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ROLL NUMBER

DESCRIPTION

1146

2007 HOUSE NATURAL RESOURCES

HB 1146

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

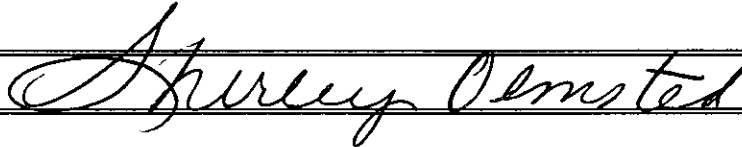
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2559

Committee Clerk Signature



Minutes:

Chairman Porter opened the hearing on HB 1146 and asked the clerk to read the title.

Representative Lyle Hanson, District #12 from Jamestown introduced HB 1146 as a sponsor.

He made reference to land that has been sold during the past few years and the hunting rights have been sold separately from the land of the sale. This is happening in the badlands.

Representative Chet Pollert from District 29 also came forward in support of HB 1146.

Mr. Curt Decker from Dickinson came forward as a concerned sportsman. We need to stop this before it gets too far. He thinks that down the road these hunting rights owners are going to come back and demand more rights. They may not even live in this state. If you want to receive the benefits of this state, you should be a resident and taxpayer of this state. I urge a do pass on this bill.

Chairman Porter asked if he thought it would be a potential problem if these severed rights were sold to groups who may or may not want hunting on the property and the affects it may have for that surface owner.

Mr. Decker said most definitely. There are going to be some negative aspects to the whole thing. Look at what is happening with mineral rights. It can lead to a negative chain reaction down the road. There have some wonderful properties sold in western North Dakota sold just

for the hunting rights. The average person cannot compete with some of these out of state hunters who are buying these rights.

Representative Drovdal wanted to correct the record on the sale of mineral rights. He said that they pay 11-1/2% production severance tax and they have to pay income tax in North Dakota for any of their income.

Mr. Decker said that is absolutely true but the large percentage of what they receive they are taking with them and the tax paying citizens of ND are having to pick up the negative impacts of what is happening out there. I think this bill will help protect our limited resources.

Representative Nottestad asked about the land being sold for one thousand dollars per acre. What does this have to do with this bill?

Mr. Decker said nothing. I just mentioned that in passing. These property values are being driven up and I am not sure how severing will affect those land values. Right now they are paying higher values for the hunting rights.

Representative Nottestad said what if there was a bill to restrict the value of your home in Dickinson. To me this is exactly the same thing. If there is a farmer who chooses to sell his land and it is better for him to sell the hunting rights separate from the land. Doesn't that take away his rights?

Mr. Decker said yes it probably would. It is a catch 22 situation. I think it would be a positive bill to protect what we do have here in ND.

Representative Charging asked if these rights are being separated now and how would you propose to deal with those that have been severed already.

Mr. Decker said yes it is happening but he doesn't know how to deal with it. He said I guess you can grandfather those in that have already been severed.

Representative Charging asked him if he was a landowner.

Mr. Decker said no but he has a lot of wonderful friends that are landowners. In some cases, it may save some of these ranches if they could sever those hunting rights, but then down the road what happens. There are a lot of scenarios.

Representative Solberg said he supports this bill. He said an example of this would be someone who sells his land and retains the hunting rights. Later he decides to sell his hunting to someone else and they can come in and overrun the surface owner's property and he would have no say in controlling this. There are a lot of negative things that can occur.

Representative DeKrey asked if an oil producer comes in the land and the mineral rights have been severed, does that company have to work with the surface owner before they can drill that well?

Representative Solberg said they have to work with the surface owner but that doesn't relate to this.

Representative DeKrey asked why doesn't it. If we are talking about rights here, you sold those hunting rights, why would that give the owner of the hunting rights the ability to just go on the land without working with the surface owner.

Representative Solberg said it would be different said the person who owns those hunting rights could just go in and start hunting.

Ms. Julie Ellingson of the ND Stockman's Association came forward in support of HB 1146. She said private property rights are the cornerstone of the ND Stockman's Association philosophy. They feel severing the hunting rights from the property would be very confusing and could also affect the landowner's ability to manage their land if not in the short term but in the long term down the line. Surface rights are very important to the management of a livestock operation. Our organization does not view hunting as a right but as a privilege.

Representative Charging said we are trying to govern the landowner here and you know we cannot do that.

Ms. Ellingson said they think in the long term this will be a problem for ranchers trying to manage their land.

Representative Charging said she still does not follow this. The surface landowner should still have the right.

Ms. Ellingson said they think there is already confusion within the separation of different rights from the land. We think there will be a problem with future generations.

Representative Drovdal said most of the hunting rights that have been severed have been caused by the federal government. How would this affect the federal governments for any land they may have acquired?

Ms. Ellingson said she was the wrong person to ask.

Mr. Harold Erickson from Carrington came forward in support of HB 1146. He had an instance last year where he was hunting in Hazen with some friends. They had permission to hunt on this piece of ground from a renter and the landowner came out and very angrily told us that we could not hunt there. We immediately left but I was wondering if the renter had the hunting rights or the owner.

Chairman Porter asked for any further testimony in favor of HB 1146. Hearing none, he asked for opposition to HB 1146.

Mr. Brian Kramer of the ND Farm Bureau came forward. He said he was not sure where he stands on this bill. There are some very good reasons to sever as well as not to sever these rights. It probably is a property right to sell those rights. In reading through this bill, most of the discussion has been about the sale of the land. What if I own the land and lease those

hunting rights, whether it is to another person or to Game and Fish PLOTS program. Is that not a lease of those hunting rights? I think this bill needs some work to clarify some of this.

Chairman Porter asked how he would view the severance of hunting rights in a land sale where someone kept that right to basically trespass on someone's land and use that in a fashion that they see fit for hunting, fishing and trapping any different than a perpetual easement.

Mr. Kramer said the severing of those rights and a perpetual easement are very similar. This is a contract between the seller of the property and the purchaser. They come to an agreement and who is to say that is right or wrong. I understand where your line of questioning is coming from. We do have a real problem with perpetual easements. What will happen down the road two generations from now? They see no benefit from that severance but they are stuck with easement on the property or the hunting rights.

Chairman Porter asked what happens in a situation where I take it upon myself to go out and acquire hunting rights permanently. I am getting a permanent easement on someone's land. I don't know who the owner is and ten years from now and I don't care. I gather up this group of hunting rights and then I sell them to the nature conservancy or to Ducks Unlimited or perhaps to the federal government. There is nothing in the current statute that says the purchase of these is restricted to anybody or for any purpose so I could get them into the lands of PETA and virtually stop hunting in North Dakota. The new landowner who buys the land and farms the land and all the livestock is running through and defragating that land couldn't even walk out and shoot a deer during the deer season or shoot a coyote that has taken one of his calves. Don't you see that as a huge potential problem by allowing the severance of those rights?

Mr. Kramer said yes it is a dilemma. I think unless a contract is specifically laid out there will be problems here. There will be problems between the person owning the land and the person leasing the land.

Representative Hofstad asked said we have talked a lot about leasing and we certainly do have a number of easements in ND with the wildlife services, but don't you think a person coming in to buy that land is going to evaluate that land based on the leases against it.

Mr. Kramer said he was correct. The purchaser down the road will have to put a value on that himself.

Representative DeKrey asked if this had been litigated anywhere or in any other states.

Mr. Kramer said not that he was aware of.

Representative Nottestad said we are talking about the separation here and to him if the land rights are separated by a sale it would have to be recorded in the Register of Deed's Office in the county. Do you know of any recordings that have taken place?

Mr. Kramer said he did not.

Representative Clark said that suppose someone acquires the hunting rights to a piece of land and he is of the opinion that everyone should be able to hunt on his land where he has the rights. If he doesn't post it, does that mean it is open to everyone?

Mr. Kramer said he did not have the answer to that but he would assume yes.

Representative Meyer asked with the right, are we talking about a perpetual easement or a right? Is the hunting a right or are we talking about a permanent easement?

Mr. Kramer said I believe that this is access to that property. Is that a right or is that an easement? I cannot honestly answer that. The hunting right is probably the access to be on that property.

Representative Rod Froehlich of District #31 came forward on HB 1146. He said in 1961 his uncle died and in 1969 they had a public auction where my father bought my uncle's land at that sale. When they reviewed the abstract before that, there is one party that my uncle had bought the land from that retained the hunting rights. We knew that when we bought the property. One day two pickups came driving up and we had the land posted. We did not know these people so my father asked them why they were there hunting. He asked them who gave them permission to hunt on this land. He said the owner of the hunting rights had given them permission to hunt there. My father said the contract reads that the owner's family has permission to hunt here and not just anyone. In this case, there was an easement in place for that family. They couldn't sell that easement because it was recorded at the courthouse and this is just one incident. He said he bought some land and the family wanted to retain the hunting rights. He said no one else could hunt on the land because the right was sold specifically to that family and that is how it was recorded. He said we can sell our mineral rights, and our coal rights, and whatever you want to call it, but I am not going to sell my hunting rights unless I have to. Whatever you work out with a willing buyer is your right as long as you come to a mutual understanding. I am opposed to something that says you cannot do this as a property owner. I look at it as being no different than being able to sell my mineral rights to someone.

Representative Solberg said he thought this example would be a good reason to pass this bill.

Representative Froehlich said we knew what we were getting into when we bought it. It has to be a willing buyer and a willing seller. If we are going to limit my ability to sell my property or my interests in my property, you are opening up a court case.

Representative Damschen said couldn't you have accomplished the same thing with a contract and not severed the hunting rights?

Representative Froehlich said he did a contract for deed and that is exactly what this family did when we bought this last property. We put it in a contract and they specified in that contract that if that family wanted to hunt on that property, they had to contact me the day before. We don't have any problems at all. They cannot sell it and if they did I would take them to court. The contract reads that it is for that family only. It has to be a willing buyer and a willing seller and you can work that out.

Mr. Steve Tomac from Farm Credit Services came forward as being neutral on this bill. This was a discussion prior to the legislature. We are beginning to see many requests and many abstracts where the hunting rights are reserved. As a lender we are getting concerned about what hunting rights actually mean. As an appraiser at Farm Credit, it is hard to break out what the hunting is worth to the land versus the real value of the land. Can you quantify what is agricultural and what is hunting? We are having problems with that. You need to be aware that this is happening. This is not a simple yes or no bill. There are some deep questions here. I would suggest a HCR relating to this bill whether it is passed or defeated. There are some lingering questions out there that come up often. Who is required to post the land? Is it the person with the hunting rights or the person who owns the land? There are so many unknowns in this. We have an opportunity to correct some of the mistakes that we didn't do with the minerals. Maybe we should have required an abstract for mineral rights? Maybe we need a tracking system for this. As a lender I can tell you we have some concerns because it really does impact the value of the property if the hunting rights are severed.

Representative Meyer said when you are lending are you looking at this severing of hunting rights as a right, or as a perpetual easement on that person's property. How is being handled financially?

Mr. Tomac said each case is handled separately. If there are no exceptions to the title of the land we assume that it is an absolute simple ownership and that owner is entitled to everything that happens on that land. If there are exceptions to that, and there are several variations to that, there are some restrictions. That does tend to diminish the value of the security through our eyes. We will make a deduction for that. The property may actually be ineligible as security. We try to quantify as much as we can what is missing from the title.

Representative Damschen said as this bill is written now, do you think it would prohibit the type of arrangement that Representative Froehlich has or the example that he gave us?

Mr. Tomac said he was not an attorney but some clarification is needed on this.

Representative Charging could this undo everything we have done for the PLOTS program.

Mr. Tomac said he was saying this in a general term. Most of the PLOTS programs are only for two to three years. Those programs that go on for fifteen to twenty five years have impacted us in our eyes. He doesn't feel that if this bill is passed, it will not have much of an impact on the PLOTS programs.

Mr. James Miller came forward saying he has to wonder if there really is such a thing as a hunting right. It seems to him that the rights of the game reside with the public. I question whether a land owner has hunting rights to sell. I have to consider hunting as a privilege and the landowner considers it a right. I think there is a disconnect here. Does the landowner have something to sell? I think this needs to be answered. Is he selling something that really becomes to the public?

Mr. Leland Goodman said he has been offered large amounts of money for his hunting rights and he does not have hunting rights to sell. I do have land access to sell. The state will have to monitor this. If you are talking about severing anything, it better have a taxable value to it.

There was no further testimony so the hearing was closed.

There was written testimony left from the Cass County Wildlife Club attached as Item #1.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2646

Committee Clerk Signature

Shirley Osmsted

Minutes:

Chairman Porter said he was going to appoint a subcommittee for HB 1146 on the severance of hunting rights. He asked **Representative Damschen, Representative DeKrey** and **Representative Hanson** to be on that committee.

They agree to be on the subcommittee.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

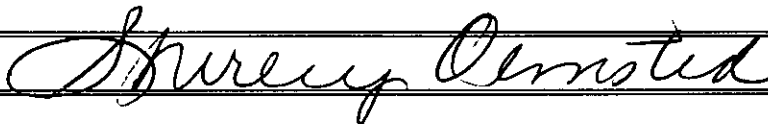
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3158

Committee Clerk Signature



Minutes:

Chairman Porter asked the committee to consider HB 1146.

Representative Damschen said the subcommittee said each of the three people on the subcommittee came up with different amendments to this bill. He reviewed his amendments with the committee. See amendments marked 70387.0101 marked as Item #1. He is having trouble dealing with "hunting rights" versus "hunting access".

Representative Hanson discussed his amendments marked as Item #2. His just grandfathers all existing hunting rights.

Chairman Porter said wouldn't this already happen. Anything we change today is not retroactive unless we specifically say retroactive.

Representative DeKrey talked about his suggested amendments. See amendments marked as Item #3. He said his amendment turns this into a study.

Representative Meyer said going back and researching this one of the problems that she has is hunting rights are not defined in the code. The right to hunt is in our constitution but that is vastly different than hunting rights. Regardless of what you do with this, I think it needs to be studied. We should not put a law in the books that is not defined. You need to define hunting rights.

Representative Hanson said he gave Representative Meyer a copy of the century code on hunting.

Representative Meyer said that was true but is not defined as hunting rights.

Representative Drovdal said there are two organizations that probably do the most severance of access rights and those are the US Wildlife and the ND Game and Fish Department. If we pass this without a study, how is this going to affect their ability to sever that right?

Chairman Porter said he was not sure that they sever a right. He thinks they lease the right of access from the current owner. It is never severed.

Representative Drovdal you may or may not be correct on the way you stated that. My son has some land that he cannot hunt on because they have the rights to that land.

Chairman Porter said when the federal government purchased the easements to that land, if it was deemed a waterfowl resting area they have the ability to limit the functions on that land. If you sell your land to me and you sell the hunting access, I do not have any control over the trespassing on that land. The big questions is who assumes the liability if I own the land but I cannot control who can come and go on it so now I have additional liabilities because you chose to sever the right to trespass off to someone else. That is what got me interested in the bill in the first place. How does the liability flow with that? If you lease the access rights, they still belong to me as owner of the land.

Representative Keiser said that he moves to accept amendment 103 which is the study.

Representative Hofstad seconded the motion.

Representative Drovdal asked that with this amendment we cannot sever it but we can get an permanent easement for it and get the same results.

Chairman Porter said in the state of ND you cannot do anything longer than 99 years. Only the federal government can do that in the state of ND. No other individual or group can do anything more than 99 years. The only permanent easements allowed in ND are through the federal government.

Representative Damschen said we are talking about hunting rights and the right to hunt.

Representative Meyer makes a good point here. There is a difference but it really boils down to access.

Representative Meyer said she feels that part of this has to be studied.

Chairman Porter asked if Representative DeKrey would be open to a word change so that it reads "severance of hunting access" and then down below it also says "related to the severance of hunting access"?

Representative DeKrey said that would be fine.

Representative Hofstad said just for the point of discussion someone asked if we would pass this legislation and deny that right, if it indeed a right, that could also be considered a taking also.

Representative Hanson said that if you sever mineral rights and if there is no activity after a certain amount of time this goes back to the surface owner. If you severed hunting rights or access that could go on forever and it may never get back to the surface owner.

Representative Damschen said he thought severing access would be a taking. What right is worth anything if you cannot have right of access. That would be a concern to me because then your owner would be denied the right of access to his own land.

Representative Meyer said on your liability questions, the surface owner always has the liability.

Representative DeKrey said as a result of all of these comments, it becomes very clear that we need a study.

Chairman Porter asked for further discussion. Seeing none, he asked if everyone was comfortable with amendment 103 and changing from rights to access in those two spots.

A voice vote was taken and the motion carried.

Representative DeKrey made a motion for a do pass as amended.

Representative Meyer seconded the motion.

Chairman Porter asked for discussion. Hearing none, the clerk was asked to call the roll on a do pass as amended on HB 1146. Let the record show there were 13 yes, 0 no with 1 absent. **Representative Meyer** will carry this bill to the floor.

70387.0101
Title.

Prepared by the Legislative Council staff for
Representative Damschen
February 5, 2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1146

Item # 1

Page 1, line 2, after "of" insert "the right of access for" and replace "rights" with "access"

Page 1, line 6, after "of" insert "the right of access for", replace "rights" with "access", and
after "to" insert "access to land to"

Renumber accordingly

70387.0102
Title.

Item # 2
Prepared by the Legislative Council staff for
Representative Hanson
February 6, 2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1146

Page 1, line 2, after "estate" insert "; and to provide for application"

Page 1, after line 11, insert:

"SECTION 2. APPLICATION OF ACT. This Act applies only to real estate transactions entered after the effective date of this Act."

Renumber accordingly

70387.0103
Title.

Item # 3
Prepared by the Legislative Council staff for
Representative DeKrey.
February 8, 2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1146

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the severance of hunting rights from the surface estate.

SECTION 1. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING RIGHTS FROM SURFACE ESTATE STUDY. The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting rights from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

*rights to
access -*

February 8, 2007

**House Amendments to HB 1146 (70387.0104) - Natural Resources Committee
02/09/2007**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the severance of hunting access from the surface estate.

SECTION 1. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY. The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting access from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 2-8-07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1146

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Moves for amend 103

Motion Made By Keiser Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman – Rep. Porter			Rep. Hanson		
Vice-Chairman – Rep Damschen			Rep. Hunsakor		
Rep. Charging			Rep. Kelsh		
Rep. Clark			Rep. Meyer		
Rep. DeKrey			Rep. Solberg		
Rep. Drovdal					
Rep. Hofstad					
Rep. Keiser					
Rep. Nottestad					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-8-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1146

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amend

Motion Made By DeKrey Seconded By Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Porter	✓		Rep. Hanson	✓	
Vice-Chairman - Rep Damschen	✓		Rep. Hunsakor	✓	
Rep. Charging	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Meyer	✓	
Rep. DeKrey	✓		Rep. Solberg		
Rep. Drovdal	✓				
Rep. Hofstad	✓				
Rep. Keiser	✓				
Rep. Nottestad	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Meyer

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

REPORT OF STANDING COMMITTEE

HB 1146: Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1146 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the severance of hunting access from the surface estate.

SECTION 1. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY. The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting access from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 SENATE NATURAL RESOURCES

HB 1146

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1146

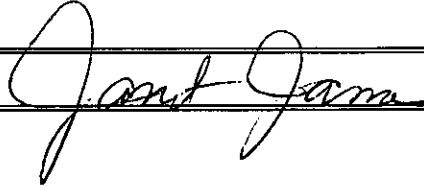
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: March 1, 2007

Recorder Job Number: # 4186, 4189

Committee Clerk Signature



Minutes:

Senator Ben Tollefson, Vice Chairman of the Senate Natural Resources Committee opened the hearing on HB 1146 that provides for a legislative council study of the severance of hunting access from the surface estate.

All members of the committee were present except Senator Stanley Lyson who was testifying at another hearing.

Representative Lyle Hanson of District 12 sponsor of HB 1146 introduced the bill stating it was made into a study by the House Natural Resources Committee and asked the committee to return it the original bill. He further stated how bankers have contacted him about the problems of severing the hunting rights from the land owners. People are buying land, keeping it for several years, then selling it but retaining the hunting rights. That is okay for the first time, because it is known who has the hunting rights but later the hunting rights can be sold to Peta or some other conservation society. This could result in no hunting allowed which could imbalance the number of wildlife in the area. That was the original intent of the bill to preserve the hunting rights. Since the bill has been turned into a study, many have asked that it be returned to the original form. He presented a copy of the original bill to the committee (See attachment #1).

