

# MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

1344

2007 HOUSE POLITICAL SUBDIVISIONS

HB 1344

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1344

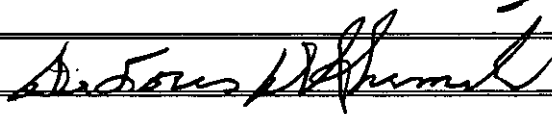
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2563

Committee Clerk Signature



Minutes:

**Chairman Herbel** opened the hearing on HB 1344.

**Rep. Kerzman:** One of the basic rights is excess and utilization of the property. We had a person in our area that has been struggling with this for a number of years. I can relate back I had an incident where I had a piece of property that I farmed and I worked extensively with the township and the township does not have allot of resources, but they allowed me to put the culvert in and they allowed me to do this an assume the liability. Section lines and excess to property has been a problem for years. Explained how an excess came about from an old agreement from a former owner of property getting to their land. Since there was no verbal agreement the county commissioners did go out and get this excess in order and every ting is in order except there is a revenue through there and he would have to fill in some dirt in order to navigate this with his equipment and the hold up has been that the county commission does not assume any kind of liability. The constituent I have been working with is willing to fix this up, but he is concerned about the liability too. There is no perfect bill but one thing about this is should put an amendment out there and put surface interests on it. We have been dealing with unorganized townships and I think this should be added.

**Rep. Lee Kaldor:** I was wondering about the rights of the easement when there has been an improvement made and then a new land owner decides to interfere with that. Aren't there laws that should protect even though there is no written agreement?

**Rep. Kerzman:** I assume there was but the county commissioners read it different and I can't dispute it with them. I did see documents where the former land owner was given a sum of money and we don't know if that was in regards to the easement, but I know that the present land owner has pulled up the cattle guard, put a fence across there and won't let him have excess. This has been going on for several years.

**Rep. Lawrence Klemin** Section line roads are part of a congressional grant to the state of ND going back to before there was a state. The federal government granted property to the state here, it has a provision in there that section lines are considered public roads and open for public travel to a width of 33 feet on each side of the section line. There are provisions already in ND law allowing for those section line roads to be closed and vacated if certain procedures are followed. Under section 24-07-03 the law provides if a person with an interest in adjoining land petitions the board of county commissioners that after a public hearing they may close the sections lines or portions there of which are not used for 10 years or are not traveled due to natural obstacles and are not traveled due to other routes of travel. We tried to come up with a method similar to the procedure for closing a section line to allow someone improve the section line and that is where the language comes from. When you do improve it and it can be traveled is there any requirement for maintenance there? Because it is a public road, not just for the petitioner or anyone else. That is why the bill says providing minimum maintenance. Who is to bear the liability for the damage to person or property as a result of this improvement and the county commission is not willing to take on that liability so that is why it is put in the bill that the person wanting that done would have to assume that liability.

**Chairman Herbel** What about people that are in the oil field area that own the land, but don't own the mineral rights and those people that own the mineral right to be able to travel around on their land?

**Rep. Lawrence Klemin** We are trying to provide an excess to people with a surface to get to their other farmland so they can farm it. These are public roads and anyone can use it. Maybe we need to narrow the scope of this to address the surface interests?

**Chairman Herbel** If we limited it to agricultural purposes maybe that would take care of that?

**Rep. Lawrence Klemin:** I can't imagine that there is any industrial or commercial entity that would not have some kind of excess already based on their existing road system. I think you are correct when you are talking about agricultural and not anything else.

**Rep. Louis Pinkerton:** This would be a public road where excess would remain with the developer; where would the liability remain?

**Rep. Lawrence Klemin** I think the cities, state and counties and other townships now has jurisdiction over public roads that have been constructed, that they would probably have some liabilities with accidents relating to the construction of that road so I don't know if that is in the statute anywhere but I know that I have seen court cases to that affect.

**Rep. Kim Koppelman** Under the bill, if the landowner improves the road, with the permission of the political subdivision, and let's say they have an established road, then the township takes it over and does more repair, how does that work?

**Rep. Lawrence Klemin** I think that there is some shares responsibility there. We did not include township authority in there and there is an amendment to do that.

**Larry Syverson:** NDTOA offers this amendment and explained it. (see testimony #1) We would not object to this bill if it is amended in this manner.

**Chairman Herbel** If we amended it like that where would the liability lie?

**Larry Syverson:** The bill tries to give the liability to the interested party. We are not sure it would completely satisfy that, but as long as it remains and option for the road authority to approve this, they would have to require that the work be done according to code and they would be under no obligation to grant the petition.

**Rep. Pat Hatlestad:** How has final authority if the county commission approves lets say my right to approve the road and the township said no we don't want it. Now what happens?

**Larry Syverson:** That would depend on whether the road is in an unincorporated township or organized township. In an organized township the right of way belongs to the township, no the county.

**Melvin Fisher (son Curtis)** We would request some working changes and I know there are issues with liability and there is not a perfect bill. Discussed the fact that his grandfather and father had traveled across this section line, a quarter mile, on a ridge line to excess our property. During the years there has been some dispute with the neighbors about crossing this property. In 1976 the county deviated from the section line under the century code, plated a trail and sell cattle guards, and the neighbors attorney prepared an easement, which was never signed. From 1976 until 2000 we continued travel as we did before. In 2000 the neighbor constructed a solid fence across the road. For the past seven years we have been before the county commissioner at every meeting pleading our case to gain excess to our property. You would think after so many years if you have traveled this route you would have the right by prescription to continue. We followed that path, but under a right by prescription there are three criteria's that need to be meet. It has to be for 20 years, for continuous use and the third is by adverse and hostel use and not by permissible. The court ruled it was permissible use because an easement was never signed. The case was referred to the municipal court and they confirmed the district court ruling. Therefore, we turned back to the

county for help to excess this property. (Handed out testimony #2 and #3) Discussed the problems with section line and excess. Discussed court trails and attached sheets and went over this in great detail.

**Melvin Fisher:** Discussed in great length the problems and court actions that have been on going for several years.

**David Mund:** Morton County Residence and own 480 acres of cropland and farmland. I know Melvin and I have written permission to get the this quarter section of land he has there to hunt and trap on it. He has been messing around with these guys and they think it is a joke after he leaves there. I can see why there is a feud over that quarter he has got because anyone that loves to hunt like I do it is like going to heaven. This piece of ground is right behind this other individual's property and is idea for wintering cattle and that. What they are trying to do is freeze him out so he will give that land up and the county commissioners appear to be involved in it. I want to address the liability issue on this. I tried to get the county commissioners to address the liability issue last month. They did not give me an answer, except for Allan Copy, who said if you keep your premiums paid up you are OK more or less. Explained problem of liability with an accident regarding an Umpleby boy that had an accident and tried to sue Morton County for the damages and stuff. It went to court and he lost. When a section line is closed, according to a law I read, even when the county commissioners close the section line, the people that have farmland or have a need to use it. It cannot be closed to them. You can close it to the general public but you can not close it to the landowner. Our Morton County engineer said these are antiquated laws. Discussed all the concerns that the Fischer's have been dealing with.

**Dennis E. Daniel:** I first became acquainted with Melvin a few years ago. I live in a subdivision 14 miles west of Mandan on a lot and it has convents. Explained the layout and

where his lot sets. I requested Morton County to just have the fences pulled back and opened up so you can travel down the section line so you can excess the back of the lot. I was told by the chairman at that time told me that you have no damn business back there. You got a road to get to your lot from the front, what the hell do you need back there for? This is the attitude of the county commission. Went on about how Morton County is not responsive to their residence.

**Rep. Kim Koppelman** The bill says the landowner can partition the county commissioners to authorize the landowner to improve the section line.

**David Mund:** If someone goes out and someone pulls that rock out and maybe he will come along with a pickup load of dirt and pour it in there to fill that hole up. If it settles down later on, does he assume the responsibility or does the county? The code says for them to be held liable they must knowingly do something wrong. So by leaving the liability with the county rather than putting on the individual owner. County puts the liability back onto the landowner and I am responsible and we are already paying the premium for the county to have that.

**Curtis Fischer:** Went on about fixing the section line. Said this is only one spot that needs fixing on this quarter mile.

Opposition: None

Hearing closed.



# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1344

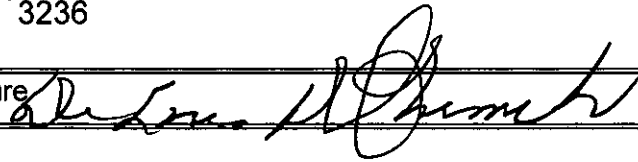
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 3236

Committee Clerk Signature



Minutes:

**Chairman Herbel** reopened the hearing on HB 1344.

**Rep. Lawrence Klemin:** (passing around the proposed amendment #1) Explained the amendment. Discussed the laws regarding the section line roads. After the hearing on this we received some good constructive criticism. With the amendments it would have to be a person having interest in the surface, that would take away that the government would have more interest in the minerals. Secondly it has to be approved for travel for agricultural purposes. That would take away the concern with some of the Western counties for oil and gas companies. Third, the person would have to file the petition with the board of county commissioners in an unorganized township or the board of township supervisors in an organized township and that petitioner would then have the burden to persuade that board that he should be allowed to include that section line road, which can't be travel due to natural obstacles for difficulty of terrain. The board would set the standards. The board would still be able to deny the petition, but they would have to have a reason. At least they would have to recognize your right to file a petition and they do have to have a reason and that could be appealed to a district court. I did discuss this with one of the Morton County Commissioners last night. He thought this was good.

**Motion made to move the amendment By Rep. Lawrence Klemin Seconded By Rep. Donald Dietrich Voice vote carried.**

**Discussion:**

**Rep. Nancy Johnson** You said they would have to identify why they would not approve it?

**Rep. Lawrence Klemin** If they file a partition they are going to either grant it or deny it. It doesn't say they have to have a reason. Normally you would have to.

**Rep. Pat Hatlestad** It doesn't say anything about maintenance where the other one said minimal maintenance.

**Rep. Lawrence Klemin** I think that is going to be up to them to decide whether they are going to do that or not.

**Rep. Pat Hatlestad** What about liability?

**Rep. Lawrence Klemin** It would be on the county or township. They set the standards when they approve it.

**Rep. Pat Hatlestad** Is it just agricultural use?

**Rep. Lawrence Klemin** We are talking about improving the road. The reason is agricultural, but after that is done it is still public roads under law.

**Do Pass As Amended Motion made By Rep. Pat Hatlestad Seconded by Rep. Dwight Wrangham**

**Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Lawrence Klemin**

Hearing closed.

VR  
2/9/2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1344

Page 1, line 6, remove "adjacent", replace "an" with "a surface", and after "in" insert "a parcel of"

Page 1, line 7, replace "adjoining" with "connected by", after "line" insert "to another parcel of land in which that person has a surface interest or to a highway", and after "commissioners" insert "in an unorganized township or the board of township supervisors in an organized township"

Page 1, line 8, after the second "line" insert "for the purpose of travel for agricultural purposes. The petition may be approved"

Page 1, line 10, replace "other property in which the petitioner has an" with "the parcel of land"

Page 1, line 11, remove "interest"

Page 1, line 12, replace ", provide minimal maintenance for the improvement, and assume liability for" with "to standards approved by the board."

Page 1, remove lines 13 through 17

Re-number accordingly

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

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1374

House Political Subdivisions Committee \_\_\_\_\_

Check here for Conference Committee

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

Action Taken Moved the Amendment

Motion Made By Rep. Klemm Seconded By Rep. Dietrich

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman			Rep. Kari Conrad		
Rep. Dwight Wrangham-V. Chair			Rep. Chris Griffin		
Rep. Donald Dietrich			Rep. Lee Kaldor		
Rep. Patrick Hatlestad			Rep. Louis Pinkerton		
Rep. Nancy Johnson			Rep. Steve Zaiser		
Rep. Lawrence Klemm					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

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 1344

House Political Subdivisions Committee

Check here for Conference Committee

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

Action Taken Do Pass As Amended

Motion Made By Rep Hatlestad Seconded By Rep Wrangham

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman	✓		Rep. Kari Conrad	✓	
Rep. Dwight Wrangham-V. Chair	✓		Rep. Chris Griffin	✓	
Rep. Donald Dietrich	✓		Rep. Lee Kaldor	✓	
Rep. Patrick Hatlestad	✓		Rep. Louis Pinkerton	✓	
Rep. Nancy Johnson	✓		Rep. Steve Zaiser	✓	
Rep. Lawrence Klemin	✓				
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch					

Total (Yes) 13 No 0

Absent 1

Floor Assignment Klemin

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

**REPORT OF STANDING COMMITTEE**

**HB 1344: Political Subdivisions Committee (Rep. Herbel, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1344 was placed on the Sixth order on the calendar.

Page 1, line 6, remove "adjacent", replace "an" with "a surface", and after "in" insert "a parcel of"

Page 1, line 7, replace "adjoining" with "connected by", after "line" insert "to another parcel of land in which that person has a surface interest or to a highway", and after "commissioners" insert "in an unorganized township or the board of township supervisors in an organized township"

Page 1, line 8, after the second "line" insert "for the purpose of travel for agricultural purposes. The petition may be approved"

Page 1, line 10, replace "other property in which the petitioner has an" with "the parcel of land"

Page 1, line 11, remove "interest"

Page 1, line 12, replace ", provide minimal maintenance for the improvement, and assume liability for" with "to standards approved by the board."

Page 1, remove lines 13 through 17

Renumber accordingly

2007 SENATE POLITICAL SUBDIVISIONS

HB 1344

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1344**

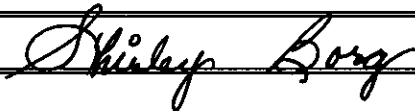
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **March 15, 2007**

Recorder Job Number: **5157**

Committee Clerk Signature



Minutes:

**Chairman Cook** called the Senate Political Subdivisions committee to order. All members present.

**Chairman Cook** opened the hearing on HB 1344 relating to section lines.

**Representative Kerzman**, District 31, introduced HB 1344. A constituent has had a long on going problem with access to his property. We live in a great democracy where we have a privilege to own property. I think there are rights that go along with that ownership and one of the rights is that we have access to that property. This situation has evolved through the years and has run into a grid lock. As one of the last resorts we have decided to try and pass some legislation that addresses the problem. His land is basically surrounded by another persons land and through the years they had access across this neighbors land and because of personal conflicts this guy decided to shut him off. He has not gotten to his property for a number of years. The county commissioners went out and surveyed where the section line is suppose to be. The land is not navigable and some dirt work would need to be done. He is willing to do the work but the commission is worried about liability issues. So we are trying to address it so he can make the corrections. He would like to add an amendment on line 11 and



change that to a must and on line fourteen change standards to minimum maintenance. He will be using it for his own use so he does not want to fix it up any more than he has to.

**Chairman Cook:** Are we talking a quarter section and do we have section lines on two sides of that. Are they both impassible.

**Representative Kerzman:** We are talking about a quarter of a section and it only has access on one side.

**Representative Klemin,** District 47, Bismarck, ND testified in support of HB 1344 (Attachment # 1)

**Senator Hacker:** Can you explain the situation, why access from either side does not work and is there water that would be disruptive?

**Representative Klemin:** There is no water that is a problem. The problem is that you can not travel on this section line road due to the terrain. There is no other way to get there as all other section line roads are basically the same.

**Senator Olafson:** The bill will give the authority to do this type of work. Is there any thing in current law that prevents this from being done?

**Representative Klemin:** I don't think there is. It is not provided for in the statute.

**Curtis Fischer:** farmer, testified in support of HB 1344. This bill pertains personally to our situation. Everyone has a dream to own property, whether it is a house or acres of land. But as a farmer or rancher this dream becomes a lively hood in the way of life to use this property to make a living. For the past fifty three years we traveled across the neighbor's property to access our property. (Attachment #2)

**Chairman Cook** asked Curtis to draw a picture of the property on the board.

**Senator Olafson:** I am still a little vague on the action that the county commission took on having the fence removed from the middle of the section line.

**Curtis Fischer:** We requested to get it back because it was in the middle of the section line. After repeated request, in July they finally did remove the fence. If we put minimum maintenance in the bill then the county should be able to post minimum maintenance signs which would remove the liability from the county.

**Senator Anderson:** Is it the whole quarter of mile that needs work.

**Curtis Fischer:** No it is just the area where the photographs are. About 200 feet.

**Melvin Fischer** testified in support of HB 1344. The law use to be that if someone needed to use the section line or move a fence you had the right to do it. The law now says that you have to petition the county commission to have the fence moved. We commissioned the county over seven years and finally got it petitioned to move the fence.

**Larry Syverson.** Chairman of Roseville Township of Trail County and Director of the ND Township Officers Association testified in support of HB 1344. (Attachment #3)

No further testimony in support, opposed or neutral on HB 1344.

**Chairman Cook** closed the hearing on HB 1344.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1344

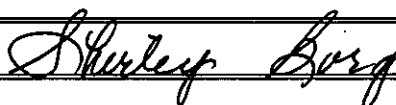
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 22, 2007

Recorder Job Number: 5446

Committee Clerk Signature



Minutes:

**Chairman Cook** called the committee to order. All members (5) present.

**Chairman Cook** asked the committee to look at HB 1344.

**Senator Warner:** I have sympathy for anyone that can not reach their land but I really think we are being asked to serve as a court here. I think the current law is more than adequate to deal with the situation.

**Chairman Cook:** It isn't. This man has not been able to access his property for seven years. He has an attorney and paying money for an attorney but he can not do it. He use to be able to do it. There is an interesting story behind this but he still can not get through the land. I will support the bill if a change is made. The change would be: In line 14 put a period right after petitioners expense and then remove "to standards approved by the board".

**Senator Hacker:** Half way through they asked for the change to "the petition must be approved" (Line 11) instead of "may be approved". I don't agree with that. Then on line 13 "The petitioner must improve the section line or portion of the section line at the petitioner's expense". What if the Local Township or county wanted to pay for that? They couldn't.

**Chairman Cook:** Yes they could.

**Senator Olafson:** If you added a section after petitioner's expense, where you are purposing to end the sentence, if you put a comma and said unless the local governing board is willing to pay the cost or something like that.

**Chairman Cook:** I don't think we need it.

**Senator Warner** made a motion to amend.

**Senator Hacker** seconded the motion.

Discussion:

Voice roll call vote: All members in favor.

**Senator Olafson** moved Do Pass as Amended.

**Senator Warner** seconded the motion.

Discussion:

**Chairman Cook:** My first thought is I wouldn't buy the land if it was landlocked unless I had a way in there.

**Senator Hacker:** I don't know if I will be in favor of this bill because I don't think it is appropriate to have specific language to affect a specific area of which a court case said no already. I know we do that but usually it affects lots of people. In my mind this is bad public policy.


Roll call vote: Yes 4 No 1 Absent 0

Carrier: **Senator Cook**

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Adopted by the Political Subdivisions  
Committee

March 22, 2007

  
3-22-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1344

Page 1, line 14, replace "to standards" with an underscored period

Page 1, remove line 15

Renumber accordingly

Date: 3.22.07  
Roll Call Vote #: 1

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
BILL/RESOLUTION NO. HB 1344

Senate Political Subdivisions Committee

Check here for Conference Committee

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

Action Taken Amendments adopted

Motion Made By Senator Warner Seconded By Senator Hacker

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman			Senator Arden C. Anderson		
Senator Curtis Olafson, ViceChair			Senator John M. Warner		
Senator Nicholas P. Hacker					

Total Yes 5 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 3-22-07  
Roll Call Vote #: #2

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
BILL/RESOLUTION NO. HB 1344

Senate Political Subdivisions Committee

Check here for Conference Committee

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

Action Taken Do Pass as Amended

Motion Made By Senator Olafson Seconded By Senator Warner

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X		Senator Arden C. Anderson	X	
Senator Curtis Olafson, ViceChair	X		Senator John M. Warner	X	
Senator Nicholas P. Hacker		X			

Total Yes 4 No 1

Absent 0

Floor Assignment Senator Cook

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

**REPORT OF STANDING COMMITTEE**

**HB 1344, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1344 was  
placed on the Sixth order on the calendar.

Page 1, line 14, replace "to standards" with an underscored period

Page 1, remove line 15

Renumber accordingly



2007 TESTIMONY

HB 1344

#1

To support HB 1344

Good morning Chairman Herbel and members of the Political Subdivisions Committee.

I am Larry Syverson a farmer from Mayville; I am the Chairman of Roseville Township of Traill County. I am also a District Director of the North Dakota Township Officers Association. NDTOA represents the six thousand township officers that serve our eleven hundred and forty one dues paying member townships.

NDTOA wishes to offer a friendly amendment to HB1344 inserting in line 7, 14 and 16 after the word "commissioners" these words in an unorganized township, or the board of township supervisors in an organized township; this change would give the decision to the authority that is actually responsible for the section line.

Chairman Herbel and Committee Members, NDTOA would not object to HB1344 if it is amended in this manor.

That concludes my prepared testimony now I will try to answer your questions.

# 2

House Bill No. 1344 As Amended

Improvement of section line by landowner. A person having a surface interest in land connected by a section line to another parcel of land may petition the board of county commissioners in an unorganized township or the board of township supervisors in an organized township to authorize the petitioner to improve the section line or a portion of the section line for the purpose of travel for agricultural purposes. The petition may be approved if the section line cannot be traveled due to natural obstacles or difficulty of terrain and if the petitioner does not have a readily accessible alternative route of travel to the parcel of land. The petitioner must improve the section line or a portion of the section line at the petitioner's expense to standards approved by the board.

