

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1297

2001 HOUSE NATURAL RESOURCES

HB 1297

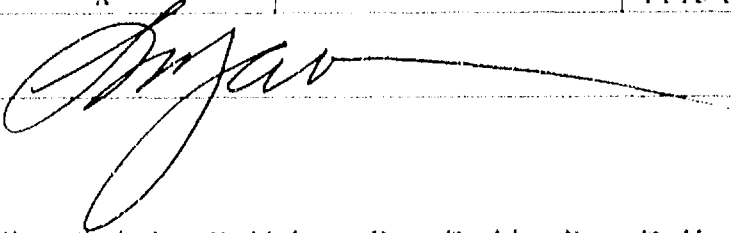
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1297

House Natural Resources Committee

Conference Committee

Hearing Date February 1, 2001

Tape Number	Side A	Side B	Meter #
1	x		4288 to end
		x	1 to 1642
3	x		1115 to 2221
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: I will open the hearing on HB 1297. Anyone here wish to testify in favor of HB 1297?

Rep. Porter: This bill came about as a result of the diesel spill in Mandan. It affects all of ND. This bill mirrors the Federal Innocent Landowners provisions that EPA follows. Currently with the situation in Mandan, property values will start to decline. This measure will allow the current landowners to retain any liability connected with the hazardous spill and allow the owners to retain full value of property. While the measure will not correct the situation it will address future concerns of liability as long as buyers perform the required environmental tests and not contribute to future hazardous spills.

Chairman Rennerfeldt: This bill mirrors Federal Law? How does that enter in?

Rep. Porter: The situation in Mandan, since it is fuel under Mandan, it does not qualify as a super fund hazardous spill. So the Super Fund doesn't come into play, there is other funds though, like the underground storage tank leaking fund that could come into play. Some of the material has been contributed back to previous and other old gas stations. The way this bill comes to play, the Innocent Landowner provision only affects those bills directly related to the Super Funds. This would include spills not related to the Super Fund.

Chairman Rennerfeldt: Questions for Rep. Porter? Rae Ann.

Rae Ann Kelsch - Representative, District 34: I am here to appear in support HB 1297. It is a good thing for Mandan and the state.

Chairman Rennerfeldt: Anyone else here to testify in favor?

Bill Delmore - Kelsch Law Firm: Our firm represents 50 people in two buildings that have some health concerns with this bill, but more importantly we represent 30 downtown landowners. When the legislators were looking at this bill, we were providing technical assistance. What this bill does is codifies the Federal concept of Innocent Landowners Defense. What it means, is if you take certain steps, as outlined, prior to acquiring land, you would be protected from cleanup by a regulatory agency if anything that you didn't know was there, was found at a later time. (Explains his point, with two client stories). If someone takes the steps as outlined in this bill, they would be protected from future liability. One of the good things this would do, if people start to file or make available with deed and other documents, is the next person buys, all they have to do is update it and they get the same protection.

Rep. Keiser: Can you help me understand from the disclosure requirement of the seller and the Realtor. I understand the intention of the bill, I buy property I do everything and so I can't be

held liable. I will however after purchasing the property become aware of a problem, and I decide I want to sell the property, I have an obligation to disclose that information to my Realtor, the Realtor has to disclose that to the buyer, the buyer knows this, he may become liable entering the contract knowing about it?

Delmore: You do have to disclose. It is unclear, regarding some kind of contamination, is that a material defect, or not? That is one reason the Super Fund put this in Federal Law.

Chairman Rennerfeldt: How would this affect lending institutions involved?

Delmore: We have already codified the third party member liability clause which provides protection to the lending institutions if they take certain steps.

Chairman Rennerfeldt: Any further questions from the committee? Anyone else prepared to speak in favor?

Jay Veil - President, First Southwest Bank in Mandan: I am here to speak in favor of HB 1297. (see written testimony).

Chairman Rennerfeldt: Any questions?

Bob Willer - Chairman of Bismarek-Mandan Chamber of Commerce: I am here today in support of HB 1297. (See written testimony).

Rep. Keiser: What would happen from a Realtors code of ethics and a buyers required to disclose on future sales. What happens to that liability. It covers the innocent buyer, but when they become aware, does the liability come back?

Willer: My understanding as a real estate agent, if you are aware of a defect on the property, you have an absolute responsibility to disclose. If the property owner is aware of the defect and fails to disclose to the broker, the broker may still have liability in the fact that you would expect expertise from your brokerage firm to do diligence to see if there was a material defect.

Rep. Keiser: It seems to me, if you follow the scenario, this gets the person off the hook for correcting the exposure immediately, but we are talking about as this bill indicates, the individual finding out about it, after the purchase, at that point there is a liability. If that person that is held innocent doesn't disclose it to the next buyer, don't they become liable again? If they do disclose it, where does the liability go? I understand this, if you buy this property and hold it to perpetuity, you are in great shape. But it seems to me we haven't solved the problem of the liability coming back.

Willer: I am not sure where and when the liability would come back, as I understand the bill, if a buyer of real estate did their due diligence, or a phase one environmental study, and found no hazardous waste, the liability from the previous seller would not be there. If something happens after that purchase, the next buyer of the property in doing their due diligence determine that there was hazardous waste, now you are in that negotiating process again. Either the price of the property or release of future liability is part of the negotiations.

Vice Chair Nelson: As a Realtor would you expect an environmental assessment on each property you sell? How do you look at this to be implemented?

Willer: Part of the process in domestic property is to find out with your client, everything that you can about the property. One of the questions we would ask is, whether or not there has been any previous studies that have been done to determine whether or not there is hazardous waste. If there have been not, no knowledge of it, I don't know if it would be the responsibility of the broker at that point to insist that the study be conducted. However, if I was representing a purchaser, I would be encouraging that study be done.

Chairman Rennerfeldt: How about if the owner doesn't want to tell you and the prospective buyer choose not to do the study? Would he still be covered under this legislation?

Willer: If you do due process, you have no liability.

Tom Keisch - Attorney: If you don't disclose, he may be able to sue you, but you can't take advantage of the defense that you didn't do diligence.

Jim Neubauer - Mandan City Administrator: On behalf of the Board of City Commissioners I am here to urge your support for HB 1297. (see written testimony)

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

Francis Schwindt - ND Department of Health: (see written testimony).

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

Clyde Krebs: I own an elevator in Glen Ullin and as you know there are many elevators across the state in the process of purchasing land from the railroads. We are in support of HB 1297. That is our basis.

Chairman Rennerfeldt: Any questions of the committee? Any one else care to testify in favor of HB 1297? Any opposition to 1297. If not I will close the hearing on HB 1297.

COMMITTEE WORK

Chairman Rennerfeldt: Let's do HB 1297.

(discussion regarding need for amendments)

Rep. DeKrey: I move we amend HB 1297 on page 3, line 16 after release, make that subsection 5 and down on line 22, make subsection 5, subsection 6. Page 2, line 13, after which, cross out consists of and write may include.

Rep. Droydal: I second.

Chairman Rennerfeldt: Any discussion on the amendment? All in favor signify by saying Aye. Opposed? Amendments carry.

Rep. Nottestad: I move a Do Pass as amended on HB 1297.

Rep. Brekke: I second.

Chairman Rennerfeldt: Any further discussion on HB 1297?

Rep. Keiser: I support the bill, but I think it is missing the most important component and so with the bill passed out, I ask you hold it for a day and have Rep. Porter talk to Mr. Kelsch to see whether or not they have any concerns. You have to understand Real Estate law and you have to understand what this bill does. This bill address when you have an exposure to something and you are an innocent person and bought the property, you are not held liable for removal of that material, if you follow the steps. This bill only applies if there is a problem substance found. There are a lot of properties with substances underneath them that are never discovered. So this bill would never apply in those situations. So this assumes that something will be discovered. So the minute it is discovered, let's say Rep. Drovdal bought the property and met all the conditions in this bill and then at some point when he sells, I go to him and say is there any problem. No, I met these things and there is nothing. So my Realtor says, lets drill and I discover now there is a problem. Drovdal is off the hook, the problem is, well, you will have to discount the property to me. I buy the property knowing the problem is there, does it become my responsibility? That is a real question. This bill protects the person who owns the property now, but if they ever find out that there is a problem, they are required by law to disclose it themselves. The Realtor is required to work on your behalf to discover any problems. Where does the liability go... They try to find the original guy. You haven't found him in the first place and I bought the property knowing, am I liable for removal. He didn't know. The amendment that goes here should say, once a person buys the property and doesn't realize it that that person can also not be liable and can sell the property and sell the limitation of liability. If I lived forever I would never be liable to remove

the substance, however, I am not going to live forever. It is going to have to be transferred. What happens to the new person? You offer the limitation of liability for Droydal, but why not for me?
(More discussion ensued)

Rep. Porter: In that scenario, I talked with Mr. Schwindt and Mr. Delmore also brought up the point that these should be recorded in the deed and transferred forward. But part of this bill is for each person to get in on the limited liability they have to perform the tests. So if each person owns it for a day and decides to sell it tomorrow, the person who buys it does not complete the test, they are not granted the immunity of the person before them. The only way the immunity goes forward is each party must jump through the hoops. If the technology changes and something is found in the future they would have to jump through those hoops anyway to get this liability. The State Health Department currently goes after who they believe to be the responsible party. That is not the case in every state or every situation. They usually go after whomever owns the land. (Cites example) I don't think what Rep. Keiser is bringing up needs to be addressed because each time this thing moves forward the buyer has to jump through the hoops. You can't get away from your liability. But if they jump through the hoops prescribed in this bill they would know about these things. If they did the environmental study and they didn't disclose that there was a hazardous waste there, then I think there would be a couple of people. The individual who did not disclose, the Realtor if they had knowledge and the person who did the study for the new buyer. I think it covers the situation. The Health Department was comfortable with it.

Rep. DeKrey: Call for question.

Chairman Rennefeldt: I have a Do Pass on HB 1297. Call the roll.

MOTION CARRIES

YES, 14 NO, 0

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House Natural Resources Committee
Bill/Resolution Number HB 1297
Hearing Date February 1, 2001

1 ABSENT AND NOT VOTING

CARRIED BY REP. DEKREY

FISCAL NOTE
 Requested by Legislative Council
 01/17/2001

Bill/Resolution No.: HB 1297

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The proposed bill does not have any fiscal impact at this time. If there is a site where a responsible party cannot be found and the federal Superfund program does not apply, there may be a fiscal impact if the State must clean up the site.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathy J. Albin	Agency:	Health Department
Phone Number:	328-2392	Date Prepared:	01/22/2001

10249.0301
Title.0400

Adopted by the Natural Resources
Committee

February 1, 2001

VR
2/2/01

AMENDMENTS TO HB 1297

HOUSE NATURAL RESOURCES

02/04/01

Page 2, line 13, replace "consists of" with "may include"

Page 3, line 16, after the underscored period insert:

"5."

Page 3, line 22, replace "5" with "6"

Renumber accordingly

