

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY B COMMITTEE

Monday, September 23, 2002
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Lois Delmore, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Lois Delmore, David Drovdal, Lyle Hanson, Dennis E. Johnson, William E. Kretschmar, Jon O. Nelson, Todd Porter, Dorvan Solberg, Elwood Thorpe; Senators Michael A. Every, Thomas Fischer, Ben Tollefson, John T. Traynor, Tom Trenbeath

Members absent: Representatives Curtis E. Brekke, G. Jane Gunter; Senator Dennis Bercier

Others present: See attached appendix

It was moved by Senator Fischer, seconded by Representative Porter, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

ELK RETENTION

At the request of Chairman Delmore, committee counsel reviewed the final draft [33008.0200] of a resolution to urge Congress to fund the cost of depreciation, personal injury damage, and property damage caused by elk escaping from the Theodore Roosevelt National Park. He said the request for funding for personal injury and property damage caused by elk was added by an amendment adopted at the last meeting. He said a whereas clause was added to address personal injury and property damage caused by elk. He said the resolution had been approved and recommended, as amended, by the committee to the Legislative Council at the last meeting.

Representative Drovdal said he has had complaints from constituents about prairie dogs on public land growing in size and moving on to private land. He said the growth of prairie dogs is analogous to the growth of elk and would fit within the resolution.

Chairman Delmore said the study of elk was a study assigned to the committee and that is why the resolution relates only to elk.

RESIDENT AND NONRESIDENT HUNTING ISSUES

Limits on Nonresident Hunters Bill Drafts

At the request of Chairman Delmore, committee counsel reviewed two bill drafts previously presented that would limit the number of nonresident waterfowl hunters through fixed caps. One bill draft

[30063.0200] created four consecutive blocks, two 7-day blocks followed by two 10-day blocks limited to a total of 7,500 nonresident hunters per block. The other bill draft [30154.0100] created two 10-day blocks in the beginning of the season limited to 10,000 nonresident hunters per block.

Mr. Kyle Blanchfield, North Dakota Professional Guides and Outfitters Association, expressed support for these bill drafts over the hunter pressure concept bill draft approved and recommended at the last meeting. He said the hunter pressure concept does not take into account when numbers of hunters spike during the season, for example, during parent-teacher conferences. He said the two bill drafts would promote late season hunting and economic development.

In response to a question from Representative Delmore, Mr. Blanchfield said once November arrives there are not many nonresident waterfowl hunters in this state. He said in November deer hunting seasons in home states compete with waterfowl hunting in this state.

In response to a question from Representative Delmore, Mr. Blanchfield said the hunting pressure concept does not look at damages caused to the resource. He said the present way of managing the resource within the federal framework works well.

Mr. Mike Donahue, North Dakota Wildlife Federation and United Sportsmen of North Dakota, presented testimony in opposition to the bill drafts. He said he is in favor of the hunting pressure concept. He said the bill drafts allow too many hunters at one time in one place.

Mr. Randy Frost, Devils Lake Chamber of Commerce, presented testimony in favor of the bill drafts. He said there should be several options for the Legislative Assembly to review during the legislative session. He said these bill drafts with fixed caps provide protection for high-density periods. He said under the hunter pressure concept there could be 22,000 hunters at one time at one place. He said the fixed cap bill drafts allow for rural development. He said the fixed cap bill drafts create an attraction for late season hunting when there has historically been a low density of nonresident hunters.

In response to a question from Representative Delmore, Mr. Frost said most nonresident hunters hunt in the first two or three weeks of the season.

It was moved by Representative Nelson, seconded by Senator Every, and carried on a roll call vote that the committee take no further action on the bill draft [30063.0200] for creating a fixed cap of 7,500 nonresident hunters per block for four consecutive blocks or two 7-day blocks followed by two 10-day blocks. Representatives Delmore, Drovdal, Hanson, Johnson, Kretschmar, Nelson, Porter, Solberg, and Thorpe and Senators Every, Fischer, Tollefson, Traynor, and Trenbeath voted "aye." No negative votes were cast.

Representative Nelson said he wants more than one concept to be forwarded to the Legislative Council and the additional concept should be a bill draft creating two consecutive blocks in the beginning of the season with a limit of 10,000 nonresident hunters per block. He said the issue is complex and it would be appropriate to have two separate bill drafts recommended to the Legislative Council. He said historically the concern has been with hunting pressure at peak parts of the season and access to hunting areas. He said this bill meets these concerns. He said this bill draft will spread pressure by time. He said this bill draft allows for incentives for late season hunting which in turn is economic development in rural areas. He said the landowners will be happier with this bill draft than with the hunter pressure concept. He said landowners are upset over this issue and are posting their land. He said this bill draft buffers that idea because it allows unlimited licenses after the 20th day. He said this may result in more access to private land. He said personally he likes the present regulation of waterfowl hunters. He said the bill draft provides for a compromise and is incentive-laden, not punitive like the hunter pressure concept.

In response to a question from Representative Delmore, Representative Nelson said the bill drafts allow for unlimited numbers of hunters at the right time.

In response to a question from Representative Solberg, Representative Nelson said zones are eliminated in the bill draft because it complicates the situation to have zones and caps. He said people will naturally move to different areas because of hunting pressure.

In response to a question from Representative Delmore, Representative Hanson said the hunting pressure concept may work well for resident ducks but does not work well for migratory ducks and geese. He said the migratory birds are the major part of the season. He said there is no lack of migratory geese or ducks. He said bag limits will be set on the basis of biology and work well for managing the resource.

Senator Traynor said the first 10-day period this season would have two full weekends and the second

10-day period would only have one weekend under the bill draft. He said he is in favor of the bill draft but suggested that at some time a change be made to take this inequity into account.

Representative Drovdal said landowners he has spoken with feel the committee has bowed to a few resident hunters. He said he has heard there has not been enough comment from tourism, businesses, and landowners.

Representative Porter said he had a bill drafted which was similar to this bill draft. However, he said, he removed the bill draft from further consideration because the hunting pressure concept bill draft is a better bill draft. He said it includes biological factors. He said he is in favor of keeping zones because they allow the Game and Fish Department the tools they need to deal with changing conditions. He said the fees remain the same under the fixed cap bill draft and said they should be higher, especially for the license for the unlimited amount of time.

Representative Nelson said this is an initial bill draft that can be changed during the legislative session. He said 30,000 nonresident hunters are an important part of local economies. He said a reduction from 30,000 to 22,000 nonresident hunters would result in the loss of fees and federal funds to the Game and Fish Department in the amount of approximately \$2.5 million. He said this money could be used for access. He said limiting the number of nonresident hunters will hurt the Game and Fish Department.

Senator Every said the committee needs to look at every option and this is a valid option. He said nonresident hunters bring in major tax revenue to the state, in addition to economic development.

In response to a question from Representative Hanson, Representative Nelson said he is not in favor of limiting nonresident hunters to 7,500 hunters per block.

It was moved by Representative Nelson, seconded by Senator Fischer, and carried on a roll call vote that the bill draft [30154.0100] providing for two consecutive 10-day blocks with a limit of 10,000 nonresident hunters per block be approved and recommended to the Legislative Council. Representatives Drovdal, Johnson, Nelson, and Thorpe and Senators Every, Fischer, Traynor, and Trenbeath voted "aye." Representatives Delmore, Hanson, Kretschmar, Porter, and Solberg and Senator Tollefson voted "nay."

Update on Waterfowl Season

Mr. Roger Rostvedt, Deputy Director, Game and Fish Department, presented testimony on the fall waterfowl season. He said in the past the Legislative Assembly has passed resolutions asking the federal government for an earlier duck hunting season. He said this waterfowl season will begin one week earlier for all waterfowl hunting. He said this one week will

be open only to residents. He said Minnesota chose not to accept the earlier opener and if nonresidents would have been able to come here for that first week, this state may have had unusually high numbers of nonresident hunters. He said he has heard there has been a light turnout for the opening week except in the Red River Valley. He said regulations have changed so a person may hunt Canada geese uninterrupted from September 1 until the end of the season. He said the state is allowed the highest bag of limits by the federal government. He said nationwide the number of ducks is dropping so these bag limits may go down in the future. He said there is a cap of 30,000 nonresident hunters for this waterfowl season. He said as of September 20, 2002, 22,700 nonresident licenses have been sold.

In response to a question from Representative Nelson, Mr. Rostvedt said three years ago the Game and Fish Department allowed all day hunting for snow geese on Wednesdays and Sundays late in the season. He said the Game and Fish Department thought this would increase the harvest by having more time to hunt instead of reducing the harvest by driving the geese out of the state. He said daylong hunting has increased the harvest.

In response to a question from Representative Nelson, Mr. Rostvedt said ducks are managed on a nationwide basis. He said this state's contribution to the number of ducks in the last few years has been quite high. He said the drought may lower the number of ducks in this state, but bag limits may not drop if duck production remains high nationwide.

In response to a question from Senator Traynor, Mr. Rostvedt said under the original hunter pressure concept, the limit on nonresident hunters would have been 22,500 for this year. He said as for the bill draft approved by the committee, the number might be a little higher.

In response to a question from Representative Delmore, Mr. Rostvedt said if there are low numbers of resident waterfowl hunters, there would be higher numbers of nonresident hunters allowed to get a license under the hunter pressure concept.

In response to a question from Representative Delmore, Mr. Rostvedt said there has been a pattern of increasing nonresident waterfowl hunters and decreasing resident waterfowl hunters.

Special Private Property Nonresident Waterfowl License Bill Draft

At the request of Chairman Delmore, committee counsel presented the second draft [30093.0200] of the bill draft creating a special private property nonresident waterfowl resident license. He said the original bill draft creates a season-long license for nonresidents to hunt solely on private property owned by a person who is a resident and actively farms or ranches on that property. He said the second draft removes leased property and adds the qualification of

residency. In addition, he said, the second draft requires that the applicant must be related by the third degree of consanguinity or have been a resident of this state for one continuous year. He said the changes close opportunities that would encourage guides and outfitters and others to purchase land to use this license to hunt, thereby superseding present hunting licenses.

Mr. Jim Erickson, Hunting for Humanity, New England, presented testimony in opposition to the bill draft. He said the original idea for a private property hunting license came from his testimony at the Dickinson meeting. He said the problem he wanted solved was too much pressure on public land. He said his idea was to restrict the number of nonresidents on public lands. He said this would provide for more access by residents. He said this would allow residential landowners to allow as much nonresident hunting as desired by landowners. He said this bill draft does not do what he wants it to do. He said this bill draft prevents landowners from doing whatever they want to do with their land.

Representative Nelson said the committee did not want to limit what Mr. Erickson could do with his land and recommended that he work with legislators to implement his idea.

Representative Delmore said there is no intent by anyone on the committee to limit what landowners can do with their property. She said this bill draft merely provides another option for nonresident hunters. She said regular licenses are still available for people to use on land they buy or lease for hunting purposes.

Representative Hanson said if land is bought solely for hunting purposes, then it may be used only the first week or two of the season by the owner for hunting and be closed to everyone the rest of the season. He said this would impede the management of the resource by the Game and Fish Department. He said the purchase of land for hunting purposes can result in moving people out of the rural areas and is not good for North Dakota.

Senator Trenbeath said he is opposed to the bill draft and on restrictions on land use. He said for the past 250 years government has instituted more and more land use limitations. He said limitations on what individuals can do with their land is done all the time. He said persons will never have 100 percent freedom to do what they want to with property they own. He said he agreed with Mr. Erickson's indignation; however, he said, it is not unheard of for property to be regulated by the government.

In response to a question from Senator Trenbeath, Mr. Erickson said the restrictions on land have increased greatly in the past 20 years. He said he does not want any more restrictions.

It was moved by Senator Traynor, seconded by Representative Drovdal, and carried on a voice vote that the committee take no further action on

the bill draft [30093.0200] to create a special private property license for nonresident waterfowl hunters. Representatives Delmore, Drovdal, Hanson, Johnson, Kretschmar, Nelson, Porter, Solberg, and Thorpe and Senators Every, Fischer, Tollefson, Traynor, and Trenbeath voted "aye." No negative votes were cast.

Regulation of Guides and Outfitters by Department Bill Draft

At the request of Chairman Delmore, committee counsel presented the second draft of a bill draft [30105.0200] to provide for the licensing of guides and outfitters by the Game and Fish Department. He said the bill draft increased the license for a hunting outfitter to \$200 if the outfitter will employ one to three guides that year, \$500 if the outfitter will employ 4 to 10 guides that year, and \$750 if the outfitter will employ more than 10 guides that year. He said the bill draft provided an exception from the fee for a landowner. He said the license was not transferable. He said a guide or outfitter must be a resident. He said a person must hold a hunting guide license for five years to be eligible to apply for a hunting outfitter license. He said the bill draft provides for grandfathering in present hunting guides as outfitters regardless of experience. He said the bill draft provides that the Game and Fish Department director may not issue a license to a person who has had any state or federal game or fish violations in the last three years. He said the bill draft requires the director to perform a background search on applicants. He said the bill draft limits the number of hunting outfitters to no more than there were in the preceding year and no more than 332. He said the bill draft requires mandatory revocation of a license for hunting-related violations. He said the bill draft makes an outfitter liable for the violation of a guide and a guide liable for the violations of a client. He said the bill draft prevents a person who has lost a license from transferring it to a strawman by prohibiting the use of the violator's name, place of business, or telephone number for three years from a violation except on permission from the director. He said the bill was otherwise similar to the original bill draft on regulation by a board.

In response to a question from Representative Drovdal, committee counsel said the language in the bill draft which provides for mandatory revocation for a guide or outfitter that has provided services for a person that has not obtained the appropriate license for the species sought by that person was intended to be an antipoaching law and not include a person who accidentally shot a doe with a buck license. He said the Game and Fish Department has rulemaking authority over the licensing and could clarify this issue through rulemaking; however, he said, if there is any ambiguity, clarification should be made legislatively.

Mr. Blanchfield presented testimony on the bill draft. He said the definition for outfitter includes motel operators and sporting goods stores. He said the definition should be narrowed. He said losing a license or not being able to get a license for any state or federal game and fish violation was too severe and that the violation should be required to be a criminal violation. He said a portion of the bill draft that provides for a committee to consult with the director in the preparing of rules should be more detailed by including the number of members and the composition of the committee. He said the cap on hunting outfitters by limiting to the preceding year's numbers could reduce the number of outfitters to a very low number through retirements. He said there should be a fixed cap of 300 outfitters.

In response to a question from Representative Nelson, Mr. Blanchfield said the landowner exception to the fee would not apply to leased land.

In response to a question from Representative Nelson, Mr. Blanchfield said 300 outfitters would provide great opportunity for growth because there are probably 50 to 100 outfitters presently.

Representative Nelson said a cap on hunting outfitters is negative economic development.

In response to a question from Senator Every, Mr. Rostvedt said the Game and Fish Department private habitat and access improvement fund does not include funds for public boat ramps.

In response to a question from Senator Every, Mr. Rostvedt said the private habitat and access improvement fund can be used for access to lakes on private land.

Mr. Erickson provided testimony in opposition to the bill draft. He said he is against the bill draft because it placed caps on hunting outfitters. He said caps limit what individuals can do with their property.

Senator Trenbeath said he agreed with Mr. Erickson. He said there is no other industry that is limited as to the number in that industry besides alcohol establishments.

In response to a question from Senator Traynor, Mr. Rostvedt said there have been a number of cases this year for the prosecution of guides and outfitters for game and fish violations. He said the department has stepped up its activities with covert operations to enforce game and fish laws. He said there were more violations than were expected by the department.

In response to a question from Representative Drovdal, Mr. Rostvedt said there are more than 332 guides and outfitters this year. He said the bill draft does not limit the number of guides but does limit the number of outfitters.

In response to a question from Representative Nelson, Mr. Rostvedt said it appears the bill draft does not include landowners in the total number of hunting outfitters.

Senator Every said he would prefer that the money collected from fishing outfitter licenses go to lake access.

Mr. Mark Motis, Minnewaukan, presented testimony on the bill draft. He said the Game and Fish Department should make decisions as to the management of wildlife and hunting and these decisions should not be under the control of guides and outfitters.

Mr. Donahue presented testimony in favor of the bulk of the bill draft. He said the cap of 300 outfitters is too high. He said the North Dakota Wildlife Federation and United Sportsmen of North Dakota do not object to fee hunting by a landowner but are against businesses that tie up lots of land through hunting leases.

In response to a question from Representative Nelson, Mr. Donahue said the limit on the number of hunting outfitters should be between 100 and 110. He said a limitation on the number of acres a guide and outfitter can control would not be a workable solution. He said he is for increased fees for licenses, separate definitions for guides and outfitters, requiring outfitters to be domiciled in North Dakota, and separate small game and waterfowl licenses for resident and nonresident hunters.

In response to a question from Representative Porter, committee counsel said the definition of outfitters appears to technically include hotels; however, the Game and Fish Department has rulemaking authority to clarify the definition. He said if there is any ambiguity, clarification should be made legislatively.

Representative Porter said the main idea of the bill draft was to replace the board concept with the committee concept. He said it would be difficult to pass a law that creates a board.

It was moved by Representative Porter, seconded by Representative Hanson, and carried on a roll call vote that the bill draft [30105.0200] to provide for the regulation of guides and outfitters by the department be amended as follows:

Page 17, line 16, after "licensed" insert "hunting"

Page 18, line 20, after "fish" insert "criminal"

Page 19, line 17, remove "at one time", after "than" insert "two hundred", and remove "were issued"

Page 19, remove line 18

Page 19, line 19, remove "thirty-two hunting outfitters"

Page 20, line 10, after "federal" insert "criminal"
Representatives Delmore, Drovdal, Hanson, Johnson, Kretschmar, Nelson, Porter, Solberg, and Thorpe and Senators Every, Fischer, Tollefson, and Traynor voted "aye." Senator Trenbeath voted "nay."

Senator Trenbeath said he voted against the amendments because there should not be a cap on hunting outfitters.

It was moved by Representative Porter, seconded by Senator Every, and carried on a roll call vote that the bill draft [30105.0200] to provide for regulation of guides and outfitters by the department, as amended, be approved and recommended to the Legislative Council. Representatives Delmore, Drovdal, Hanson, Johnson, Kretschmar, Porter, Solberg, and Thorpe and Senators Every, Fischer, Tollefson, Traynor, and Trenbeath voted "aye." Representative Nelson voted "nay."

Representative Nelson said he was opposed to the bill draft. He said states situated in similar situations to this state, like South Dakota, do not have any regulation of guides and outfitters. He said guides and outfitters provide a valuable service and employ people in rural areas.

It was moved by Senator Trenbeath, seconded by Senator Fischer, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.

It was moved by Representative Nelson, seconded by Representative Thorpe, and carried that the meeting be adjourned sine die.

Chairman Delmore adjourned the meeting sine die at 11:55 a.m.

Timothy J. Dawson
Committee Counsel

ATTACH:1