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10/3/03
Date

2003 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1303

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Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1303

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1-31-03

Tape Number	Side A	Side B	Meter #
1	x		0-32.5
Committee Clerk Signature <i>Joseph Runkle</i>			

Minutes: Chairman Klein: called the meeting to order on HB 1303. All members were present.

Sandy Clark, North Dakota Farm Bureau: spoke in favor of HB 1303, and the Farm Bureau supports this bill.

Representative DeKrey: sponsored the bill, but did not show up to testify in favor.

There was no testimony in favor of HB 1303.

Benny Graff, Judge, South Central Court, Burleigh County: appeared in opposition of HB 1303

I believe it will have a great impact on the judiciary. If you pass this measure it will tear the guts right out of the administrative hearing process. Its like having a brand new trial right after you've gone through the administrative process, it would mean 60 more trials for South Central District. If this would pass it could take up to a week for trials, it would add us a lot of work. As you know we have cut way back in the last few years, we are from 54-42 we think we are stream-lined, and you are going to just add us a lot of work. I want you to know the ramifications at our level.

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House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1303

Hearing Date 1-31-03

Doug Bahr, Director, Civil Litigation Division, Office of Attorney General: appeared in opposition of HB 1303. **(SEE ATTACHED TESTIMONY).**

Bruce Hicks, Assistant Director, Oil and Gas Division, of the North Dakota Industrial Commission: appeared in opposition of HB 1303. **(SEE ATTACHED TESTIMONY).**

Christine Hogan, Executive Director, State Bar Association of ND: appeared in opposition of HB 1303. **(SEE ATTACHED TESTIMONY).**

Ilona Jeffcoat-Sacco, Director, Public Utilities Division, PSC: appeared in opposition of HB 1303. **(SEE ATTACHED TESTIMONY).**

Joe Ibach, ND Real Estate Appraiser Qualifications and Ethics Board: appeared in opposition of HB 1303. **(SEE ATTACHED TESTIMONY).**

DeNae Kautzmann, Appeals Supervisor, Department of Human Services: appeared neutral on HB 1303. **(SEE ATTACHED TESTIMONY).**

Bonnie Fetch, Administrative Law, Director of the Office of Administration Law: I'm hear not to give any testimony but will answer any questions.

Jod, Bjornson, Workers Compensator, appeared in opposition of HB 1303 and recommend a DNP.

Tom Tupa, Lobbyist: appeared in opposition of HB 1303.

Jody Campbell: would like to go on record in opposition of the bill.

Hearing closed.

Representative Grande: made a **DO NOT PASS** motion on HB 1303.

Representative Devlin: **SECOND** the motion.

VOTE 14 YES 0 NO 0 ABSENT.

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Date: 1-31-03
 Roll Call Vote #: ~~1303~~

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1303

House GOVERNMENT AND VETERANS AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DNP

Motion Made By Rep. Grande Seconded By Devlin

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	✓		B. Amerman	✓	
Vice Chairman B.B. Grande	✓		L. Potter	✓	
W.R. Devlin	✓		C. Williams	✓	
C.B. Haas	✓		L. Winrich	✓	
J. Kasper	✓				
L.R. Klemin	✓				
L. Meier	✓				
M. Sitte	✓				
W.W. Tieman	✓				
R.H. Wikenheiser	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Klein

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

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In Costa Rickford 10/3/03
 Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
January 31, 2003 12:05 p.m.

Module No: HR-19-1432
Carrier: M. Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1303: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1303 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-19-1432

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2003 TESTIMONY

HB 1303

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TESTIMONY BEFORE THE HOUSE
GOVERNMENT & VETERANS AFFAIRS COMMITTEE
IN OPPOSITION TO HOUSE BILL NO. 1303

Douglas A. Bahr
Director, Civil Litigation Division
Office of Attorney General

January 31, 2003

My name is Doug Bahr. I am the Director of the Civil Litigation Division of the Office of Attorney General. I am appearing today on behalf of Attorney General Wayne Stenehjem in opposition to House Bill No. 1303.

Section 28-32-42, N.D.C.C., provides for the appeal of a determination of an administrative agency. Under current law, the district court's review of an agency decision is based upon the record made at the hearing before the agency and in accordance with specific statutory standards. N.D.C.C. § 28-32-46. House Bill 1303 would change the nature of the appeal of an agency's decision by permitting the party to request a de novo review by the district court.

It is unclear from the bill what is meant by "de novo review." There are at least two possibilities. Each creates both logistic and constitutional concerns.

"De novo review" could mean a "trial de novo." A trial de novo is when the appellate court acts as if there has been no prior proceeding and tries the matter again. Thus, if "de novo review" means "trial de novo," there would be a new evidentiary hearing or trial. At the hearing, the district court could hear the same expert and lay witnesses and see the same physical or documentary evidence admitted at the administrative hearing. At the trial de novo, the parties could also present witnesses or introduce evidence not presented to the administrative agency. A trial de novo could also open up the possibility that the parties would conduct discovery anew, meaning parties could serve interrogatories (written questions to other parties), requests for production of documents, and take depositions (oral questions under oath).

"De novo review" could also mean an "appeal de novo." An appeal de novo is an appeal in which the appellate court uses the trial court's record but reviews the evidence without giving any deference to the trial court's factual findings. If this is what is meant by "de novo review" in HB 1303, the district court would review the record of the administrative proceeding and, without taking any new evidence or testimony, decide the case without giving any deference or consideration to the administrative agency's decision.

Whether "de novo review" means a "trial de novo" or "appeal de novo," requiring de novo review of an administrative agency's determination is contrary to sound public policy and unconstitutional. A de novo review would violate the separation of powers doctrine embodied in the North Dakota Constitution. It would also ignore the very purpose and function of administrative agencies. The advantage of the experience and expertise of the administrative agency would be lost. Permitting de novo review of administrative agency decisions will also likely increase the frequency of appeals from administrative agency decisions, placing a substantial and unmanageable burden on an already taxed judiciary. A "trial de

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