

**1999 HOUSE NATURAL RESOURCES**

**HB 1339**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1339

House Natural Resources Committee

Conference Committee

Hearing Date January 28, 1999

Tape Number	Side A	Side B	Meter #
1		X	8.8
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SECTION TO CHAPTER 15-04 AND A NEW SECTION TO CHAPTER 15-07 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO PUBLIC ACCESS ON ORIGINAL GRANT LANDS AND NONGRANT LANDS; AND TO AMEND AND REENACT SECTION 15-07-20 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO NONGRANT LAND LEASES.

REPRESENTATIVE HANSON: Handout - All this bill does is treat the same as Federal land as far as public access. I have passed out the amendment to the bill, which adds the wording from the Federal statutes.

REPRESENTATIVE DEKREY: What is the law right now? Can you post state land right now?

REPRESENTATIVE HANSON: You have to get permission from the State Land Department.

PAUL KERRY: Cass County Wildlife Club - The club goes on record as supporting 1339, and we are asking for your endorsement.

REPRESENTATIVE DROVDAL: Only two percent of school land is currently being posted and only after they show reasonable cause. Do you find the two percent unreasonable?

PAUL KERRY: Not really, but just a general principal I think one should have access to grant land.

REPRESENTATIVE NELSON: I would guess that the most common cause of posting school land would be if somebody is pasturing that land, and someone is shooting at whatever game and disrupting the livestock, wouldn't you agree that that would make that property less likely to rented for the same amount of money the following year or the next time the contract comes up?

PAUL KERRY: I can't answer that question.

REPRESENTATIVE NELSON: One of the ways cattle producers mark productivity is the average daily weight gain, and if cattle are chased around the pasture I would guess the weight would be affected.

PAUL KERRY: I can understand that.

BILL PFEIFFER: North Dakota Chapter Wildlife Society - We support HB1339. Most state school lands are open to public access, about two percent is closed. All Federal land, which are leased for the same purpose as the school lands, are open to grazing. Leasees of Fed land are fully aware of the leasing situation, and grazing regulations are no problem - they have adjusted their herd operations. We see no reason why there would be any difference if your grazing on state land or federal land. When state school lands are posted, I as taxpayer and owner, don't have access to them. But when the leasee leases the land, he leases the pasture, the grass - not the access to that land. I feel we should allow these lands to all be open.

REPRESENTATIVE DEKREY: We are told that two percent of the land is closed and this amount doesn't amount to much, but now we're hearing that two percent is a big deal. Isn't there a mixed signal there?

BILL PFEIFFER: I think when you are comparing 22,000 acres of nonprofit land to state school land, there is a lot of difference in the acreage involved.

REPRESENTATIVE NELSON: The state school land is in quarter section blocks. Is the Federal grazing leased land in larger parcels?

BILL PHEIFFER: I know land is leased out for grazing purposes and these are wildlife lands that you are referring to and not the grazing land from the Forest service. Those were set up purposely for grazing. These were set up purposely for wildlife, but in addition they do grazing because there is benefit in it.

REPRESENTATIVE NELSON: What I was referring to is that when you are in a smaller situation, the ability to scare the animals is going to be greater than if you are in a natural grassland.

BILL PHEIFFER: I don't know the size of the tracts that they are broken down into.

REPRESENTATIVE DROVDAL: It seems to me that philosophy on state land is that we want it open for hunting, since we require the leasor to have reasonable cause before they allow them to post it. We talking about any kind of hunting. Is there any leeway there where we should allow posting of land?

BILL PHEIFFER: I don't see any difference if the overall management is for grazing. I see little difference in the reasoning why state should be posted and federal isn't - even though it is only a small portion.

REPRESENTATIVE DROVDAL: I guess the difference I see is that leased land is usually a quarter where grazing land is usually about 160 sections.

REPRESENTATIVE GROSZ: Rep. Hanson, would you explain what the incorporated provisions of Federal code. How does that effect your bill?

REPRESENTATIVE HANSON: It is on the front page. It puts in number seven.

REPRESENTATIVE CARLSON: State Representative from District 41, Fargo - I introduced a bill like this in the last session, and I must admit that I think they have done an excellent job. It is the public's land, and I think that without a real good excuse it should be open for access to the people who really own it.

REPRESENTATIVE DEKREY: Would you consider exceptions such as if the leasor wishes to keep the hunters out of the land?

REPRESENTATIVE CARLSON: Probably not. Not in November during deer hunting season because most people who use the land for grazing move their livestock off in the fall.

REPRESENTATIVE NELSON: You mention that there were some special circumstances where a leesee would post his land. Can you give an example?

REPRESENTATIVE CARLSON: I hate to not answer you question, but I cannot remember why such postings were put up last year.

REPRESENTATIVE NELSON: And under this bill, all those reasonable approaches would be nullified and they would have to keep this open if this bill was to pass in its present form

REPRESENTATIVE CARLSON: Yes they would.

MIKE DONAHUE: North Dakota Wildlife Federation. In support of HB 1339 - We agree there should be public access to that land. Much of the school land is in smaller tracts, and if there is cattle on that land, we don't go in, whether it is posted or not. Our organization pushes to have ethics and we think that if cattle are on that land, most hunters would stay out.



REPRESENTATIVE DROVDAL: I concur with your comments about having ethics, but then if everybody had ethics, then we wouldn't need all those century codes.

REPRESENTATIVE GROSZ: I'm still struggling with the change here of interfering with lawful users including obstructing free transit.

LARRY KNOBLICH: United Sportsmen of Jamestown, going on record as supporting the bill. We would like to have federal mandate on their property, and then the state be the same so that both lands could be used for grazing but open to public access. I do understand the ethics, but I don't think a lack of ethics is epidemic.

REPRESENTATIVE HANSON: You represent United Sportsmen of North Dakota, what are the Chapters?

LARRY KNOBLICH: I don't know where they are all at, but we have many like in Minot, Bismarck, Jamestown, Fargo, and Devils Lake. I am representing all of them since I am on the Board of Directors.

RICK LARSON - Deputy Land Commissioner. Presenting testimony for Robert Olheiser. Testimony is in opposition of HB 1339. Attached.

REPRESENTATIVE NELSON: Give me a couple of examples of situations where you have allowed posting.

RICK LARSON: If you wouldn't mind, we have another surface management director that can be more specific on that.

REPRESENTATIVE DROVDAL: Could you provide the committee with a North Dakota map showing the location where your land is located? My question is if you find a landowner that is leased state land and has posted it without your permission, how do you handle that?

RICK LARSON: Mike Gram from our office who deals with this and can answer your question more specifically.

REPRESENTATIVE NOTTESTAD: I would also like to see maps of the land closed to public access and reasons why these specific parts were closed.

MIKE RAND - Director of Surface Management. Speaking in opposition, adding comments to Robert Olheiser's testimony. Only 2% of the lands are closed and we feel we have done a very good job of maintaining this land as open land to public access. In 1983 the State Game and Fish Department and the State Land Dept. worked on programs to open these lands to public access and as part of that plan these lands could be posted by the leasees at their discretion. That is no

longer the case that you require specific permission from the State Land Commissioner in order to post those lands. Only 2% of these lands receive permission. Because the policy has been very successful, we have changed the signs so that they list the reasons for posting. With the advent of cell phones, it has made us more responsive since the hunter is calling us from the spot. Prior to deer hunting we checked every sign to confirm that those signs are properly posted. So we do everything we can think of to be responsive to the issues that are involved. We do have lands that are posted by the Game and Fish Dept. that are waterfowl rest areas and I don't know how this will affect that. I hear talk about western ND and how the forest service lands are open and that the school lands should also be open. We do have an in-house policy where, except under very unusual circumstances, we don't allow anyone to post where the lands are included with federal lands out west. So if you see federal land, the school land should also be open. We agree with that 100 percent. We are very serious and conscientious about the way we manage these lands. I understand the concerns and I do think there is a difference between western and eastern ND, and we do treat them differently when we consider requests for posting. There have been some questions about why we post, most of it involves livestock. I don't think we differ with the sponsors on this bill, but we believe the land board does need some discretion, or ability to manage the land. I don't think overall that we have abused our authority and we tried very hard to listen to the wishes of the legislature and this committee on making this land available to the public.

REPRESENTATIVE PORTER: What is the assurance that when you retire or move on, that this is the way things are going to be done?

MIKE RAND: I would assume that the feelings of the committee and the legislature and the people of ND would not change, and that is one reason why we manage the way do.

REPRESENTATIVE PORTER: When you talk about the fall grazing program, Aug - Oct, most of the impact is happening the first weekend in November, which should be a nationally recognized holiday anyway, is there is any reason why the expiration date on any of the postings are Oct 31?

MIKE RAND: On the majority of school lands, there is absolutely no reason for posting since there is no water on them. Oftentimes when you see postings, it is because that is where there is a water supply, something that stays open and flowing, usually the reason for Nov. usage. But this is not the rule.

REPRESENTATIVE HANSON: Do you think there should be a penalty for illegal posting of state lands? Now there is no penalty, you just tell them to take the signs down.

MIKE RAND: We have not had a repeat offense. We tell them if there is a second offense we would go to the board and request it to be canceled. Further offenses would result in termination of their lease.

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House Natural Resources Committee  
Bill/Resolution Number HB 1339.lwp  
Hearing Date January 28, 1999

REPRESENTATIVE HANSON: There is an illegal posting someplace around Jamestown. How long is it going to be there?

MIKE RAND: I am not familiar with this complaint and would be more than happy to look into it.

REPRESENTATIVE HANSON: A couple years ago, Golden Valley had 11,000 acres posted. I think there was some dissension with Game and Fish. Why did you allow so much to be posted during 1996?

MIKE RAND: That was before the last legislative session, and you will find that during the intervening years we have corrected that situation.

REPRESENTATIVE NELSON: You said that the sign that the land department uses is different than one that you buy at the local hardware store. How distinctive is that sign, and can a hunter just ignore the hardware sign?

MIKE RAND: We tell hunters that a hardware store sign is not valid.

Closed hearing on HB 1339

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1339-A

House Natural Resources Committee

Conference Committee

Hearing Date 1-29-99

Tape Number	Side A	Side B	Meter #
1	X		
Committee Clerk Signature <i>Robin L. Smaer</i>			

Minutes:

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**REPRESENTATIVE DEKREY:** Motion for a Do Not Pass.

**REPRESENTATIVE NELSON:** Seconds the motion.

**REPRESENTATIVE HANSON:** The only people who testified against the bill was the State Land Board and they were trying to cover their turf. Not one farm organization testified against the bill.

**REPRESENTATIVE DROVDAL:** That is correct that nobody else got up to testify in opposition to the bill. But I know that there was \_\_\_\_\_ Association out here and talked after that they figured that their testimony revealed, so obviously their testimony was not needed. It does more than just put that definition in there. It takes the flexibility that the landlord has to make those decisions on a one-to-one basis. That is why they didn't bother to testify.

**REPRESENTATIVE HENEGAR:** I didn't get into discussion on that before because I was the individual who dealt with the landowner 1983 to get this bill in and after negotiations for about a month when they agreed to go ahead and open it up, and knowing that there would be a serious

problem with it at different places. There were some mind sets out there who were very much against it. Then, over the years, as they worked on it and tried to make it work, they corrected a lot of the problem. I think right now, with the exception of one particular sign that is up, the program really is working very, very well. I certainly would be opposed to changing it.

**REPRESENTATIVE HANSON:** The department caught heat a couple years ago when they said nowing until July 15 or so the ranchers thought. They proposed 11,000 acres. It is pretty easy to get that permit to close it.

**REPRESENTATIVE DEKREY:** My only real opposition is that it totally removes any flexibility whatsoever in what the Land Department has. I can understand that during the hunting season that if there is no cattle in there that the landowner should not be able to post because there is nothing there to protect. But this totally removes their ability to when it comes into a rotation, I can understand why a landowner leasing this land would want this posted. Under this bill, there is no way that the Land Department can say that that is a reasonable request.

**REPRESENTATIVE NELSON:** I agree with Representative De Krey. This is just another erosion of property rights that our ranchers and farmers are, at least, perceiving across the state. It sends a signal that I do not think is good. I will certainly support the Do Not Pass and I think we should kill this thing and move on.

Roll call: 8 (yes) 5 (no); do not pass.

**REPRESENTATIVE NELSON:** Carry the bill.

VR  
2/2/99

**HOUSE AMENDMENTS TO HOUSE BILL NO. 1339 2/3/99 NAT. RES.**

Page 1, line 2, remove "public access on"

Page 1, line 3, remove the first "lands" and after the second "lands" insert "leases"

Page 1, line 8, replace "**Public access**" with "**Requirements**" and remove "Notwithstanding any other provision of law, a"

Page 1, remove line 9

Page 1, line 10, remove "hunting on the lands."

Page 1, line 11, replace "that the lessee may not post the leased land to prohibit" with "incorporating the provisions of 43 Code of Federal Regulations 4140.1(b)(7)"

Page 1, line 12, remove "hunting during any open hunting season"

Page 1, line 15, replace "**Public access**" with "**Requirements**" and remove "Notwithstanding any other provision of law."

Page 1, remove line 16

Page 1, line 17, remove "or hunting on the lands."

Page 1, line 18, replace "that the lessee may not post the leased land to" with "incorporating the provisions of 43 Code of Federal Regulations 4140.1(b)(7)"

Page 1, line 19, remove "prohibit hunting during any open hunting season"

Page 1, line 22, after "**lands**" insert "**- Requirements**"

**HOUSE AMENDMENTS TO HOUSE BILL NO.1339 2/3/99 NAT. RES.**

Page 2, line 10, replace "include a provision that the lessee may not" with "incorporate the provisions of 43 Code of Federal Regulations 4140.1(b)(7)"

Page 2, line 11, remove "post the land to prohibit public access or hunting"

Renumber accordingly

Date: 1/29/99  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO.**

House House Natural Resources Committee

Subcommittee on 1339  
 or  
 Conference Committee

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

Action Taken Do NOT Pass AS Amended

Motion Made By DeKrey Seconded By Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz	X				
Vice-Chairman Dale Henegar	X				
Representative David Drovdal	X				
Representative Pat Galvin	X				
Representative Duane DeKrey	X				
Rep. Darrell D. Nottestad		X			
Representative Jon O. Nelson	X				
Representative Byron Clark					
Representative Todd Porter		X			
Representative Jon Martinson	X				
Representative Lyle Hanson		X			
Representative Scot Kelsh		X			
Representative Deb Lundgren	X				
Representative Sally M. Sandvig		X			
Representative Dorvan Solberg					

Total (Yes) 8 No 5

Absent 2

Floor Assignment Nelson

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

REPORT OF STANDING COMMITTEE

HB 1339: Natural Resources Committee (Rep. Grosz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). HB 1339 was placed on the Sixth order on the calendar.

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Re-number accordingly



**1999 TESTIMONY**

**HB 1339**

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North Dakota  
**STATE LAND DEPARTMENT**  
1707 N 9th Street  
PO Box 5523  
Bismarck, ND 58506-5523



Robert J. Olheiser  
COMMISSIONER

**TESTIMONY OF ROBERT OLHEISER**  
**State Land Commissioner**

**IN OPPOSITION TO**  
**HB 1339**  
**House Natural Resources Committee**

**January 28, 1999**

Mr. Chairman and Committee Members:

Although the State Land Department is testifying in opposition to HB 1339, we want the committee to know that our opposition does not generate from a belief that school trust lands should not be open to public access. On the issue of public access, we agree with the co-sponsors of this bill that school trust lands should be open. We oppose the bill because the Land Board's public access policy makes the bill unnecessary.

In 1998, 98% of our 714,000 acres of school trust lands were open to non-vehicular public access. 2% of school lands were not open to the public and these lands were specifically approved for closure for management reasons approved by the Land Department. An individual lessee of school trust land does not have the authority to unilaterally post school trust land. They cannot simply decide to go down to the local hardware store and buy "No Hunting or Trespassing" signs and put them on the school land that they lease. Only the Land Department decides what tracts may be posted and we furnish specific signs for specific dates and reasons. This system has worked very well and allows us to professionally manage school lands, while maintaining public access.

School trust lands were granted to the State of North Dakota by the Congress of the United States for the primary purpose of funding public education. The Constitution of North Dakota has given the responsibility for the management of these lands to the Board of University and School lands. Under the Land Board's management, these lands produce \$3.8 million in annual revenue for public grades K-12, while at the same time providing the additional benefit of non-vehicular public access to just under 700,000 acres of land for recreational purposes. It is our position that the Land Board's management of school trust lands has allowed everyone, trust beneficiaries, lessees, and the general public, to win. The Land Board's current discretionary authority to allow posting when necessary for management reasons, is reasonable and important to the wise and balanced use of school trust lands. Removing this authority from the Board would significantly reduce the Board's ability to manage and improve school trust lands. The land Board's land management and public access policy is not broken and does not need to be fixed.

We have individuals from the Land Department who are here and available to answer any questions you may have on this subject.

We respectfully request a "do not pass" recommendation on HB 1339.

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50. Payment made  
s after the due date,  
appropriate late fee  
are to make payment  
may be a violation of  
shall result in action  
officer under §§4150.1

1984, as amended at 53  
FR 10235, Mar. 29,  
1988. Redesignated  
FR 4227, Feb. 5,  
1995; 61 FR 4227, Feb. 5,

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FR 12705, Mar. 30,  
at 60 FR 9965, Feb. 22,

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published periodically  
REGISTER.

1984; 49 FR 12705, Mar. 30,  
at 60 FR 9965, Feb. 22,  
at 60 FR 9967, Feb. 22, 1995]

ANB 1339

§4130.9 Pledge of permits or leases as security for loans.

Grazing permits or leases that have been pledged as security for loans from lending agencies shall be renewed by the authorized officer under the provisions of these regulations for a period of not to exceed 10 years if the loan is for the purpose of furthering the permittee's or lessee's livestock operation, *Provided*, That the permittee or lessee has complied with the rules and regulations of this part and that such renewal will be in accordance with other applicable laws and regulations. While grazing permits or leases may be pledged as security for loans from lending agencies, this does not exempt these permits or leases from the provisions of these regulations.

[43 FR 29067, July 5, 1978. Redesignated at 49 FR 6454, Feb. 21, 1984. Further redesignated at 60 FR 9965, Feb. 22, 1995]

Subpart 4140—Prohibited Acts

§4140.1 Acts prohibited on public lands.

The following acts are prohibited on public lands and other lands administered by the Bureau of Land Management:

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under §4170.1:

- (1) Violating special terms and conditions incorporated in permits or leases;
- (2) Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse, conservation use, or use temporarily suspended by the authorized officer.
- (3) Placing supplemental feed on these lands without authorization.
- (4) Failing to comply with the terms, conditions, and stipulations of cooperative range improvement agreements or range improvement permits;
- (5) Refusing to install, maintain, modify, or remove range improvements when so directed by the authorized officer.
- (6) Unauthorized leasing or subleasing as defined in this part.
- (b) Persons performing the following prohibited acts related to rangelands

shall be subject to civil and criminal penalties set forth at §§4170.1 and 4170.2:

- (1) Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands:
  - (i) Without a permit or lease, and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.
  - (ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;
  - (iii) In an area or at a time different from that authorized; or
  - (iv) Failing to comply with a requirement under §4130.7(c) of this title.
- (2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;
- (3) Cutting, burning, spraying, destroying, or removing vegetation without authorization;
- (4) Damaging or removing U.S. property without authorization;
- (5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;
- (6) Littering;
- (7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;
- (8) Knowingly or willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports and/or amendments thereto;
- (9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;
- (10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;