

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1352

2005 HOUSE NATURAL RESOURCES

HB 1352

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1352

House Natural Resources Committee

Conference Committee

Hearing Date February 3, 2005

Tape Number	Side A	Side B	Meter #
1		x	0-2470
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

Chr. Nelson: Open the hearing on HB 1352 and ask the clerk to read the title.

Rep. Shirley Meyer, Dist. 36: HB 1352 is similar to some of the things that the surface owners are suffering with that we alluded to in 1344. One of the problems we're running into as surface owners where we own a portion or none of the mineral acres, when it comes to updating our abstract, it is an extremely expensive process. The entire cost of updating the abstract always lands on the surface owner. This is going to be required. What we're trying to do is reapportion these costs between the surface owners and the mineral acre owners. For example, if you're a surface owner updating your abstract, you do that. If you have to update your abstract concerning the mineral acres and you own 25% of those, this would address the cost of apportioning that between the mineral acres and the surface owner on a percentage basis. The surface owner's cost of updating that abstract would then be 25%. Minerals are not taxed at this time. Until they start being taxed, and we're always told minerals can't be taxed because they have no value unless

they're being produced. If you've ever tried to buy or sell land, you know the minerals do have a value, if they've never been produced or leased. That is what this bill is trying to address. I'm not sure if it is exactly the way it should be, but we're trying to bring out that the mineral acre owners need to help in the cost of updating our abstract. An abstract is gathered off public documents, but at the time it's gathered, it becomes a confidential document because you have to pay for it. It's extremely expensive. In the case of a real estate sale, we're trying to accomplish apportioning these costs between the surface owner and the mineral acres owners. I think we will find very fast that when these mineral owners start having a charge to them of any kind, whether it be a tax or having to pay to update your abstract, you're going to find just exactly how many of these mineral acres have been abandoned.

Chr. Nelson: Are there any questions for Rep. Meyer?

Rep. Solberg: Are the abstract costs from one abstract company to another fairly uniform or can they charge whatever they like depending on their location?

Meyer: I don't know that.

Rep. Hunsakor: Who's responsible for the fee for getting an abstract updated currently?

Meyer: The surface owner, 100%

Rep. Nottestad: If this bill passes and you went to an abstractor to have an update made, part of the bill would go to you, part of it to those who own the mineral rights. Would it be up to the abstractor to collect the money, and if it was, and these owners were all over, would he want to take your business on?

Meyer: That's exactly what I see as one of the problems of the bill.

Chr. Nelson: Further questions for Rep. Meyer? Seeing none, thank you for your testimony. Is there further support for HB 1352 at this time?

Bobbi Kukla, self: (Written testimony attached)

Chr. Nelson: Are there questions of Ms. Kukla?

Rep. Nottestad: Do you think the abstract company would take the search on under the basis of this bill, not knowing where the money is coming from, or having to seek it out by sending out 20-25 bills on a quarter of land?

Kukla: I believe that the mineral owners would already be defined and that could be something that is worked out through the abstractor and the royalty companies.

Nottestad: Bear in mind that they're not requesting the abstract.

Kukla: It's the banks and mortgage companies that make the request.

Chr. Nelson: Are there further questions?

Kukla: I'm not sure who should pay the bill, but I think that...

Nottestad: That's what the bill you're testifying for states.

Kukla: I think it should be split up. I do not believe that the surface owner should be the sole recipient of that bill.

Chr. Nelson: Are there further questions? Seeing none, thank you. Is there further support of HB 1352

Brian Kramer, ND Farm Bureau: We stand in support of this bill as well. We think the point has been that the surface owner bears all the cost when it comes to the abstract fees. In large part, those abstract fees deal with the mineral interests. Why should not the person who owns

that mineral interest and has a vested interest in that abstract, why should they not bear some of the cost. That is what this bill is about and that's why we support it.

Chr. Nelson: Are there questions of Mr. Kramer? Seeing none, thank you for your testimony. Is there further support for HB 1352?

Woody Barth, ND Farmers Union: We, too, stand in support of HB 1352. We believe when the abstracts are updated that the cost should be prorated between the surface rights and mineral rights. They should be reimbursed or pay the cost as those abstracts are updated to transfer property.

Chr. Nelson: Are there questions for Mr. Barth?

Rep. Clark: If a surface owner comes in, wants his abstract updated, but the mineral owner is not interested in having it updated, should he have to pay part of that bill?

Barth: Then there would be no cost associated with that portion of the abstract update and I think Lines 15-16 address that in the top portion of the bill that is not being amended here. There is a separation amongst the surface abstracts and the mineral abstracts. If the minerals aren't updated, then we would feel that it would only be borne by the surface owner. That is done in some cases.

Chr. Nelson: Further questions by Mr. Barth? Seeing none, thank you for your testimony. Is there further support of HB 1352? Seeing none, is there opposition to HB 1352.

Brian Bjella, ND Landman Assoc.: These are the men and women who have researched mineral rights and leasing for oil drilling in ND. I'm also a member of the ND Petroleum Council and Ron Ness could not be here today but he asked me to indicate to the committee the opposition of the ND Petroleum Council to the bill. Under the existing law, Lines 7-10, an

abstractor can furnish a surface-only abstract when requesting to do so, omitting the entries of mineral rights and severed mineral rights. So, there is already a process on the books whereby a surface owner, if they only want a surface abstract, can request it from the abstractor and get it. So they can omit all the mineral entries that could increase the cost. The way this mechanism is set up, it simply unworkable. What you are asking the abstractor's to do is to not only include all the mineral entries but also to determine the current mineral owners, who have gone through 50 years of title changes, to determine their interests, their address, then send them a bill for something they did not request and will not receive. We understand the concerns of the surface owners but believe the law already provides a mechanism to get a surface-only abstract. We fill this law would not work and put an incredible burden on the abstractors from which they cannot recover their fee.

Chr. Nelson: Are there situations where the surface owner wouldn't necessarily request a mineral abstract update but in present law have to bear the cost of that update? That is what this bill is addressing. I don't think the surface update is in question. I understand the complexities of the billing process, but as far as the fairness issue, wouldn't you agree that the surface owner is required to bear the cost? Isn't that an onerous requirement for that individual?

Bjella: I understand that a full mineral abstract and surface abstract could be quite lengthy and expensive, but I'm not aware of why they are required to do that. My understanding for lending purposes that if they are simply lending on the surface that that is all that should be necessary. The minerals are not part of the collateral for the loan. The current law should work.

Chr. Nelson: Maybe I should have asked that question of Ms. Kukla. Why are mineral abstracts updated on a regular basis. What's the reason for that?

Bjella: I'm sorry I can't speak for that.

Chr. Nelson: Any questions from the committee members? Seeing none, thank you. Further opposing testimony for HB 1352?

Jim Horner, ND Land Title Assoc.: (Written testimony attached)

Chr. Nelson: Are there questions of Mr. Horner? Seeing none, thank you. Is there further testimony in opposition to HB 1352?

A.G. Golden: The surface abstract only is available to the owner if he chooses to do that. The cost of the abstract should always be charged to the person *who orders it*, not to the owners under the land, not to the mortgagors, not to the lenders, not the oil and gas lease holders, or anyone else who has an entry under that land, only to the person that orders it. In order to get a drill site opinion, we don't expect to charge our cost off to other mineral owners, to other lease owners, to other entities. We expect to pay that cost ourselves and we would expect that whoever finds it necessary to order an abstract on that land, whatever kind of abstract that they choose to order, that they be prepared to pay for that abstract themselves.

Chr. Nelson: Are there questions for Mr. Golden? Seeing none, thank you. Is there further opposition to HB 1352?

Seeing none, I will close the hearing on HB 1352.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1352**

House Natural Resources Committee

Conference Committee

Hearing Date **February 11, 2005**

Tape Number	Side A	Side B	Meter #
2		x	3021-3527
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

CHR. JON O. NELSON: We will take up HB 1352.

Rep. Mike Norland: Isn't the essence of this bill that if you were the surface owner and wanted to have an updated abstract, the mineral owners have to help pay for it.

Chr. Nelson: For those who weren't here, after listening to the testimony, it's really going to be difficult to administer this, speaking from a personal opinion. The nightmare trying to find people to update abstracts - I don't think you would find a person who would do it. To build a practice, it would be impossible.

Rep. David Droydal: I move a do not pass.

Rep. Duane DeKrey: Second.

Chr. Nelson: Before I accept that motion, Rep. Johnson, do you have a question?

Rep. Dennis Johnson: I wasn't here. Did abstractors come in to testify?

Rep. Darrell D. Nottestad: Yes, they did. I spoke to Jim Horner after the hearing and asked him the question, how would he handle it if this bill was passed. He said that his recommendation to all abstractors in the state would be to demand money upfront from the person requesting the abstract and let them collect. That's the only way, he said, that they would be able to do abstracts.

Chr. Nelson: The people I had who testified *for* the bill were Brian Kramer from ND Farm Bureau, Bonnie Kukla, a reporter and Clerk of Court in Dunn County, and Woody Barth from Farmers Union. Opposing testimony was Brian Bjiella, a landsman, Jim Horner, and I don't have his testimony. He's a lobbyist from the Landman's Assoc. Also opposing was Al Golden, who is an oil man from ND. Rep. Drovdal made a do not pass motion, seconded by Rep. DeKrey. Committee discussion.

Rep. Lyle Hanson: Question.

Chr. Nelson: Question has been called. I'll ask the clerk to call the roll on a

Do Not Pass Motion, Vote:

13-Yeas; 0-Nays; 1-Absent; CARRIER: Clark

✓
entered

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

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1352 - Apportionment of abstracter fees ✓

House NATURAL RESOURCES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken : Do Not Pass

Motion Made By : Drovdal Seconded By : DeKrey

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

Total (Yes) 13 No 0

Absent 1

Floor Assignment Clark ✓

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

REPORT OF STANDING COMMITTEE (410)
February 11, 2005 3:10 p.m.

Module No: HR-28-2636
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1352: Natural Resources Committee (Rep. Nelson, Chairman) recommends DO NOT PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1352 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1352

Testimony Prepared For the
Natural Resources Committee
February 3, 2005
By Bobbi Kukla

RE: HB 1352

My name is Bobbi Kukla, and I would like to submit my testimony in support of this bill. While I come on a personal level, representing myself, this issue also affects me professionally. I am the Recorder and Clerk of District Court of Dunn County. I record all legal documents for our county. Some documents deal with surface ownership, mortgages on land, many liens on personal property, all criminal documents, but the bulk of the documents that are recorded in my office are dealing with mineral ownership.

Many times, surface owners come in wanting to update their abstracts. The bulk of these requests come from surface owners, but because of the increased oil and gas activity, their requests have expanded to prove their mineral ownership. It is the duties of the Abstractors to compile data from the chain of title as to which mineral rights, royalties, or other mineral interests the requestor owns. We then refer them to the Abstract office. Upon receiving the estimate for updating their mineral abstracts, they often times return to our office in frustrating, finding that this task is not only quite lengthy and time consuming, but very costly.

After contacting our abstract office, Northwest Abstract in Williston, I understand why the costs are prohibitive. In one quarter of land, there can be hundreds of owners, all owning a small portion of the mineral rights. These abstracts are not only cost prohibitive, but they are also quite bulky, and are hard to understand for the lay person. Many banks and mortgage companies request the abstracts be updated not only on the surface, but also on the mineral acres. The surface owner may own only a minimal fraction of the mineral rights, but is burdened with the cost of these abstracts. The majority of the surface owners are our farmers and ranchers with limited funding.

In the passage of this bill, the financial burden can be shared with all mineral owners. I feel if one is to benefit from the royalties of the oil and gas activity, it is only fair to split the costs amongst all recipients. As an effect, mineral owners that have only a fraction of rights to these mineral acres may be more inclined to sell these rights to other owners with a more substantial interest, or in the best case scenario, gift them to the surface owners, in most cases, our farmers and ranchers.

Thank you for your time.

Testimony of James Horner, Lobbyist for North Dakota Land Title Association on House Bill 1352.

Mr. Chairman and members of the committee.

My name is Jim Horner and I am the Lobbyist for the North Dakota Land Title Association. This association is comprised of all of the abstract companies in the State of North Dakota.

This bill would have the abstracter bill to each mineral holder the cost of the abstracting of the mineral entries according to their proportionate share of the mineral interest.

This would be very impractical as we would be sending bills out to holders of mineral interest in land who did not authorize any abstract work to be done and did not agree to make any such payment. Many of these mineral holders would go many years back. We would have problems with addresses and even who they are as some of them may be deceased.

If the owner does not want to be charged for entries pertaining to mineral they can request what is called a surface abstract. This would leave off the mineral entries and there would be no charge according to law.

If they want to see who the names of the mineral holders may be, they could request that all mineral entries be listed in a buyer, sell, date manner and the cost for that would be \$1.50.

If they request the entire document be shown, of course then there is the normal charge as like any other entry to an abstract

The cost of sending these bills out to those holders of minerals may even be more than the amount of the bill.

Also, if this were to pass and become law, we would have to remember that the State of North Dakota hold many mineral interests in the state and would therefore be billed when an abstract is done where their interest is involved, and I would think the State of North Dakota would follow the law and pay, if this were to become law.

However, like any other business, we are allowed to charge the cost of the order for the work to the party requesting the work to be done. There would be no contract between the abstracter and any other party which would require any type of payment.

We would hope that you give this measure a do not pass recommendation.

Thank You

Jim Horner

Lobbyist, North Dakota Land Title Association