

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

2254

2007 SENATE NATURAL RESOURCES

SB 2254

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2254

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: # 2566, 2567

Committee Clerk Signature

*Janet James*

Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee brought the committee to order.

Attendance was taken indicating all members of the committee were present.

**Senator Lyson** opened the hearing on SB 2254 relating to hunting on nontraditional livestock and farmed elk facilities and to the escape and identification of farmed elk.

**Senator Lyson** explained to those attending the process of the hearing.

**Senator Tim Mathern** from District 11 sponsor of SB 2254 introduced the bill on the behalf of hunters and other outdoor enthusiasts (See attachment #1). He also submitted amendments (See with Attachment #1).

**Senator Layton Freborg** asked if there was any record of deceased farmed or otherwise elk in North Dakota.

**Senator Mathern** answered that disease has been kept out of the state and specifically CWD (chronic waste disease) has not yet shown up in the state, although he left that to the experts to answer the question.

**Senator Constance Triplett** commented the senators have received a lot of communication from constituents regarding SB 2254 and those opposed the bill say it would impose on their

rights as property owners. She asked if he could identify why the state should have this interest in regulating the industry to this extent as he is proposing.

**Senator Mathern** answered that one of the state's interests is reflected in the number of people attending the hearing. With differing points of view, there needs to be a process for addressing those points of view. He further stated the second is the economic issue that has different points of view whether it is the farmer with the elk or the industry of hunting and its related industries. The economic consequences are broad. The third issue is how we deal with animals in the state and that there are many laws that regulate these animals enforced by the North Dakota Game and Fish Department. These three indicators are important and should be addressed by the legislature.

**Shawn McKenna**, Executive Director of the North Dakota Wildlife Federation testified in support of SB 2254 (See attachment #2). He also presented a survey conducted by the federation regarding fenced hunting (See with attachment #1).

**Senator Herbert Urlacher** asked if the survey indicated the elk were raised in a cage.

**Shawn McKenna** responded that was not the case.

**Senator Joel Heitkamp** stated he did not disagree with the nature of the hunt in a cage but would not a better word be harvest. Instead of hunt. He asked what the difference is if the goal is for the meat.

**Shawn McKenna** commented that a cow is never mounted on the wall as a trophy.

**Senator Heitkamp** stated he has seen a lot of long horn cows on the wall. He further made his point asking if the objection is the bragging of the hunt or is it the ethics of shooting something in a pen.

**Shawn McKenna** answered the objection to SB 2254 was all of the above.

**Senator Triplett** asked if this is any different shooting a deer that has been eating in the vegetable garden all year long.

**Shawn McKenna** answered that is not a hunt but is shooting deer that has been eating your vegetables and he would not do that.

**Senator Triplett** asked if he thought the state should have an interest in making a law that a person could not shoot a deer in a garden.

**Shawn McKenna** answered it was not for him to decide as he does not make the laws.

**Senator Triplett** stated the committee is trying to understand why the state should have interest in regulating private property. We can all agree these are not wild animals that are being discussed, but animals that are owned privately and held in a fence and what is being talked about is depriving people of their private property rights. She further stated those in support of SB 2254 have an obligation to tell the committee in clear terms what is the state's interest is in depriving people of their property rights simply because those opposed do not agree with what the property owners are doing.

**Shawn McKenna** answered that society makes laws all the time that restrict people's ability to use their private property.

**Senator Triplett** agreed that the state does have the right to make those restrictions but only when there is a compelling interest and further asked Shawn to give the committee the compelling state's interest that would make them deprive the property owner's their property rights.

**Shawn McKenna** responded that North Dakota has become a destination for hunter across the county for water fowl hunting, etc. and we want them to come but not to hunt animals inside fenced enclosures. That is not the reputation North Dakota wants.

**Senator Freborg** stated he would not shoot an elk in an enclosure but these animals will be shoot some day either by the owner or someone who is willing to pay to do it and does not see the difference as the animal will eventually be killed.

**Senator Freborg** commented he has always eaten everything he has hunted and has never hung anything on the wall.

**Gary Masching** testified in support of SB 2254 (See attachment # 3).

**Senator Lyson** stated the disease issue is bothersome as the elk farmers he knows are more concerned with the wild elk bringing the disease into the farmed herd and asked why there is a concern of the domestic animals spreading the disease.

**Gary Masching** answered it was due to the leaky fence and where they have escaped in the wild.

**Senator Lyson** asked how many wild animals are tested for the disease when the farmers are testing their domestic herds on a regular basis. Are the North Dakota Game and Fish Department testing the wild elk?

**Gary Masching** answered there are domestic elk in the wild that are unaccounted for, although it is not known if they are diseased or not.

**Senator Urlacher** stated the domestic elk are disease controlled and the wild are not, he is concerned with the chance of spreading disease from the outside verses the spreading of disease from the disease tested and controlled inside.

**Gary Masching** commented he is not as much concerned with the disease issue as the ethical issue of shooting in a pen and should take a lesson from Theodore Roosevelt as referred to in his written testimony.

**Mike McEnroe** representing the North Dakota Chapter of the Wildlife Society testified in support of SB 2254 (See attachment #4). He further stated the bill is not about nonresident

hunting issues, does not address wildlife disease issues, does not change the existing disease monitoring program of North Dakota Game and Fish Department, it does not change the North Dakota Animal Health disease testing programs, it does not take away land owner right, it does not prohibit fee hunting for wild animals on private land, it does not restrict the guiding and outfitting industry, it does not prohibit the nontraditional livestock industry from raising or selling animals for hide, horn, meat, as breeding stock, as pets or genetic material, it does however stop the pain for shooting such animals, Without sportsmanship and Theodore Roosevelt's definition of arduous pursuit for hunting it just becomes killing animals. This is not the legacy we want to leave our children. He continued by responding to Senator Triplett question of the state's right to deprive land owner's rights stating if the shooting preserves become the way of hunting we will not need the North Dakota Game and Fish Department, no need for habitat, conservation of the nature resources.

**Senator Lyson** asked if he would have objections of having a moratorium for no hunts on ranches.

**Mike McEnroe** responded that would be a step in the right direction but he would have some objections.

**Senator Triplett** stated that although she appreciated his attempt to answer her question, she is still struggling and if he objects to the ranchers owning elk and has them penned

**Mike McEnroe** responded he has no problem with the ownership of nontraditional livestock and does not object to the industry nor the use of the animals for meat as he understands the animal will be killed some day, but the concern is with someone paying to shoot the elk and then is portrayed as hunting or sportsmanship.

**Senator Triplett** asked if it is the money changing hands that bothers him.

**Mike McEnroe** stated it is the charging to kill the elk, it is not the killing but the charging for the privilege to pull the trigger that is their concern.

**Senator Triplett** commented she interrupts Theodore Roosevelt's writing differently than portrayed in the hearing. She does not see his words convincing her to support SB 2254.

**Mike McEnroe** he disagreed and feels the former president would object to shooting an animal in a pen and then referred to the story of not shooting the bear cub.

**Senator Triplett** affirmed it was a personal choice of Theodore Roosevelt not to shoot the bear and we need to distinguish between people making personal moral choices for themselves verses the state telling them what their choices should be. Passage of this bill will tell people what they can and cannot do and that is different than choosing your own moral path.

**Mike McEnroe** stated that the government does this all the time when they tell how much we can drink, how fast we can drive and how much tax we pay by putting sideboards or curves on our behavior. This is a sideboard on natural resource recreation that should be in place.

**Roger Kaseman** testified in support of SB 2254 stating he did some research on Dr. Valerius Geist of Alberta, Canada. (See attachment #5). He further commented on shooting a deer in a garden as the deer can run away but a penned animal cannot and there is a yardage limitation regarding shooting of game near a residency.

**Dave Brandt** testified in support of SB 2254 presenting the results of two audits of deer and elk game farms in other states. (See attachment # 6).

**Senator Lyson** asked what has the audit report have to do with SB 2254.

**Dave Brandt** responded the compliance of the elk ranch industry will ultimately will cause problems as it already is because it costs the hunter, North Dakota Game and Fish Department lots of money.

**Senator Lyson** asked if the passage of the bill will help things, should there be stronger laws or what exactly will help the problem.

**Dave Brandt** answered that noncompliance with laws will not solve the problem, but keeping the industry from expanding would help the problem because it will control the potential risk of spreading disease.

**Senator Urlacher** commented that there is free flowing travel of game which causes the transfer of diseases.

**Dave Brandt** agreed but there is an added risk due to the game farm industry in other states and if the expansion is curbed it will help with the problem.

**Dick Monson**, a farmer and hunter from Barnes County testified in support of SB 2254 (See attachment # 7). He referred to pages 24-27 of his handout and asked the committee to please read them.

**Senator Lyson** asked for testimony in opposition to SB 2254.

**Representative Glen Froseth** of District 6 testified in opposition of SB 2254 stating in has several reputable legal elk farmers in his area. There are crafted laws that govern these elk farmers as well as the rules of the North Dakota Game and Fish Department. This is another way of economic opportunities for these farmers and encourages a Do Not Pass of SB 2254.

**Senator David O'Connell** of District 6 testified in opposition of SB 2254 stating he hears fears of disease spreading and does not agree.

**Bryan Dvirnak**, Bismarck testified in opposition to SB 2254 (See attachment # 8).

Tape recorder stops recording at this time and new Job was started.

**Shawn Schafer** testified in opposition to SB 2254 (See attachment # 9) He further addressed issues raised by other testimony stating there has been an animal with CWD cross state lines, he asked the committee to request all the pages of the survey not just the few chosen to be

presented at the hearing, how can the right of prostitution be compared to the right of a legal industry of elk farming, and the North Dakota Game and Fish Department will not be put out of business. He also highlighted the Canadian specialist of CWD as well as the 20 year old audit of the Game and Fish Department.

**Senator Lyson** questioned the testing of dead animals by the law.

**Shawn Schafer** stated that North Dakota has lead the way in testing of these animals and by the direction of the governor for the North Dakota Game and Fish Department and the elk producers.

**Tim Dvirnak** an elk rancher testified in opposition to SB 2254 (See attachment # 10). Also attached are letters of opposition from **Sally Dvirnak, James B., Craig J. and Brent Shostak,** and **Sam Molwite**.

**Lynn Steven** representing the North Dakota Elk Growers Association testified in they are in opposition to SB 2254. He presented a brief history of the association.

**Laura Griffin** testified on SB 2254 by presenting the written testimony in opposition from **Willard and Barb Swanke** (See attachment # 11).

#### Job # 2567

**Representative Rod Froelich** of District 31 testified in opposition of SB 2254 stating the bill greatly concerns him as the bill flies in the face of free enterprise and private property rights. He asked if the bison be next.

**Representative Dawn Charging** of District 4 testified in opposition to SB 2254 stating she has mixed emotions because she is a hunter and has been involved in the economics of North Dakota. Working with the tourism industry they found ways of keeping the population on the land with alternate opportunities such as elk farming. North Dakotans have very strong ethics

and land owner values and it is a dead end if the lawmakers go down that road. She further explained the tribes involvement with elk ranching and the work done with the park system.

**Representative Bob Hunskor** of District 6 testified in opposition of SB 2254 stating the elk are born within a fence being raised as a domestic animal for food. The 100 plus elk ranchers should be able allowed to continue their operations and collect fees as an economic source.

**Beth Carlson**, Deputy State Veterinarian of the State Board of Animal Health from the North Dakota Department of Agriculture testified in opposition to SB 2254 (See attachment # 12) stating her packet contains information on the new administrative rules governing nontraditional livestock, the administrative rules regarding framed elk and also information in a application packet for establishing a deer or elk operation.

**Dwight Grosz** testified in opposition of SB 2254 (See attachment # 13).

**Roger Mishoff**, Valley City, North Dakota testified in opposition to SB 2254 stating the bill does bad things to the property rights of land owners.

**Oren Krapp**, Pingree, North Dakota testified in opposition to SB 2254 (See attachment # 14). He also told of stories of the disabled and terminally ill who have hunted in the enclosed ranch.

**Terry O'Clair** testified in opposition to SB 2254 (See attachment # 15).

**Ernie Mau**, President of the North Dakota Elk Growers Association and elk rancher testified in opposition to SB 2254 (See attachment # 16).

**Jeff Nelson**, Hillsboro, North Dakota testified in opposition of SB 2254 (See attachment # 17). He also presented letters in opposition to SB 2254 from Rick Forgren, Executive Director of the Traill County Economic Development Commission and Jim Muckenhirn a volunteer fireman.

**Tom Mau**, an elk rancher testified in opposition to SB 2254 (See attachment # 18).

**Pete Leiss** of the North Dakota Exotic Animal Ranch testified in opposition to SB 2254 stating he has 90% of the fallow deer in the state and has testified previously with his cub bear.

**Lance Tomlinson**, Max, North Dakota testified in opposition to SB 2254 (See attachment # 19).

**Stan Savelkoul**, President of the North Dakota Buffalo Association testified in opposition to SB 2254 stating he understands the bill is not directed towards the buffalo rancher but if SB 2254 is passed it could eventually affect the buffalo industry too.

**Laurie Linnertz**, manager of the South of Border Restaurant testified in opposition to SB 2254 (See attachment # 20).

**Kyle Blanchard**, President of the North Dakota Professional Guides and Outfitters Association testified in opposition to SB 2254 stating they stand behind the elk industry in opposition to the bill.

**Steve Kelly**, Attorney for the Three Affiliated Tribes testified in opposition to SB 2254 stating they have raffles and allow hunting on the reservation's ranch with proceeds going to their game and fish program.

**Senator Lyson** closed the hearing on SB 2254.

**Senator Triplett** made a motion for a Do Not Pass of SB 2254.

**Senator Ben Tollefson** second the motion.

Roll vote was taken for a Do Not Pass of SB 2254 indicating 7 yeas, 0 Nays and 0 absent or not voting.

**Senator Triplett** will carry SB 2254.

Other written testimony in support of SB 2254 was presented to the committee included;

**Jim Posewitz** (See attachment # 21)

Other written testimony in opposition to SB 2254 was presented to the committee included;

**Dennis Berg**, (See attachment #21)

**Foster Hager**, representing the Cass county Wildlife Club, (See attachment #22).

**James Weight**, Chairman of the United Sportsmen of North Dakota, (See attachment #23).

**Kim Wagenman**,, (See attachment #24).

**William C. Henke**, President of the MN Division of Izaak Walton League of America, (See attachment #25).

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2254

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: # 2719

Committee Clerk Signature

*Janet James*

Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee brought the committee to order to relook at SB 2254.

All committee members were present except **Senator Ben Tollefson** and **Senator Jim**

**Pomeroy**.

**Senator Lyson** told the committee they need to look at the amendments as presented by the sponsor of SB 2254 (see attached).

**Senator Joel Heitkamp** made a motion to reconsider the action taken on SB 2254.

**Senator Constance Triplett** second the motion.

A voice vote was taken indicating 5 Yeas, 0 Nays and 2 absent.

**Senator Heitkamp** made a motion to accept amendments 0401.

**Senator Triplett** second the motion.

Hearing no further discussion voice vote #2 was taken indicating 5 Yeas, 0 Nays and 2 absent.

**Senator Heitkamp** made a motion for a Do Not Pass as Amended of SB 2254.

**Senator Triplett** second the motion.

Roll call vote #3 for a Do Not Pass as Amended of SB 2254 was taken indicating 5 Yeas, 0 Nays and 2 absent.

**Senator Triplett** will carry SB 2254.

**Senator Pomeroy** returned to the committee and submitted his vote for a final tally of 6 Yeas,  
0 Nays and 1 absent.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2254

Page 2, line 1, after "Identification" insert "- Rules"

Page 2, line 2, replace "visible at one hundred yards [91.44]" with "measuring at least one inch by two inches [2.54 centimeters by 5.08 centimeters] in size which is a color that does not blend in with the natural color of the animal. Facilities that have a secondary ninety-six-inch [243.84-centimeter] perimeter fence, in addition to the animals' primary enclosure, are exempt from the tagging requirement but must have the animals properly identified by other means established by the state veterinarian by rule"

Page 2, line 3, remove "meters] in low-light conditions"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2254

Page 1, line 2, remove "nontraditional livestock and"

Page 1, line 8, replace "Nontraditional livestock and farmed" with "Farmed"

Page 1, line 9, replace "shooting" with "hunting" and remove "nontraditional livestock or"

Page 1, line 10, remove "nontraditional livestock or"

Renumber accordingly



Date: 2-2-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2254

Senate Natural Resources Committee

Check here for Conference Committee

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

Action Taken reconsider action taken on bill

Motion Made By Heitkamp Seconded By Wiglett

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman			Sen. Joel Heitkamp		
Sen. Ben Tollefson, ViceChairman			Sen. Jim Pomeroy		
Sen. Layton Freborg			Sen. Constance Triplett		
Sen. Herbert Urlacher					

Total (Yes) 5 No 0

Absent 2

Floor Assignment \_\_\_\_\_

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

70081.0401  
Title.

Prepared by the Legislative Council staff for  
Senator Mathern  
January 17, 2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2254

Page 1, line 2, replace "nontraditional livestock" with "big game"

Page 1, line 8, replace "Nontraditional livestock" with "Big game"

Page 1, line 9, replace "nontraditional livestock" with "big game, as defined in section 20.1-01-02."

Page 1, line 10, replace "nontraditional livestock" with "big game"

Renumber accordingly

Date: 2-2-07

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2254

Senate Natural Resources Committee

Check here for Conference Committee

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

Action Taken adopt 401

Motion Made By Heitkamp Seconded By Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman			Sen. Joel Heitkamp		
Sen. Ben Tollefson, ViceChairman			Sen. Jim Pomeroy		
Sen. Layton Freborg			Sen. Constance Triplett		
Sen. Herbert Uriacher					

Total (Yes) 5 No 0

Absent 2

Floor Assignment \_\_\_\_\_

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

Date: 2-2-07

Roll Call Vote #: #3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2254

Senate Natural Resources Committee

Check here for Conference Committee

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

Action Taken Do Not Pass as Amended

Motion Made By Heitkamp Seconded By Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman	✓		Sen. Joel Heitkamp	✓	
Sen. Ben Tollefson, ViceChairman	—		Sen. Jim Pomeroy		
Sen. Layton Freborg	✓		Sen. Constance Triplett	✓	
Sen. Herbert Urlacher	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Triplett

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

**REPORT OF STANDING COMMITTEE**

**SB 2254: Natural Resources Committee (Sen. Lyson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2254 was placed on the Sixth order on the calendar.**

Page 1, line 2, replace "nontraditional livestock" with "big game"

Page 1, line 8, replace "Nontraditional livestock" with "Big game"

Page 1, line 9, replace "nontraditional livestock" with "big game, as defined in section 20.1-01-02,"

Page 1, line 10, replace "nontraditional livestock" with "big game"

Renumber accordingly

2007 TESTIMONY

SB 2254

February 1, 2007

To: Senate Natural Resource Committee

From: Gary Masching

Senate Bill 2254

I am here today to testify in favor of Senate Bill 2254. This bill would ban the shooting of captive big game, require ear tags for elk, higher fences, and fewer days for escaped elk to be recaptured.

This subject is very near and dear to my heart, as it is to many folks. That's why we are here-because it matters. When we do this, talk about hunting, we are talking about who we are and what sort of a society we wish to live in. It has been said, "the games we play reflect the sort of people we are."

In my opinion no one should run a business in which people pay to kill penned big game animals and call it hunting. That type of thing is not congruent with anything taught in Hunter Education. It contributes to the demise of fair chase hunting and it is disrespect for the animal. Additionally, it gives a very poor image to fair chase hunting when the shooting of deer, elk, and other big game animals occurs behind high fences where fair chase is totally disregarded.

Another concern I have about elk-deer-and other non-traditional livestock being kept behind fences is the disease issue. While ND does not have any documented cases of CWD yet, do we want to wait for the incident to happen in our wild herds first and react to it, or do something proactive and pass Senate Bill 2254? Leaky fences, places where wild and penned animals cross back and forth. Cases are documented. The ND G&F Dept. and Wildlife Services have spent well into the 5 figures of sportmens dollars to kill wild deer and elk that have crossed into penned game farms. On the other hand, penned deer and elk have escaped into the wild and are unaccounted for.

From information I have, escapes are pretty common. This info comes from ND G&F and the State Board of Animal Health. One example is a landowner in the Walhalla area who attempted to hide elk that died in his farming operation by burning them in a pit. It should not take a biologist to know that before elk and deer were allowed to be moved all around the country like Sams Club merchandise, we did not have some of these disease concerns.

Finally I would like to say that this state uses Theodore Roosevelt as man and symbol of greatness. Legendary RoughRider Country. TR was a great hunter/conservationist who would turn over in his grave if he knew what was going on with the game farms. And I will leave you with a quote of his and one other great individual.

TR: The professional market hunter who kills game for the hide or for the feathers or for the meat or to sell antlers and other trophies; and the rich people who are content to buy what they have not the skill to get by their own exertions-these are the men who are the real enemies of game."

Jim Posewitz: Retired Montana Wildlife Biologist, and the founder of Orion, which is The Hunters Institute. " Game Farming commercializes the last remnants of the great wild commons, it seeks to privatize what is held in public trust by all of us. It domesticates the wildness we sought to preserve, and trivializes what is exceptional...The things we value die inside the woven wire of game farms...

Sincerely,

*Gary Masching*  
Gary Masching

