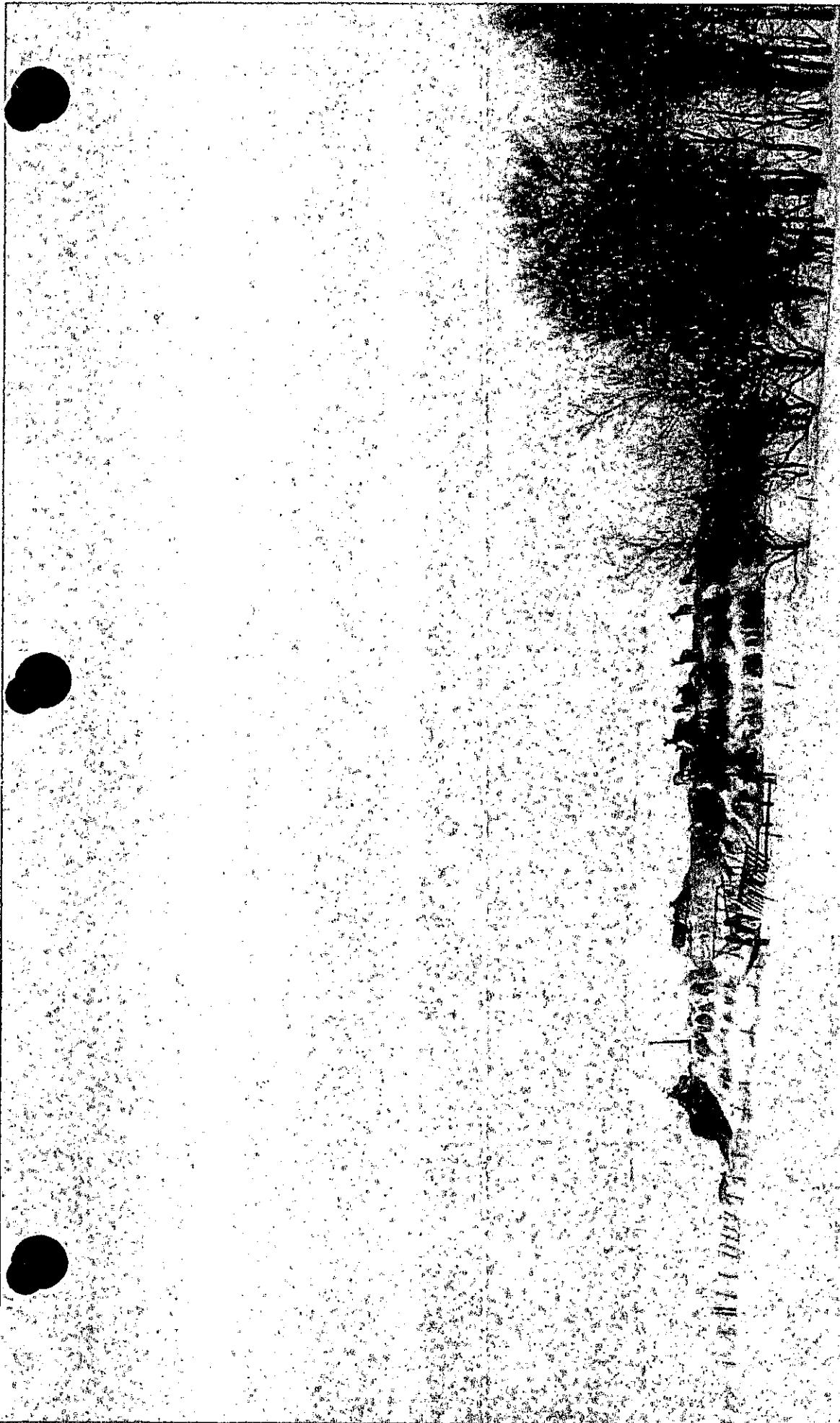
36-21.1-15. Applicability of chapter. This chapter does not apply to estrays covered under chapter 36-22.

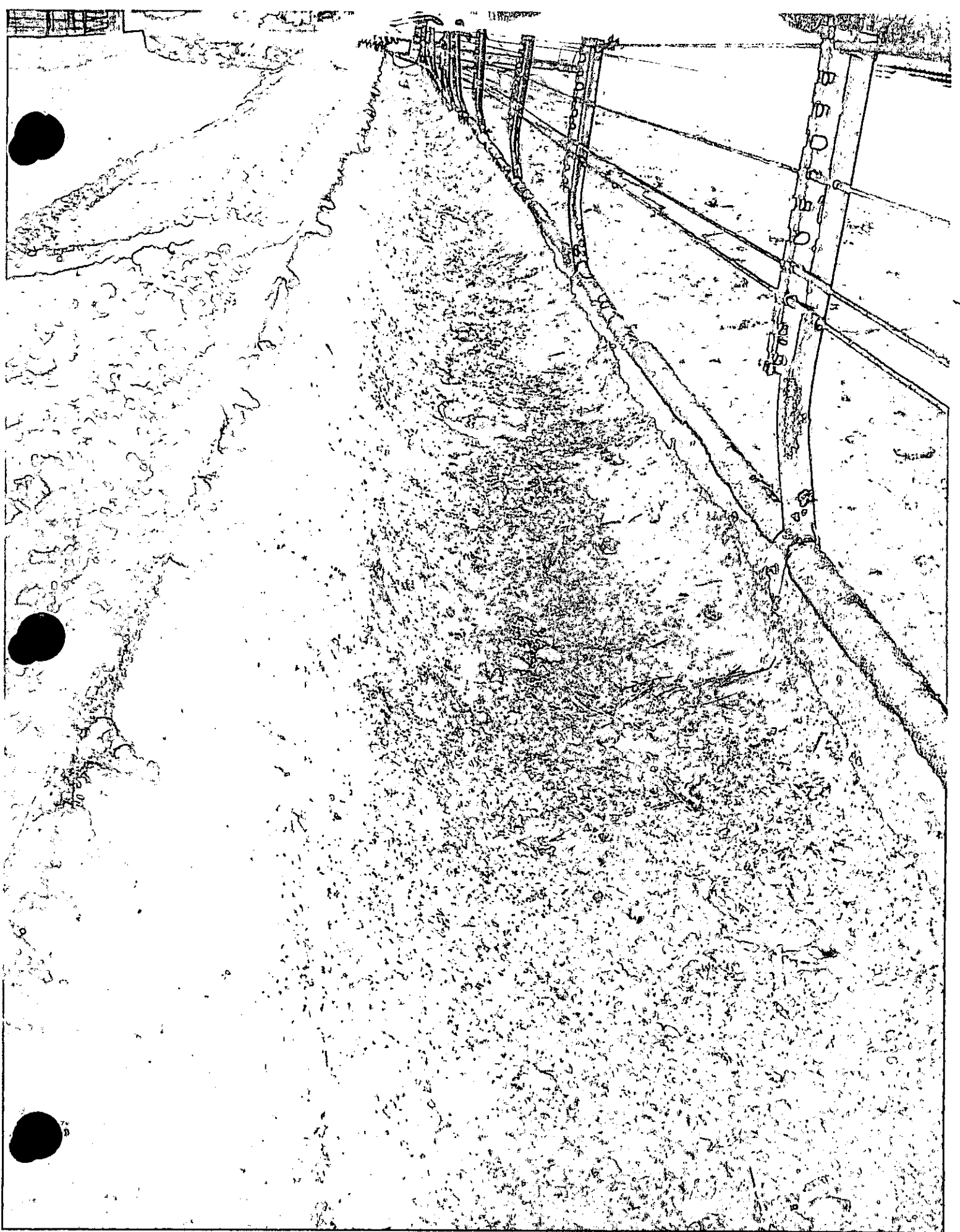


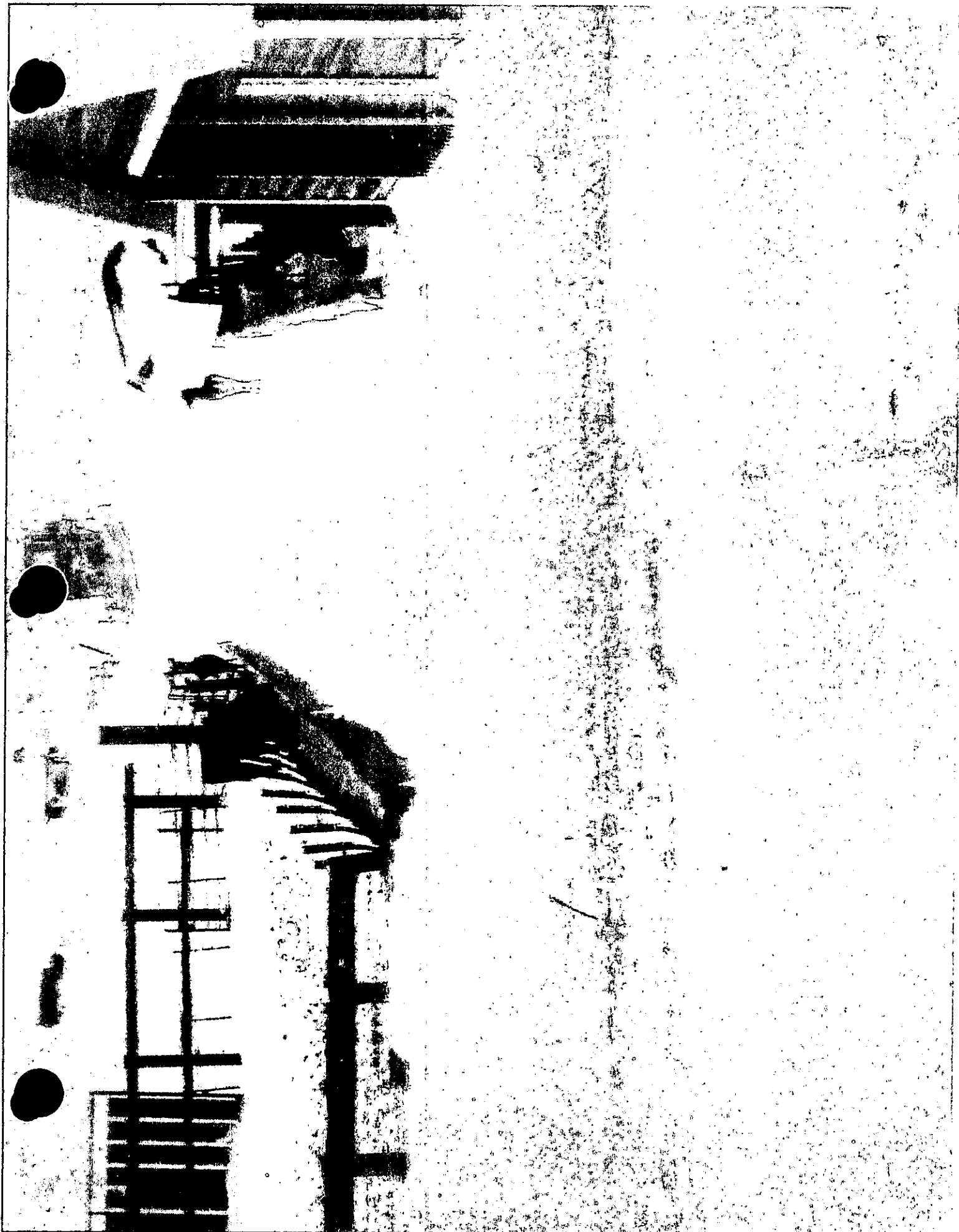










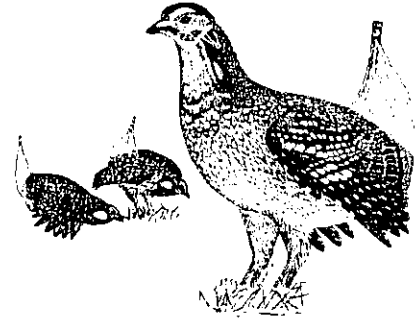




North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
ON SB 2227
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
MARCH 10, 2011**

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

For the record, Mike McEnroe, representing the North Dakota Chapter of The Wildlife Society.

The Chapter is opposed to SB 2227. While we understand the intent and sympathize with landowners who have deer depredation problems, we believe this bill does not provide a solution.

Section 2 of SB 2227 does not define "severely impacted" by deer. Does that mean 10, 50, or a 100 deer damaging haystacks, or a doe and two fawns eating rosebushes? Severe impact varies from landowner to landowner or from one's perspective.

Section 2 also requires the Director to attempt other measures, but it does not describe those measures. The Director currently has quite a number of other measures at hand. (Scare devices, short-stop feed supplies, and hay yards) It requires the Director to determine that these other measures have not been effective, but does not define "ineffective". Is a reduction in the number of deer depredating feed supplies from 100 deer to 25 effective? Does being effective mean "no deer"? Or is "ineffective" left to the landowner to define or accept?

Section 3 of the bill states the Director shall provide deer proof hay yard materials and "construction cost-share assistance" to landowners. Does the landowner have some responsibility to assist or help with the problem.

Section 4 changes the strict liability requirement for the big game protection statute, to a willful intent. This places a wildlife law enforcement officer in the almost impossible position of proving intent by a potential violator of the big game statute.

Finally, the logistics of managing a depredation hunt on an individual farm or ranch are not effective. Will the landowner be agreeable to one or several individuals with one or several antlerless deer tags coming out to the farm or ranch and shooting one or a couple of deer each weekend? Shooting deer off the haystack is still a one or two animals per "shoot" operation. Then one must wait for the herd to return and shoot one or two more. This does not magically reduce a herd of 50 or 100 animals to none or 5 or 10, or some acceptable number in the course of a couple days. We also question the palatability of a stressed deer in January, February, and March. These will not be very desirable animals from an edibility standpoint.

The Chapter would support a depredation bill that address deer depredation issues, but believes this bill fails to do that. We urge a ~~"Do not Pass"~~ recommendation on SB 2227. Thank you for the opportunity to provide comments. I will answer any questions the committee may have.

PITTMAN-ROBERTSON WILDLIFE RESTORATION

FY 2011 BUDGET JUSTIFICATION

U.S. FISH AND WILDLIFE SERVICE
FINAL APPORTIONMENT OF PITTMAN-ROBERTSON
WILDLIFE RESTORATION FUNDS FOR FISCAL YEAR 2010 ESTIMATED

STATE	WILDLIFE FUNDS-5220 CFDA: 15.611	HUNTER SEC 4(c) FUNDS-5210 CFDA: 15.611	EDUCATION SEC 10 FUNDS-5230 CFDA: 15.626	TOTAL
ALABAMA	\$6,407,633	\$1,776,432	\$180,641	\$8,364,706
ALASKA	19,289,787	786,724	80,000	20,156,511
AMERICAN SAMOA	642,992	131,121	13,333	787,446
ARIZONA	9,204,309	2,360,171	240,000	11,804,480
ARKANSAS	7,929,322	786,724	80,000	8,796,046
CALIFORNIA	13,306,714	2,360,171	240,000	15,906,885
COLORADO	9,796,799	1,882,196	191,396	11,870,391
CONNECTICUT	1,928,979	1,334,163	135,668	3,398,810
DELAWARE	1,928,979	786,724	80,000	2,795,703
DISTRICT OF COLUMBIA	0	0	0	0
FLORIDA	5,995,279	2,360,171	240,000	8,595,450
GEORGIA	7,104,412	2,360,171	240,000	9,704,583
GUAM	642,992	131,121	13,333	787,446
HAWAII	1,928,979	786,724	80,000	2,795,703
IDAHO	8,124,224	786,724	80,000	8,990,948
ILLINOIS	7,196,054	2,360,171	240,000	9,796,225
INDIANA	5,468,727	2,360,171	240,000	8,068,898
IOWA	6,717,580	786,724	80,000	7,584,304
KANSAS	7,510,524	786,724	80,000	8,377,248
KENTUCKY	6,652,249	1,626,810	165,426	8,444,485
LOUISIANA	6,879,102	1,680,748	170,911	8,730,761
MAINE	4,546,361	786,724	80,000	5,413,085
MARYLAND	2,249,848	2,146,701	218,292	4,614,841
MASSACHUSETTS	1,928,979	2,360,171	240,000	4,529,150
MICHIGAN	15,646,740	2,360,171	240,000	18,246,911
MINNESOTA	12,398,269	1,989,248	202,282	14,589,799
MISSISSIPPI	5,837,437	786,724	80,000	6,704,161
MISSOURI	10,150,567	2,252,636	229,064	12,632,267
MONTANA	11,665,905	786,724	80,000	12,532,629
N. MARIANA ISLANDS	642,992	131,121	13,333	787,446
NEBRASKA	6,765,736	786,724	80,000	7,632,460
NEVADA	7,276,337	786,724	80,000	8,143,061
NEW HAMPSHIRE	1,928,979	786,724	80,000	2,795,703
NEW JERSEY	1,928,979	2,360,171	240,000	4,529,150
NEW MEXICO	8,366,555	786,724	80,000	9,233,279
NEW YORK	10,734,970	2,360,171	240,000	13,335,141
NORTH CAROLINA	9,153,665	2,360,171	240,000	11,753,836
NORTH DAKOTA	6,190,593	786,724	80,000	7,057,317
OHIO	7,619,323	2,360,171	240,000	10,219,494
OKLAHOMA	8,585,728	1,387,934	141,136	10,114,798
OREGON	9,282,553	1,444,215	146,859	10,873,627
PENNSYLVANIA	14,398,130	2,360,171	240,000	16,998,301
PUERTO RICO	1,928,978	131,121	13,333	2,073,432
RHODE ISLAND	1,928,979	786,724	80,000	2,795,703
SOUTH CAROLINA	4,454,720	1,707,042	173,585	6,335,347
SOUTH DAKOTA	7,779,103	786,724	80,000	8,645,827
TENNESSEE	10,947,728	2,360,171	240,000	13,547,899
TEXAS	19,289,787	2,360,171	240,000	21,889,958
UTAH	7,042,930	786,724	80,000	7,909,654
VERMONT	1,928,979	786,724	80,000	2,795,703
VIRGIN ISLANDS	642,992	131,121	13,333	787,446
VIRGINIA	6,392,066	2,360,171	240,000	8,992,237
WASHINGTON	6,644,920	2,360,171	240,000	9,245,091
WEST VIRGINIA	4,312,007	786,724	80,000	5,178,731
WISCONSIN	12,946,894	2,144,555	218,075	15,309,524
WYOMING	7,601,382	786,724	80,000	8,468,106
TOTAL	\$385,795,747	\$78,672,396	\$8,000,000	\$472,468,143

<Note> Amount apportioned includes reverted and recovered funds

U.S. FISH AND WILDLIFE SERVICE
PRELIMINARY APPORTIONMENT OF PITTMAN-ROBERTSON
WILDLIFE RESTORATION FUNDS FOR FISCAL YEAR 2011 ESTIMATED

STATE	WILDLIFE FUNDS-5220 CFDA: 15.611	HUNTER SEC 4(c) FUNDS-5210 CFDA: 15.611	EDUCATION SEC 10 FUNDS-5230 CFDA: 15.626	TOTAL
ALABAMA	\$8,153,811	\$2,145,110	\$180,641	\$10,479,562
ALASKA	24,546,550	950,000	80,000	25,576,550
AMERICAN SAMOA	818,218	158,333	13,333	989,884
ARIZONA	11,712,624	2,850,000	240,000	14,802,624
ARKANSAS	10,090,183	950,000	80,000	11,120,183
CALIFORNIA	16,932,998	2,850,000	240,000	20,022,998
COLORADO	12,466,577	2,272,824	191,396	14,930,797
CONNECTICUT	2,454,655	1,611,055	135,668	4,201,378
DELAWARE	2,454,655	950,000	80,000	3,484,655
DISTRICT OF COLUMBIA	0	0	0	0
FLORIDA	7,629,084	2,850,000	240,000	10,719,084
GEORGIA	9,040,473	2,850,000	240,000	12,130,473
GUAM	818,218	158,333	13,333	989,884
HAWAII	2,454,655	950,000	80,000	3,484,655
IDAHO	10,338,199	950,000	80,000	11,368,199
ILLINOIS	9,157,089	2,850,000	240,000	12,247,089
INDIANA	6,959,039	2,850,000	240,000	10,049,039
IOWA	8,548,224	950,000	80,000	9,578,224
KANSAS	9,557,257	950,000	80,000	10,587,257
KENTUCKY	8,465,089	1,964,435	165,426	10,594,950
LOUISIANA	8,753,763	2,029,568	170,911	10,954,242
MAINE	5,785,314	950,000	80,000	6,815,314
MARYLAND	2,862,966	2,592,224	218,292	5,673,482
MASSACHUSETTS	2,454,655	2,850,000	240,000	5,544,655
MICHIGAN	19,910,716	2,850,000	240,000	23,000,716
MINNESOTA	15,776,987	2,402,093	202,282	18,381,362
MISSISSIPPI	7,428,228	950,000	80,000	8,458,228
MISSOURI	12,916,751	2,720,145	229,064	15,865,960
MONTANA	14,845,043	950,000	80,000	15,875,043
N. MARIANA ISLANDS	818,218	158,333	13,333	989,884
NEBRASKA	8,609,503	950,000	80,000	9,639,503
NEVADA	9,259,250	950,000	80,000	10,289,250
NEW HAMPSHIRE	2,454,655	950,000	80,000	3,484,655
NEW JERSEY	2,454,655	2,850,000	240,000	5,544,655
NEW MEXICO	10,646,569	950,000	80,000	11,676,569
NEW YORK	13,660,414	2,850,000	240,000	16,750,414
NORTH CAROLINA	11,648,179	2,850,000	240,000	14,738,179
NORTH DAKOTA	7,877,625	950,000	80,000	8,907,625
OHIO	9,695,705	2,850,000	240,000	12,785,705
OKLAHOMA	10,925,470	1,675,983	141,136	12,742,589
OREGON	11,812,191	1,743,945	146,859	13,702,995
PENNSYLVANIA	18,321,841	2,850,000	240,000	21,411,841
PUERTO RICO	2,454,655	158,333	13,333	2,626,321
RHODE ISLAND	2,454,655	950,000	80,000	3,484,655
SOUTH CAROLINA	5,668,700	2,061,320	173,585	7,903,605
SOUTH DAKOTA	9,899,028	950,000	80,000	10,929,028
TENNESSEE	13,931,152	2,850,000	240,000	17,021,152
TEXAS	24,546,550	2,850,000	240,000	27,636,550
UTAH	8,962,236	950,000	80,000	9,992,236
VERMONT	2,454,655	950,000	80,000	3,484,655
VIRGIN ISLANDS	818,218	158,333	13,333	989,884
VIRGINIA	8,134,002	2,850,000	240,000	11,224,002
WASHINGTON	8,455,762	2,850,000	240,000	11,545,762
WEST VIRGINIA	5,487,095	950,000	80,000	6,517,095
WISCONSIN	16,475,121	2,589,633	218,075	19,282,829
WYOMING	9,672,875	950,000	80,000	10,702,875
TOTAL	\$490,931,000	\$95,000,000	\$8,000,000	\$593,931,000

PROPOSED AMENDMENT TO REENGROSSED SENATE BILL 2227

Page 1, line 20, replace "agriculture" with "North Dakota"

Page 1, line 21, remove "mandatory"

Page 1, line 21, replace "A decision" with "If the parties"

Page 1, line 21, after "service" insert "are unable to reach a negotiated settlement,"

Page 1, line 22, remove "negotiator is subject to review by"

Page 1, line 22, after "board" insert "may issue a final, non-appealable, decision"

Page 1, line 22, remove "A decision of the credit"

Page 1, line 23, remove "review board under this subsection is final."

Page 1, lines 19-23 would read:

"A landowner dissatisfied with a decision of the director under this subsection may submit the decision to the North Dakota mediation service for mediation. If the parties of an agricultural mediation service are unable to reach a negotiated settlement, the credit review board may issue a final, non-appealable, decision."