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2001 HOUSE NATURAL RESOURCES

HB 1276

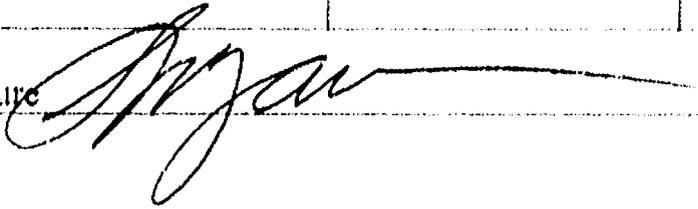
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

House Natural Resources Committee

Conference Committee

Hearing Date January 26, 2001

Tape Number	Side A	Side B	Meter #
1	x		46 to 2893
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: Will call the Natural Resources Committee to order. Call the roll. Open the hearing on HB 1276. Anyone here to testify in favor of this bill.

Wes Tossett: There is a law in ND that you cannot have a commercial lease for longer than 10 years. This is also true of agricultural leases. In agriculture leases, with cash rent, 3 to 5 years is as long as anyone cares to enter in to. As far as crop share leases you can renew these for as long as 20 years. HB1276 is not necessarily on leases, but on easements, a partial lease of property. Leases tend to be short. Farm ownership is about 30 years. CRP is a ten year contract. Some conservationists say CRP is the best thing to come along since the Duck Stamp. All we are

asking for today is a balance. Good easements make for a good working partnership, if leases are too long the guy that holds that 20 - 30 can be pretty incentive to the things that change.

Rep. DeKrey: I have some real concerns about tying up agricultural land forever. Right now if you take a Federal grassland easement, that easement is on that land forever. It is a perpetual easement. Many of these easements are being paid for by Ducks Unlimited and other contribution groups. Which I don't have a problem with. The Federal government writes these easements and under my bill, if they were to take the easements themselves, we could keep it in the state, we could control the number of years and I think if people had that option to do that we could perhaps stop some of the perpetual easements which I think aren't a good thing for the farmer or the state in the long run. One of the things we talked a lot about this session is wind energy. That might be a big thing in ND. If you take a Federal grassland easement right now you will sign a paper that will not allow you to have wind energy on that parcel of land. Land owners could be taking it for financial problems or just because he believes in the program. Wind energy comes along and get developed in 10-15 years and he will be excluded from that income because he has a grassland easement. I would hope when we work with non-profits in this state that that is something we wouldn't have to place in easements. I think it just makes sense that every generation should be able to decide what the land use of their own farm or ranch is going to be. If you take a perpetual easement you have excluded anyone from every making a decision on that property forever. I think that is a little bit long. Another thing, when you sign a Federal easement there is no protection there for hunters, hikers, or anything whatsoever. It doesn't say you can't post your land, but it isn't going to be any more open for hunting then it was before. That could be part of a nonprofit lease, but not a Federal lease. It makes it much more flexible for a

nonprofit group and the owner to come to an agreement on their own, tailor made for the landowner. Federal leases are not that way. That is nation wide.

Chairman Rennerfeldt: Any questions from the committee?

Rep. Winrieh: As I read this bill, this would place restrictions on easements that could be granted to nonprofit organizations?

Rep. DeKrey: That is right.

Rep. Winrieh: Then I don't understand how that is going to encourage nonprofit easements and discourage Federal easements?

Rep. DeKrey: Because farmers are extremely wary of getting into contracts with the Federal government. That is one of the biggest hang-ups. If they know it is perpetual and a one time payment and that's it. On these easements would restrict the number of years they could take it, but the farmer can go into it with the provision in the bill he can buy his way out of it. He can't do that on a Federal lease.

Rep. Porter: If we are allowing the buy back of the easements based on percentages, what would it matter having the time period up front? Is there any reason you started this one at 10?

Rep. DeKrey: I started this one at 10 years because I matched it up with CRP and other parts of the Code where you can only write a lease for maximum of ten years. I am trying to keep it consistent, but I am open to amendments.

Chairman Rennerfeldt: Any further questions of the committee? Anyone else in favor of this bill?

Wes Tossett: If you have an unduly long lease, then you hold the paper. The longer the lease, the longer the up front payment you have, I would like to keep that at 10 years. If it is too long, then you don't have the farmer caring about future generations. I guess I will summarize this by

saying if the preservationists can't afford a stamp every 10 years to get that renewed. Non profits are always crying about how little money they have, but they never pay any taxes. I guess with a 10 years limit you can keep both sides humble. I ask for your support on a 10 year limit.

Rep. Nottestad: Will you provide documentation to the committee that the non profits aren't willing to pay the taxes, excluding Federal government, that would not be considered a nonprofit.

Tossett: There was a Senate bill passed that they agreed to pay the taxes.

Rep. Nottestad: Sir, that bill mandates they pay their taxes. It doesn't say they agreed. You made a past tense statement, I would like documentation to support that statement. You said they aren't willing to pay in lieu of taxes.

Dennis Miller - Landowners Association of ND: (See written testimony).

Rep. Keiser: Are you telling me that individual farmers does not have the freedom right now to choose all of things when negotiating a lease with a nonprofit?

Miller: Yes, that is certainly the question. We have a number of instances where we feel there are certain agencies that create willing sellers, meaning their organizations working against the outlet on Devils Lake and yet they are right there to buy up all the land as it is flooded. Sometimes it is not an issue of a willing buyer, willing seller. It is an issue of an organization manipulating the market so willing sellers are created. We support a landowners rights to do whatever he wants. In the same sense there are economic instances where organizations have the power to create willing sellers and we do not support those instances.

Chairman Rennerfeldt: Any questions of the committee? Anyone else to testify in favor?

Eric Aasmundstad - ND Farm Bureau: We certainly support HB 1276 in as much as it does limit the amount of time a conservation easement exists. I want to differentiate between the Federal Government and the non profits in the way they handle their cash payments. We are very

supportive of the fact that the non profits do pay their fair share of taxes. The US Government does not. And yes, the things contained here can be negotiated today. The nonprofit organizations that have the money to take these easements are not willing to sign short term leases. They prefer perpetuity. It is our feeling that if our state law read that they could carry a lease for 10 years, and that is long enough, there is not reason for the operator of that property not to re-up the easement. We feel that we have what they want and if our state law says 10 years they will come around.

Chairman Rennerfeldt: Questions of the committee? We will have to take the opposition to this bill now.

Jim Horner - Lobbyist for the ND Land Title Assn. And On behalf of Malcom Brown, ND Bar Association: We are not for or against this bill. We would like an amendment to this bill. (See written testimony).

Chairman Rennerfeldt: Any questions of the committee?

Keith Trego - Executive Director of the ND Wetlands Trust: (See written testimony).

Chairman Rennerfeldt: Any questions of the committee? Anyone else care to speak in opposition to this bill?

Bill Pfeifer - ND Chapter of the Wildlife Society: (See written testimony).

Chairman Rennerfeldt: Any questions of the committee?

Joe Satrom - Director of the Land Protection Program Great Plains Office of the Ducks

Unlimited, Inc.: We support a Do Not Pass. (See written testimony).

Chairman Rennerfeldt: Any questions of the committee?

Rep. Kelsh: What is the status of these easements with regard to wind energy development?

Satron: As was eluded to, Ducks Unlimited are providing resources for the permanent grassland easement program of the US Fish and Wildlife Service on the Missouri Coteau Landscape of Central ND. As an organization we are very interested in a variance that would allow development on a limited basis on grassland easements held by the Fish and Wildlife Service. All of this is under consideration, it sounds as though that will be worked out as Bill suggested. We believe it can be done in a way that it will not affect the value of the easement relative to the natural qualities of the land.

Chairman Rennerfeldt: Any further questions of the committee?

Andy Mork - Chairman of the BOMMM Joint Board: I am neither in support or opposition to this bill but as a matter of information. There will be two other easement bills in the Senate, ours is 2266. If you pass this bill in this form it would be in conflict with our bill. I would suggest you may have to work with other versions of the bill, so you could come up with a clean bill. We are asking for perpetual easements for riparian land along the Missouri River in that area. We can work with you - Mike Dwyer represents our board.

Chairman Rennerfeldt: Any questions of the committee?

Rep. Winrich: What was the number of that bill?

Mork: 2266 is our bill and another one 2319.

Chairman Rennerfeldt: I will close the hearing on HB 1276.

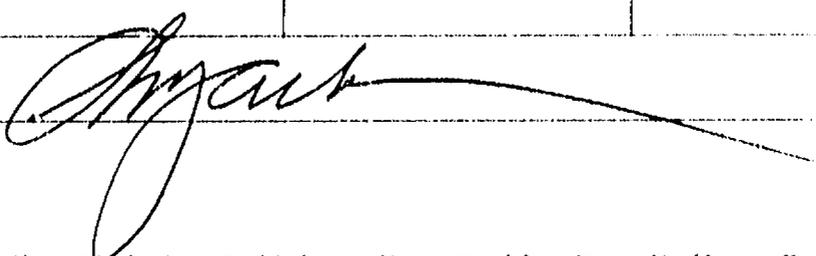
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

House Natural Resources Committee

Conference Committee

Hearing Date February 1, 2001

Tape Number	Side A	Side B	Meter #
3		x	1183 to 5387
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich,

Chairman Rennerfeldt: Okay, let's do 1276.

Rep. DeKrey: I move an amendment, line 17, scratch 10 insert 30. Line 17 scratch 1/10, insert 1/30 and line 16 scratch 10, insert 30.

Vice Chair Nelson: I second.

Rep. DeKrey: The reason I am doing that is because I talked to quite a few groups around here and I think that is a reasonable compromise. The ag groups are pretty much stuck on 10 because it matches CRP, it matches the number of years that contractors have in other parts of state law. That is where the ten came about, they are talking fifty years because they want a generation and

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House Natural Resources Committee

Bill/Resolution Number HB 1276

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one half, so I compromised with 30 years so each generation can make their own decisions on these easements. I think it makes a lot more sense than the bill we heard today on perpetual easements. I can't see how anyone can stand up with a straight face and tell us perpetual easements are good for North Dakota. They have far more law suits in District 10 than in this state that anything the Federal Government has done to this state. Why we would want to invite that into the Southwestern part of the state, I have no idea.

Vice Chair Nelson: I move a Do Pass as amended.

Chairman Rennerfeldt: We need to move the amends first. Do we have a move on a Do Pass on amendments?

Rep. DeKrey: I move a do pass on the amendments.

Vice Chair Nelson: I second that.

Chairman Rennerfeldt: We have a do pass on the amendments, all in favor signify by saying Aye. Opposed? Amendments passed.

Vice Chair Nelson: I move a Do Pass as amended on HB 1276.

Rep. DeKrey: I second.

Rep. Winrich: I guess I have to raise the same question with this bill I raised earlier, about the bill we heard this morning. I am not sure what the difference is? I don't own any agricultural land, but I do own property in Grand Forks. I know that in residential and commercial property in cities, properties carry with them something called a restrictive covenant with the deed. That is a condition that exists in perpetuity. In fact, regulates what can be done with the property, whether it can be subdivided from its current size. I guess I don't understand, if we permit restrictive covenants, which is perpetual condition or restriction on piece of property, why aren't

perpetual easements permitted in other areas. What is the difference between a restrictive covenant and an easement, legally?

Chairman Rennerfeldt: I tried to get a hold of Jeff Nelson.

Rep. DeKrey: We have dealt with this before on Judiciary Committee, and when you get the covenants in residential areas, it is to protect the neighborhood from the guy that comes in and builds the gaudy house. You enter that covenant when you buy the property. The thing about an easement is, it isn't much different. But, the question is, why do we restrict in town, and you guys don't want to be restricted in the country. I guess that is why we live out in the country. I don't want to impose my country rules on your city. I think we should be able to do whatever we want around here. All I am saying is don't bring your rules out to my farm, that is why I am living out here.

Vice Chair Nelson: I think there are a couple things, my previous argument works a lot better now, this does move towards middle ground. I believe the Wetlands Trust entered a pilot project, I think they have 14 easements that are 30 years in length that Gov. Schaffer accepted a year ago. This seems to be an area of compromise. This generational type of easement. It think it fits the argument from the landowners standpoint, whether it is good or bad to enter into an agreement, you have that right to do with what you want with that land while you are on it. On the other side you have the buy back in this bill, it does have a burden of responsibility from the people holding the easement and it does end. It has to be renewed. I think that ensures there is going to be some responsible behavior from the people holding the easement. On a perpetual easement you don't know how things change, I am scared to death of a perpetual easements. I think this is one of the area where we may not get to the perpetual stages, it does give some ground. Let's see if we can

