

2009 HOUSE JUDICIARY

HB 1493

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1493

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/3/09

Recorder Job Number: 8497

Committee Clerk Signature

DeKrey

Minutes:

Chairman DeKrey: We will open the hearing on HB 1493.

Dennis Boyd, MDU Resources Group: Support (attachment).

An example of an actual notice sitting in a field, along the highway, south of Winner exit on I-94. That sign reads "Danger – Do not enter unless you can cross this pasture in 9.6 seconds or less. Our bull can cross it in 9.5 seconds." We know that noxious weeds can get out of control very quickly and we have no intention of trying to change that. We just don't want people trying to get into the substations, etc. because of the inherent dangers.

Rep. Delmore: Why the 10 days, that seems like a fairly lengthy time frame.

Dennis Boyd: Maybe it could be five working days; but the problem is getting written permission from the owner of the property, which could take a few days.

Rep. Delmore: Are there other agencies that also want to be included in the exemption.

Dennis Boyd: I think we will find out.

Rep. Dahl: Do you know if the term "dangerous condition" is defined anywhere in law; should it be signed as such.

Dennis Boyd: I think the key here is “descriptive entry”. I don’t know if dangerous condition is defined in the century code. If we think it is dangerous enough to have a fence around it and barbed wire over the top, I think that is probably dangerous.

Rep. Klemin: This started out as spraying for noxious weeds and all of the areas that you talk about usually have chain link fences.

Dennis Boyd: Yes.

Rep. Klemin: Those chain link fences certainly don’t prevent anyone from taking a picture of a noxious weed on the other side of the fence, do they?

Dennis Boyd: No. We don’t have a problem with that. You can stand outside the property and see right through the fence. In fact, we contract with a professional sprayer to make sure that no weeds exist within the fence.

Rep. Griffin: Would you be opposed to adding that it would only apply to weeds.

Dennis Boyd: That’s the way it started out. Then we found out there are other places in the century code where somebody can come onto the property and that was news to us. That’s the reason for the bill. There are a lot of examples where dangerous substances are stored, and people shouldn’t be allowed to enter those areas.

Chairman DeKrey: One example would be up at Camp Grafton National Guard Center, where they have ammo supply point. That’s a dangerous area. They have armed guards there.

Rep. Boehning: Aren’t these areas locked.

Dennis Boyd: Yes. The bill allows them to enter that property with or without permission. If someone were to come up there and cut the lock, and look around and leave, then there would be an unsecured premise.

Chairman DeKrey: Thank you. Further testimony in support.

Harlan Fuglesten, ND Association of Rural Electric Cooperatives: Support. The concept of HB 1493 is a matter of safety for our public official to enter private property to carry out lawful business. I think we need to be concerned about that. Being a part of the electric industry which deals routinely with very hazardous situations where we've trained our employees on how to deal with those situations and what kinds of clothing to wear in and around that kind of thing, we should think no less about our public officials who have to enter into those premises. I hope we can give this bill some consideration.

Rep. Vig: If a noxious weed or the county sheriff, or folks call and want access, what kind of response time do they receive from you to gain access to that restricted area?

Harlan Fuglesten: I would think there is always cooperation and I would hope that any utility would respond immediately. I do not think that permission would not almost always be granted. I think there are circumstances where you would want to have somebody accompany you on the premises that are dangerous. Those dangers might not always be obvious.

Rep. Delmore: As I look at this bill, it isn't only about weeds; this certainly would open it up to a large number of service providers.

Harlan Fuglesten: Yes, it applies well beyond weed control; to all types of entry on the premises for carrying out state and local public activities.

Rep. Griffin: Is your industry subject to any type of inspections beyond the weed control issue, and are any of these inspections done unannounced.

Harlan Fuglesten: There may be OSHA type inspections; I'm not sure about that. As a practical matter, I don't think that we have unannounced inspections as a routine matter that I can think of.

Chairman DeKrey: Thank you. Further testimony in support.

Al Christianson, Great River Energy: Support. We also are concerned with the safety aspects. There are several issues involved here. I would like to see some amendments before it would be passed.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Merlin Leithold, ND Weed Control Association's South-Central Area Director: Opposed (attachment).

Rep. Koppelman: Why didn't you jump up when they were hearing the other bill, when Mr. Boyd raised his concerns and say we'll fix that rather than allowing it to precipitate.

Merlin Leithold: I don't think there is anything to be fixed. I understand their concerns but I don't see anybody that would go into that property to begin with. We don't crawl over fences or cut locks to go onto the property.

Rep. Koppelman: That's my point, my understanding of what they tried to do with the other bill, was to exclude those areas. You testified that you wouldn't want to go in there anyway and your colleagues have said they don't, so what's wrong with excluding it.

Merlin Leithold: I guess we wouldn't have a problem if the bill would state "dangerous substations" but it says dangerous property.

Rep. Koppelman: I'm talking about the other bill. Why didn't you put in an exclusion in that bill?

Merlin Leithold: Our feeling is that it has worked all these years and nobody has tried to gain access. They're sure not going to gain access now.

Chairman DeKrey: Thank you. Further testimony in opposition.

Illona Jeffcoat-Sacco, General Counsel, Public Service Commission: Opposed (attachment).

Rep. Boehning: When you go out and do a surprise inspection, do you announce yourself to the superintendent's office and let them know that you are here to do the inspection. What happens with that?

Illona Jeffcoat-Sacco: I will defer to Jim Dice.

Jim Dice, Director, Mine Reclamation: We are always accompanied by mine personnel for all inspections.

Rep. Klemin: In your written testimony you refer to electric and gas distribution systems. Does that include these electric substations and gas compressor stations?

Illona Jeffcoat-Sacco: It could. We do not inspect these unless there is a safety call. We have the authority. For transmission lines we don't do surprise inspections, they are coordinated with the company.

Rep. Klemin: You also talked about the potential for major fiscal impact and I guess the way I read this bill, it was to "hold harmless" language related to the entry by someone representing the governmental entity onto that property. Typically we would be thinking of an employee of the PSC who is entering. Would that employee normally have a claim against the electrical company if he enters a substation and gets injured?

Illona Jeffcoat-Sacco: Yes, that's why it's there. The employee may have a claim and the employee may be found negligent, and the owner of the property liable or not liable. There is an entire huge body of law that sorts of set up those possibilities. One of the problems in the bill is that in the normal course of liability law, if the employer or the state should not be held responsible, this bill would make them responsible no matter what the fault of the other party. The other part of this problem in the bill is that it extends beyond that. We were discussing the possibility of being on an abandoned mine site with contractors. The employee from the state, the owner of the property and another third party and there is some kind of negligence or

malfeasance between those two and the state would be paying that bill. It's almost hard to believe. You need to read it, not from what you think they are saying here, but what it actually says. That's very scary.

Chairman DeKrey: Thank you. Further testimony in opposition.

Lynn Helms, Director, Dept. of Mineral Resources: Opposed (attachment).

Chairman DeKrey: Thank you. Further testimony in opposition.

David Glatt, Chief, Environmental Health Section of ND DHS: Opposed (attachment).

Chairman DeKrey: Thank you. Further testimony in opposition.

Jonathan Byers, Asst. AG: Opposed. In its current form the AG would have to oppose the bill as well. Any parolee or probationer could avoid having their home inspected, simply put up a sign that says "dangerous dog". If that parolee or probationer, or another person decided to get into the meth. cooking business, they would simply have to put up a sign that says "don't enter, volatile or caustic chemicals". Then they'd have ten days to get their cooking done, because law enforcement would not be able to enter those premises, even with the search warrant. And if that dangerous meth lab were to cause a fire and burn that facility down, the person not wanting law enforcement or a fire marshal to know why their home burned down, could put up a sign saying "it's dangerous because the structure is unsafe due to the fire" and that would keep the fire marshal and other law enforcement from going onto the property. For every scenario that we can think of, I am concerned about the two or three other scenarios that we are not envisioning that this might apply to. So we have to oppose it.

Chairman DeKrey: Thank you. Further testimony in opposition.

Todd Anderson, Director, OMB: Opposed. I would like to address the liability issue, the hold harmless clause. I would echo Illona's comments that as this bill is literally drafted, this would require the State of North Dakota to pay judgments against MDU by third party citizen that was

accompanying an inspection. That is problematic for a number of reasons. There is no appropriation for that expenditure; it would come directly from the agencies, even though they have no appropriation for it; it is our position that it would not be covered by the ND Risk Management Fund, in fact if there was any attempt to make it responsible; we are not actuarially prepared to assume that liability at all. Our contributions are based on biannual budgets built well in advance. We aren't ready to absorb that liability. In fact, it may impact our carrier coverage; I can almost guarantee that our insurance would drop us.

Chairman DeKrey: Thank you. Further testimony in opposition.

Raymond Lambert, State Fire Marshal: Opposed to the way the bill is written. As it is, it greatly reduces the ability of not only the Fire Marshall's office to function. We also couldn't go on private property if it were signed "dangerous property" by the property owner. Many of the routine scheduled inspections that are handled by our office, a tremendous amount of those properties are dangerous and hazardous property. We routinely do unscheduled, unplanned inspections for the sole purpose to see what the normal day-to-day operations are. We do not enter any property without permission to be there, but again if we're denied that permission, a warrant is in order and we don't leave the property until the warrants are served. The question is if this passes, the legitimacy of that warrant, whether or not we would still be able to enter the property. Maybe this can be reverted back to just access to the power issues and not the issues that have discussed here today.

Chairman DeKrey: Thank you. Further testimony in opposition.

Jerry Hjelmstad, ND League of Cities: Opposed.

Chairman DeKrey: Thank you. Further testimony in opposition.

Myron Dieterle, Sheridan County Weed Board: Opposed (attachment). By law, we hold an annual meeting of weed officers, at which time the weed officers are trained.

Rep. Griffin: Do you know what the language of HB 1026 is that is causing the problems, was it new language or current law.

Mr. Dieterle: I would reference you to the first page of my testimony, the 5th paragraph where it says 63-01.1-08.

Rep. Griffin: Is it new language or existing law.

Mr. Dieterle: That's existing language and that is language that is in the rewrite, which is consistent with the existing record.

Chairman DeKrey: Thank you. Further testimony in opposition.

Bill Wocken, City Administrator for the City of Bismarck: Opposed. Being able to put up a sign that says danger or dangerous property, I can see where this would cause a lot of problems. This cast an over-wide net.

Chairman DeKrey: Thank you. Further testimony in opposition.

Judy Carlson, State Ag Dept.: In HB 1026, section 13, is in the rewrite. They had worked on this rewrite for the last two years and they didn't want any amendments added to it.

Chairman DeKrey: Thank you. Further testimony in opposition, testimony neutral. We will close the hearing.

(This bill was withdrawn on the House Floor.)

2009 TESTIMONY

HB 1493

Testimony on HB 1493
Dennis Boyd
MDU Resources Group, Inc.
February 3, 2009

Good afternoon Mr. Chairman and members of the committee. For the record, my name is Dennis Boyd. I am appearing this afternoon on behalf of MDU Resources Group and our family of affiliated companies and divisions, particularly Montana-Dakota Utilities Co. and Williston Basin Interstate Pipeline Company.

HB1493 was introduced at the request of my companies, but before I talk about the bill itself, I would like to explain our reason for its introduction. HB1493 actually has its origin in another bill, HB1026, which deals with noxious weeds and has been passed by the House. HB1026 was the work product of the interim Agriculture Committee. It is a lengthy bill of 19 pages and contains 35 sections. Three sections in that bill are particularly of concern to our companies as they would allow a city or county weed control officer or the Commissioner of Agriculture or his agents to enter private property without permission. At the time of the hearing, our primary concern was the danger of someone entering our electric substations and pipeline compressor stations without our permission or without being escorted by an appropriate employee. As I am certain all of you know, those are dangerous properties for someone who does not understand and is not trained to work with electricity or natural gas compressors. We recognize the danger that exists, and consequently, virtually all of those properties are surrounded by an 8 foot hurricane or chain link fence, topped with barbed wire, gated and locked, with a Danger - Keep Out sign prominently displayed. I know you have all seen and can appreciate the danger associated with substations and compressor stations, but if you are curious or want to refresh your memory, there is an MDU substation about 100 yards from this hearing room, located on the west side of the road which leaves the north Capitol parking lot and enters Divide Avenue.

At the hearing on HB 1026 I offered an amendment to exempt utility and pipeline companies from those three sections of the bill. To say my amendment got a cool reception would be an understatement. One of the committee members questioned my heartburn over those sections, telling me there were other sections of the Century Code which gave various other officials the same authority to enter dangerous private property. That was news to me, and it was suggested that we should introduce a separate bill, as there would be no amendments to HB1026. The really unfortunate thing about those sections is there is no reason for a weed control officer, or anyone else, to enter the property except for an emergency because you can stand on the outside of the fence and see virtually everything on the inside without entering. Nonetheless, the die was cast and my amendment was not accepted.

Having no other recourse than to try to kill the bill, which I didn't want to do because noxious weeds are a serious problem in some places, Rep. Klemin was kind enough to be our prime sponsor of HB1493. In drafting this bill and as you will see in a moment, we made it significantly broader than HB1026 in order to cover other agencies and other governmental agencies that might have the authority to enter dangerous private property without the permission of or notice to the owner of those properties. The result is HB1493.

If I might, Mr. Chairman and members of the committee, I would like to briefly summarize the bill.

Lines 3 through 9 of the bill state that before a governmental official or his agent can enter DANGEROUS private property, he must provide a ten day written notice to the owner of the property. There is an exception in instances of emergency or in instances where a property owner has given oral permission. You will notice Line 5 where the

term "constructive or actual notice of restricted entry " is used.

Constructive notice is actually defined in the Century Code (NDCC 1-01-25) and means actual notice of circumstances sufficient to put a prudent person upon inquiry but the person fails to make such inquiry. Probably an 8 foot fence, topped with barb wire, and a locked gate might be considered "constructive notice" of a dangerous condition if the person did not inquire about the reason for the fence. Actual notice would be a sign warning of DANGER - DO NOT ENTER. An example of actual notice is a sign of which I am aware in a field along the highway south of the Windsor exit off of I-94. That sign reads "Danger - Do not enter unless you can cross this pasture in 9.6 seconds or less. Our bull can cross it in 9.5 seconds".

Lines 9 through 13 of the bill establish liability for injuries sustained by someone entering dangerous private property. The owner of the property is held harmless if the person enters the property without permission of or notice to the property owner. In instances where permission to enter the property has been granted or 10-day notice of entry has been received, the property owner then has the responsibility to ensure that entry is made in a safe manner. If the property owner fails to do so and injury or property damage occurs as a result of willful, negligent, or malicious conduct, the property owner is liable for those damages. In the example I used a minute ago about the pasture with the bull, if permission has been received to enter that property, it would be the landowner's responsibility to remove or corral the bull.

That in summary is the bill. Short, but not exactly a "simple little bill". Before I conclude my testimony, I wish to re-state our realization that this bill is far broader than HB1026, and in a few minutes you will hear testimony in opposition to this bill from numerous state agencies and city officials. We have no intention of interfering with or restricting governmental agencies from performing their duties which might require unannounced inspections of or entry to dangerous property. Some of those agencies have paid me the courtesy to inquire

about why we have asked to have this bill introduced, and invariably they have agreed with our concerns. Conversely, we also realize that the Public Service Commission, the Oil and Gas Division of the Industrial Commission, the State Geologist, and cities have a need to conduct "unannounced inspections" to make certain operators of dangerous property are complying with Federal and state laws and regulations. We have no desire or intention of interfering with those duties.

In conclusion, Mr. Chairman and members of the committee, HB1493 is probably in need of some revision. I ask the committee to give us a few days of latitude, during which we will try to accommodate those agencies who truly have a need to enter "dangerous, private property". That concludes my testimony. I have legal counsel with me, and we would be happy to try to answer your questions.



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TESTIMONY OF MERLIN LEITHOLD
LOBBYIST # 324
HB 1493
HOUSE JUDICIARY COMMITTEE

FEBRUARY 3RD, 2009

Good afternoon Chairman DeKrey and members of the House Judiciary Committee.

My name is Merlin Leithold. I am the ND Weed Control Association's South-Central Area director, the association's lobbyist, and I am also the weed officer in Grant County.

This afternoon, I stand before you in opposition to HB 1493. If this bill is passed, it would change how weed control in North Dakota is performed. A couple of weeks ago, HB 1026, which is the noxious weed rewrite bill, was heard in the House Agriculture Committee. During that hearing, the issue that we hear today with HB 1493 was brought up by an electric utility at that hearing. They thought that the section in the law concerning "entry upon land," was a new addition to the law. This section however has been in the law since the noxious weed law was originally written. When asked, the committee members were told by that electric utility that there has never has been a problem, but that there could be in the future.

First of all, I realize the concerns folks like electric utilities have. But, their yards are fenced, and I presume that they are also locked. As a weed control officer

myself, I have several substations in my county. I have never even considered trying to go inside the fences, and I doubt if there is any weed officer in the state that has. The fenced areas in those substations are usually sprayed with a sterilizing chemical, leaving a bare ground situation. If there would be a problem, the utility company would be notified. I doubt that there are too many weed officers that would want to go inside a fenced substation yard, even with an employee of that utility.

This bill mentions dangerous property that is signed. Besides fenced yards with danger signs, would this bill also allow a landowner to post his property? We could have warnings such as:

DANGER – RATTELSNAKES or DANGER – PRAIRIE DOGS or even
DANGER – MEAN BULL. I guess you can see what I mean.

When I drive down a road, checking the ditches for noxious weeds, I have found numerous times a suspicious weed sometimes up the draw in a landowners pasture.

I don't hesitate to stop, walk in to the plant and try and identify it. Sometimes I cut off a branch and take it with to identify at home or take to the extension office.

And on occasion, when you get to the weed, it is harmless. It may be a native weed or a lookalike.

If HB 1493 passes, that day is over. I would then have to send the landowner a written notice, by certified mail to prove he received it. Then drive back to that place that I first spotted the weed, and then proceed. What if he isn't home for a while? By then it may be too late.

Keep in mind; I am only talking about checking for noxious weeds, not controlling them. That is an entire different section of the law. That section does deal with written notices.

This bill will significantly reduce the effectiveness of a county weed control program. What the fiscal impact to a county program would be I don't know. The bill does not address this, but maybe it should. I believe that the numbers would be alarming. I urge you to vote no on HB 1493. Thank you

House Bill 1493

Presented by: Illona A. Jeffcoat-Sacco
General Counsel
Public Service Commission

Before: House Judiciary Committee
Honorable Duane DeKrey, Chairman

Date: 3 February 2009

TESTIMONY

Mr. Chairman and committee members, I am Illona A. Jeffcoat-Sacco, General Counsel for the Public Service Commission. The Commission asked me to appear today in opposition to House Bill 1493.

The Commission has several areas of jurisdiction that require Commission employees to enter onto the property of regulated entities that may be dangerous. This includes inspecting grain licensees, coal mine permit sites, abandoned mine sites, pipeline and transmission line routes, electric and gas distribution systems, and testing weighing and measuring devices at fuel stations, elevators, fertilizer dealers, etc. House Bill 1493 poses a threat of potential liability for activities we perform involving entry onto the property of another and unnecessarily complicates how we do business.

The Commission opposes the notice requirement in the bill because it could keep us from performing our duties efficiently and effectively. Circumstances in the office and in the field do not lend themselves to a ten-day notice requirement. In some cases, inspections are scheduled well in advance. In others, they may be performed on much shorter notice. In fact, there is often

good reason to provide no notice of an inspection in order to obtain the most accurate picture of the entity's operations. The bill does not allow this flexibility and will hinder the Commission's ability to carry out policy set by the legislature.

In addition, state and federal laws require that routine inspections of surface coal mining operations occur without prior notice to the mining company. House Bill 1493 proposes a new law that would conflict with this existing statutory language.

Of even greater concern are the bill's hold harmless provisions. The bill exposes the state to a significant potential liability by requiring the state to indemnify and hold harmless a third party for damages that may be incurred by another third party. The bill would put the state in the position of defending a private party in a law suit by another private party.

When discussing this bill, staff recognized similarities between this issue and the issue of liability between grain elevators and the railroad arising from provisions in their lease and track agreements. As you may recall from past consideration of this issue, elevators were concerned not only about the degree of potential liability, but also because insurance against that potential liability could be unavailable or cost prohibitive. House Bill 1493 threatens these same problems for state government. There is no fiscal note on this bill, but there should be. The fiscal impact to the state from House Bill 1493 should not be underestimated.

The magnitude of the potential cost to the state if this bill passes, coupled with the impact of the bill on program effectiveness, provide good reason to vote **Do Not Pass on House Bill 1493.**

This concludes my testimony. I will be happy to answer any questions you may have.



House Bill 1493

House Judiciary Committee

February 3, 2009

Testimony of Lynn D. Helms, Director

The Department of Mineral Resources (DMR) is responsible for regulating all facets of petroleum production by enforcing statutes, rules, and orders of the Industrial Commission with regards to permitting of wells, establishing well spacing for producing reservoirs, inspection of facilities, approving enhanced oil recovery operations, ensuring proper plugging and site reclamation of all wells, and conducting hearings on oil and gas matters in a manner that will be most beneficial to the producer, royalty owner and all citizens of the state.

The DMR through the North Dakota Geological Survey (GSD) provides detailed information on the surface and subsurface geology of North Dakota to citizens, industry, municipalities, as well as federal and other state agencies; identifies, collects, and displays important fossils of North Dakota; disseminates educational geologic material to the general public; and administers regulatory programs for coal exploration, mineral exploration, geothermal energy production, and paleontology assessment.

Following are existing sections of the North Dakota Century Code and North Dakota Administrative Code that authorize unannounced entry and inspection by DMR personnel. Making sure that drilling wells are in compliance with their permit, spills are cleaned up, and operators do not violate environmental protection laws and rules or immediately correct problems all require entry and inspection without notice.

HB 1493 would remove this vital authority.

38-08-04.7. RIGHT OF ENTRY. The commission, its agents, employees, or contractors shall have the right to enter any land for the purpose of plugging or replugging a well or the restoration of a well site as provided in section 38-08-04.4.

43-02-03-14. ACCESS TO RECORDS. The commission, director, and their representatives shall have access to all well records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, or servicing wells shall permit the commission, director, and their representatives to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells. If requested, copies of such records must be filed with the commission. The confidentiality of any data submitted which is confidential pursuant to subsection 6 of North Dakota Century Code section 38-08-04 and section 43-02-03-31 must be maintained.

43-02-05-13. ACCESS TO RECORDS. The industrial commission and the commission's authorized agents shall have access to all injection well records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, operating, or servicing injection wells shall permit the industrial commission, or its authorized agents, to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of wells and to conduct sampling and testing. Any information so obtained shall be public information. If requested, copies of injection well records must be filed with the commission.

38-12.1-04. Jurisdiction of commission. The commission has jurisdiction and authority over all persons and property, both public and private, necessary to effectively enforce the provisions of this chapter. The director of mineral resources shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the director of mineral resources has the authority:

4. To inspect all drilling or exploration sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all drilling or exploration installations regulated by this chapter for the purpose of inspection and sampling and shall have the authority to require the operators' aid if the director finds it necessary and requests it.

54-17.3-02. Jurisdiction of the commission. The commission, acting through the office of the state geologist, has jurisdiction and authority to enforce the provisions of sections 54-17.3-01 through 54-17.3-08. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission has authority to adopt rules and issue orders to effectuate the provisions of sections 54-17.3-01 through 54-17.3-08.

38-12-02. Jurisdiction of commission. The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. Subject to the provisions of section 38-08-21, the director of mineral resources shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the subsurface mineral resources of this state and the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the director of mineral resources has the authority:

4. To inspect all exploration, development, and production sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all exploration, development, or production installations for purposes of inspection and shall have the authority to require the operator's aid if it is necessary and is requested.

We recommend HB 1493 be amended to preserve the enforcement authority critical to the mission of the DMR. Following are two possible amendments:

Page 1, line 4, after "to" delete "perform a statutorily authorized or required function or duty" and insert "to spray for noxious weeds"

or

Page 1, line 6, after "must" insert "comply with state safety rules or"

Testimony
House Bill 1493
Judiciary Committee
Tuesday, February 3, 2009; 3 p.m.
North Dakota Department of Health

Good morning, Chairman DeKrey and members of the Judiciary Committee. My name is L. David Glatt, and I am the chief of the Environmental Health Section for the North Dakota Department of Health. I am here today to provide testimony in opposition to House Bill 1493.

The Department of Health opposes House Bill 1493 for the following reasons:

1. Right of access and the ability to conduct unannounced compliance inspections are important components of ensuring compliance with environmental regulations. In fact, it is required as part of many of the federal programs delegated to the state. This bill could jeopardize these program delegations.
2. Because many of the operations we permit and inspect could be classified as having dangerous conditions onsite, it would severely restrict our ability to conduct compliance inspections or address timely remedial action.
3. This bill is in direct conflict with existing statute and code relating to the department's right of access.

This concludes my testimony. I am happy to answer any questions you may have.

February 3, 2009

Sheridan County Weed Board

Good afternoon Mr. Chairman, members of the committee.

For the record, my name is Myron Dieterle. I am here representing the Sheridan County Weed Board. I am a farmer, weed board member, and in our county, we are also designated to be weed officers in another portion of the county.

We are in opposition to House Bill 1493. State noxious weed law: 63-01.1-08, "Any control authority or its agent may enter upon land within its jurisdiction.....without the consent of the landowner.....without being subject to any action for trespass or damages.....if reasonable care is exercised." This section of the law has been in place since the State Noxious Weed Law was first rewritten and took effect in July of 1981. We believe that HB 1493 came about as a result of testimony given on HB1026, "State Noxious Weed Law rewrite" as required by review of all laws concerning agriculture. During the hearing on 1026, concern was expressed that weed sprayers would enter utility company enclosed fences without permission to spray weeds and could be injured. Does crawling across the top of a mesh fence with barb wire constitute "reasonable care?"

We feel that all control work on private and public property represents a potential “dangerous condition” as referenced in 1493 due to potential liability.

In Sheridan County we send letters to landowners explaining our spray program, ask them if they want to participate, and if they want to be present when the spraying is done. Some letters are returned and some are not. No spraying is done without a signed return letter, a confirmation call, or a personal contact documented on the initial letter copy. None of this would qualify as an official notice since none of it is done via certified mail, return receipt documenting time and date received.

In Sheridan County we have sent “notices to control.” These are the letters sent to individuals where a written complaint or history of non-control of noxious weeds has occurred. Each of these letters are required to be sent certified mail, return receipt, or delivered by law enforcement.

In 2006 we sent 27 letters, 2007- 18 letters, and 2008- 10 letters. Each letter required an inspection of the problem and associated documentation, plus a follow up inspection and documentation. This last year the official letter cost us \$5.32 in postage. The associated other costs without the postage were \$133.45 per letter. This does not include the cost of law enforcement attempting to deliver a letter.

The situation involving the undeliverable letter via certified mail and law enforcement involved a 320 acre tract of a solid infestation of Canada thistle with lesser amounts of other weeds blowing on to adjacent landowners. A hearing was held without the landowner present as we were unable to locate him. A fine was assessed, and a lien was filed against the land. We as a board question if we were taken to court by the individual and a sharp lawyer whether the lien would stand up since we never were legally able to notify to do the control.

In Sheridan County there are over 6000 taxed parcels and over 750 landowners.

We question whether you want us to spend our 4 mills and approximately \$27,000.00 for weed control work on all maintained roads and private land spraying, or are we to spend it on official notices, fines, and liens and associated weed officer costs.

Do you like to get certified mail that you have to sign for, or would you rather get an information letter?

Thank you Mr. Chairman and committee members. Are there any questions?