

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2096

2007 SENATE NATURAL RESOURCES

SB 2096

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2096

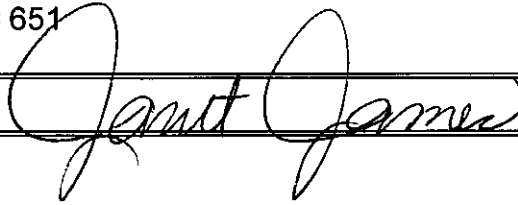
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 5, 2007

Recorder Job Number: # 651

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee brought the committee to order.

Attendance was taken indicating all member of the committee were present.

Senator Lyson opened the hearing on SB 2096, relating to sovereign land management regulations violations and danger in navigable waters.

Dale Frink, North Dakota State Engineer of the North Dakota State Water Commission introduced SB 2096 (see attached testimony #1). He also presented additional background information explaining sovereign lands as land being along navigable rivers, streams and lakes in North Dakota that were acquired at statehood. Sovereign lands are defined as the ordinary water mark from one side of the river, stream or lake to the ordinary water mark on the other side.

This land is public land including the beds, sandbars and the areas of vegetation or wetland. In the last few years there have been issues associated with sovereign lands and the Attorney General's office issued an opinion that required the State Engineer to prepare a long over due sovereign lands management plan. There have been cases of false posting of sovereign lands as the public demand and competition for these lands has increased. As a result a lot of effort

was put into developing this comprehensive plan. Most of the changes will be the rules but there are changes in statute that expand the section stating "lakes" into "waters" and the ability to impose a small penalty. He also commented that adding the suggested phrase "environment" is a concern of the State Health Department but feels comfortable in the removal of it.

Senator Lyson commented that SB 2096 sounds like a simple bill, but is concerned about the rules that would be set down without much input or control of the legislature.

Dale Frink stated the rules are presently in a draft form and would be glad to share them. The bill and rules reflect the General Attorney's opinion and the requirement of the North Dakota State Water Commission be more proactive in managing the sovereign lands. The department is hoping the North Dakota Game and Fish Department will help manage the lands.

Senator Constance Triplett questioned the removal of "by a court" in the third line of the bill.

Dale Frink stated that the various courts should not be the only ones who determine what is navigable because it is an ongoing process. Criteria for determining "navigable" will be part of the rules instead of just what the courts have determined.

Senator Herbert Urlacher asked if and what kinds of violations are presently occurring.

Dale Frink answered that most issues involve all terrain vehicles and hunting on public lands, but for the most part it is an issue of private land owners that claim land as sovereign when it should remain open for use.

Senator Urlacher asked if landowners have access to the water for their livestock.

Dale Frink assured the committee that adjacent landowners always have access to the water. He also commented if it is not sovereign lands, the public cannot walk along the edge of the waters.

Mike McEnroe representing the North Dakota Chapter of the Wildlife Society testified in support of SB 2096 (See attached testimony #2).

Senator Lyson commented he receives correspondence from the societies membership agreeing with SB 2096 and questioned if the membership would also accept the rules that would result with the bill.

Mike McEnroe said the society agreed with what they reviewed in the Water Commission's sovereign lands management plan and that when the rules are available there will be a comment period and will then respond to those rules.

Dennis Fewless, Director of the Water Quality Division of the North Dakota Department of Health testified on SB 2096, clarifying the addition of the word "environment" in the bill was of concern for the department. They are discussing the issue of determining the impact on the environment with the Water Department as the Health Department has the mandate and authority to regulate the rules in determining the rules.

Senator Joel Heitkamp asked for clarification if Dale Frink of the Water Commission wants to take the word "environment" out of the bill.

Dale Frink answered the discussion is not to that point yet although the concern is important and should be considered.

Senator Triplett asked about what rules already exist from their agency.

Dennis Fewless answered the water pollution control rule under Chapter 61-28 already gives the State Water Department the authority to control water pollution as well as waste management and air pollution rules, therefore the discussion between the two agencies is warranted.

Senator Lyson asked for testimony in opposition to SB 2096.

Sandy Tabor, general counsel for the Lignite Energy Council testified on SB 2096 stating they do not have a present position regarding SB 2096, but is happy the two departments are discussing regulations and how "environment" is defined and hopes the committee is cautious in their actions deciding this bill.

Senator Lyson asked if there was any other testimony regarding SB 2096 and hearing none, closed the hearing on SB 2096.

Senator Lyson asked for discussion and stated he has concerns about proceeding with SB 2096 until further information is available.

Senator Triplett agreed and would like to review the draft of the management plan and inquired the time schedule for the draft.

Dennis Fewless responded as much time as the committee would allow, but stated they would need a few days.

Senator Ben Tollefson stated the committee definitely would require more specific information before it could take action on SB 2096.

Senator Lyson announced SB 2096 was to be tabled until a later date.

Senator Heitkamp further commented the issue is real and just because someone owns the land does not mean the public should not have access to the shoreline.

Senator Lyson adjourned the committee.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2096

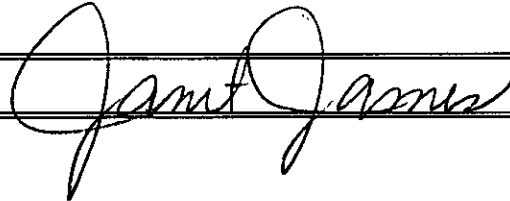
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 11, 2007

Recorder Job Number: # 922

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened committee work on SB 2096.

All members of the committee were present.

Senator Lyson stating the Office of the State Engineer of the North Dakota State Water Commission had presented to the committee members the final draft of the North Dakota Sovereign Land Management Plan and had asked the interested agencies to be available for comments and questions.

Todd Sando, Assistant Engineer and the Director of Water Development for the North Dakota State Water Commission, stated Dale Frink, the State Engineer was unavailable and therefore was present before the committee representing the agency. He stated the agency has been working with the North Dakota Game and Fish Department and the State Health Department and the Directors of each were also present. He presented a proposed amendment (See attached) that addresses the issue of giving the North Dakota Game and Fish Department the legal authority to enforce the penalties proposed in the bill. They are also trying to develop MOA and MOU with the Game and Fish Department and the county sheriff departments to help enforce the rules they are trying to adopt. He further explains the amendments (See

attached) including the concerns with the Health Department and the Lignite Energy Council, enforcing the rules and the ability to enter agreements with the Game and Fish Department and other agencies and finally the concern with severity of the penalty.

Senator Constance Triplett stated she would not understand what the words "unless otherwise indicated" inferred if she were not sitting in the committee. She further stated that a court could actually interpret those words to include a higher penalty because it is stated so vaguely.

Todd Sando answered they relied on the recommendation of the Game and Fish Department and referred the question to Director of the North Dakota Game and Fish Department.

Terry Steinwand, Director of the North Dakota Game and Fish Department answered the question as these words are standard when referring to the department's administrative rules. Unless other penalties are specified, often an offense will be classified as Class B non-criminal offense that will not go on a person's record. He agreed that as the law is stated, it would need an explanation.

Senator Triplett asked if a violation could be higher than a Class B misdemeanor.

Terry Steinwand assured the committee that would be the highest penalty by law and that most offenses would be much lower than a Class B.

Senator Lyson asked if the amendment could be defined for a better understanding.

Terry Steinwand confirmed that this language is used on all the department bills unless otherwise indicated which gives the flexibility within the administrative rules process.

Senator Triplett suggested that "unless a lesser penalty is indicated" would be a lot clearer.

Terry Steinwand agreed that would be clearer and was willing to make the change.

Senator Joel Heitkamp commented that would make sense but would the phrase require changes on a lot of other things.

Terry Steinwand answered he did not think it would be a problem, but if Senator Triplett has a excellent point that if she is interpreting it differently, others might do the same, but does not feel that a wholesale set of changes would be required for every bill that already has this language.

Senator Ben Tollefson requested the definition of sovereign lands and if it has any relationship to sovereign lands of the Indian reservations.

Todd Sando answered that sovereign land refers to land to land high water mark and this could be on reservation land but sovereign land refers to the state of North Dakota as described in Chapter 61-33 of the Century Code.

Senator Triplett requested information regarding the removal of the word "environment" within the bill and how the departments involved arrived to the conclusion of eliminating it from the bill.

Dale Sando stated that he was present at the hearing and it was decided the environment will be considered in the rules, but it should be defined in the law and that removing "environment" will not effect the managing of the sovereign lands and are therefore is willing to remove it because of the Health Departments concerns.

Senator Layton Freborg asked if not all Game and Fish lands are not sovereign lands as they are government lands, owned by the state.

Terry Steinwand confirmed that under the laws they are state lands of North Dakota and are not considered sovereign lands under this definition, although there are some areas of purchased lands that do include sovereign lands.

Senator Triplett clarified that there is a difference between the sovereign lands under navigable waters definition as opposed to the land the state purchases for other reasons, like

school lands or for other propriety reasons. These lands can be bought and sold whereas the other sovereign lands are held in trust and are not allowed to be sold.

Senator Lyson stated the amendments will be given to the Legislative Council to be drawn up to be studied.

Dennis Fewless, Director of the Water Quality Division of the North Dakota State Health Department responded to Senator Triplett question regarding the department's involvement in the decision to remove "environment" from the SB 2096 stating that removing the "environment" is acceptable. The department has always had a good working relationship with the Water Commission and North Dakota Game and Fish Department regarding any environmental issues, and has implemented any pertinent rules. He further stated that after reading the amendments, his department is considered to be one of the agencies referred to in Section 3 on Page 3, after line 20 and if the need arises they could also enter into a MOU with the Water Commission. His department would not have to be specifically listed in the bill because they are already included as "another law enforcement entity."

Senator Triplett had a concern that more dependence might be given to the North Dakota Game and Fish Department or not enough acknowledgment to all other entities if all are listed.

Dale Frink explained that a lot of the department's rules regard issues that are related to the Game & Fish Department for law enforcement and just did not want to name all the departments they work with.

Senator Triplett again asked why name any of the departments.

Senator Lyson stated that there is only a small portion of the Game & Fish Department that is law enforcement and the other sections of the Department to not have the authority, so therefore list them separately.

Senator Heitkamp added that North Dakota Game and Fish Department is needed to be specifically listed within the bill because the public needs to know who has the authority.

Todd Sando further stated the Water Commission needs different departments for additional support in enforcing their rules because they do not have an enforcing division.

Senator Herbert Urlacher asked if the federal regulations are the responsibility of the State Water Commission to regulate and if this bill writes an agreement with the Game & Fish to enforce the responsibility although it still lies with the Water Commission.

Todd Sando confirmed this to be true and that there are different acts regulated by the Federal government that defines sovereign lands.

Lee Klappardt, Director the Planning and Education Division of the North Dakota State Water Commission, repeated how the management plan developed due to the direction of the Attorney General's office. He referred to the management plan and he further described sovereign lands on navigable waters that are determined by prescribed criteria and preceded to list some of small number within the state. He further explained the management plan to included criteria of navigation of waters at statehood and the waters need to be considered a highway of commerce to be considered navigable so that small lakes or pot holes cannot be included. He also explained the ordinary high water mark and how it is defined in the administrative code and by the Supreme Court.

Senator Lyson stated that instead of Mr. Klappardt reviewing the entire management plan the committee members could ask questions if they required explanation of any sections.

Senator Lyson asked if there will be time for public comment on the management plan.

Lee Klappardt confirmed there were public hearings across the state as required although they were not very well attended. He further added the real guts of the plan were in the nineteen recommendations and many issues already raised are answered in the plan.

Senator Triplett asked how well the public hearings were attended.

Lee Klappardt answered there were meetings in Williston, Minot, Fargo, Valley City and Bismarck which had the largest attendance (20-30 people) due to the issues of development in the Bismarck/Mandan area.

Senator Triplett asked if the Water Commission anticipated further public hearing processes as interest is developed when other areas of the state are affected.

Lee Klappardt envisions this to happen in the future.

Senator Triplett asked for confirmation that the sovereign land management plan was not intended to become part of the administrative code but is an internal working set of codes.

Lee Klappardt assured the committee the plan is not cast in stone and is a working document that will be modified as needed. The State Engineer of the Water Commission only inherited the Sovereign Lands Management Plan recently and will aid the Commission in consistent management of the sovereign lands along with the laws and regulations.

Senator Freborg asked for an explanation of the navigable test.

Patrick Fridgen, a member of the planning staff of the Water Commission, explained two criteria is used for determination of "navigable" including the historical documentation of a body of water being used as highway of commerce and the accessibility for navigational purposes.

Senator Heitkamp asked if and how the Corp of Engineers was involved with this process.

Lee Klappardt answered the Corp of Engineers involvement is based on Section 10 law that makes the Corp part of the determination of navigability to whether it is federal water having an impact on the said navigable water in question or not or if it is sovereign land or not.

Patrick Fridgen clarified the North Dakota only has title to the original bed of the Sakakawea Reservoir and Lake Oahe and the land flooded is considered to be a separate tracks of land.

Senator Heitkamp asked for confirmation that this is a North Dakota issue and the Federal Corp of Engineers has no involvement.

Lee Klappradt sited the issue of the Corp of Engineers wanting to establish bird habitat on the sand bars on the Missouri River. The Corp did not have control because the sandbars belong to the state of North Dakota and were required a permit from the State Engineer because it is ruled as sovereign land.

Senator Lyson commented the amendments will be drawn up and a later time will be set for later review.

Senator Lyson closed the committee work on SB 2096.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2096

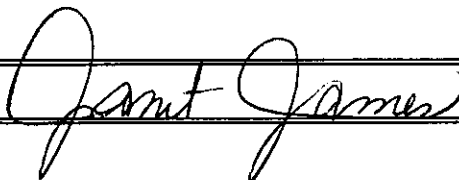
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: #1334

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened committee work on SB 2096 relating to sovereign land management regulations, violations and dangers in navigable waters.

All members of the committee were present except **Senator Joel Heitkamp** who was testifying in another committee.

Copies of the proposed amendments were distributed to the committee members.

Senator Lyson suggested that after reviewing the amendments further discussion would be held the next day.

Todd Sando, Assistant State Engineer of the North Dakota State Water Commission, told the committee the department had some concerns with the penalty section of the amendment on page 4. The portion of the bill has been removed; "subject to a civil penalty not to exceed \$1000.00 for each violation."

Senator Lyson commented that was the penalty for Class B misdemeanor and further clarification within the bill was necessary.

Senator Constance Triplett informed the committee that after discussion, this phrasing is the cleanest language.

Senator Lyson again informed the committee that after Senator Heitkamp has an opportunity to review the amendment, the committee will work further on the bill.

Senator Lyson adjourned the committee.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2096


Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 19, 2007

Recorder Job Number: 1459

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee brought the committee to order.

Attendance was taken indicating all members of the committee were present.

Senator Lyson asked the committee to take a look at a mock-up of the bill with the proposed amendment including the use of the better language as suggested by **Senator Constance Triplett** (see attachment).

In questioning if the North Dakota State Water Commission agrees with the amendment, **Senator Triplett** reminded the committee that **Todd Sando**, Assistant Director of the State Water Commission had told them the day before the department had no further questions regarding the amendment indicating their approval.

Senator Ben Tollefson made a motion to adopt the amendment as written in the mock-up bill.

Senator Pomeroy second the motion.

Roll call vote #1 of a voice vote was taken indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Tollefson made a motion for a Do Pass as Amended of SB 2096.

Senator Pomeroy second the motion.

Roll call vote # 2 for a Do Pass as Amended for SB 2096 was taken indicating 7 Yeas, 0 nays and 0 absent or not voting.

Senator Joel Heitkamp will carry SB 2096.

Senator Lyson closed the committee work on SB 2096.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2096

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 1 of section 20.1-02-15.1 of the North Dakota Century Code, relating to additional powers of the game and fish department;"

Page 1, line 4, after the semicolon insert "to amend and reenact section 61-33-05 of the North Dakota Century Code, relating to duties and powers of the state engineer;"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 1 of section 20.1-02-15.1 of the North Dakota Century Code is amended and reenacted as follows:

1. To enforce state laws and rules on any game refuge, game management area or other land or water owned, leased, or managed by the department, and on sovereign lands."

Page 1, line 9, overstrike "a"

Page 1, line 14, remove "or the environment."

Page 1, line 19, remove "or the environment."

Page 3, line 8, remove "or the environment."

Page 3, after 20, insert:

"SECTION 3. AMENDMENT. Section 61-33-05 of the North Dakota Century Code is amended and reenacted as follows:

61-33-05. Duties and powers of the state engineer. The state engineer shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all rights of the owner in its own name; may issue and enforce administrative orders and recover the cost of the enforcement from the party against which enforcement is sought; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter. The state engineer has the authority to enter into agreements with the game and fish department or other law enforcement entities to enforce this chapter and its related administrative rules."

Page 3, line 24, after "misdemeanor" insert "unless otherwise indicated"

Re-number accordingly

Date: 1-19-07

Roll Call Vote #: #1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2096

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Accep. of Amendment as proposed

Motion Made By Tollefson Seconded By Pomroy

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman			Sen. Joel Heitkamp		
Sen. Ben Tollefson, ViceChairman			Sen. Jim Pomeroy		
Sen. Layton Freborg			Sen. Constance Triplett		
Sen. Herbert Urlacher					

Total (Yes) 0 No 0

Absent 0

Floor Assignment _____

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

Date: 1-19-07

Roll Call Vote #: #2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2096

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Tollefson Seconded By Pomeroy

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman	✓		Sen. Joel Heitkamp	✓	
Sen. Ben Tollefson, ViceChairman	✓		Sen. Jim Pomeroy	✓	
Sen. Layton Freborg	✓		Sen. Constance Triplett	✓	
Sen. Herbert Urlacher	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Heitkamp

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

REPORT OF STANDING COMMITTEE

SB 2096: Natural Resources Committee (Sen. Lyson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2096 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "section" with "subsection 1 of section 20.1-02-15.1 and sections", after "61-03-21.3" insert "and 61-33-05", and after "to" insert "powers of the game and fish department,"

Page 1, line 4, after "waters" insert ", and powers of the state engineer"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 1 of section 20.1-02-15.1 of the North Dakota Century Code is amended and reenacted as follows:

1. To enforce state laws and rules on any game refuge, game management area, or other land or water owned, leased, or managed by the department and on sovereign lands."

Page 1, line 9, overstrike "a"

Page 1, line 13, remove the overstrike over the first "or", remove the first underscored comma, remove the overstrike over the second "or", and remove the second underscored comma

Page 1, line 14, remove "or the environment."

Page 1, line 18, remove the overstrike over "or" and remove the underscored comma

Page 1, line 19, remove the overstrike over "or", remove the first underscored comma, and remove "or the environment."

Page 3, line 7, remove the overstrike over the first "or", remove the first underscored comma, remove the overstrike over the second "or", and remove the second underscored comma

Page 3, line 8, remove "or the environment."

Page 3, after line 20, insert:

"SECTION 3. AMENDMENT. Section 61-33-05 of the North Dakota Century Code is amended and reenacted as follows:

61-33-05. Duties and powers of the state engineer. The state engineer shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all rights of the owner in its own name; may issue and enforce administrative orders and recover the cost of the enforcement from the party against which enforcement is sought; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter. The state engineer may enter agreements with the game and fish department or other law enforcement entities to enforce this chapter and rules adopted under this chapter."

Page 3, line 24, replace "and is subject to a civil penalty not to exceed one thousand" with "unless a lesser penalty is indicated. A"

Page 3, line 25, remove "dollars for each violation. The"

Renumber accordingly

2007 HOUSE NATURAL RESOURCES

HB 2096

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2096

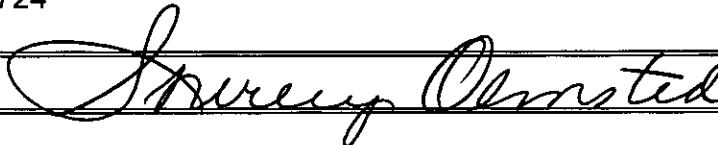
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 23, 2007

Recorder Job Number: 3724

Committee Clerk Signature



Minutes:

Chairman Porter opened the hearing on SB 2096 and asked the clerk to read the title.

Mr. Todd Sando, Assistant State Engineer, came forward as a sponsor of SB 2096. Two years ago, the Burleigh County Water Resource Board had asked the Attorney General's office for an opinion on some developments that were going on the Missouri River. We had been drafting permits for them to mitigate on public land for some of these marina projects and developments. The Attorney General said we needed a comprehensive sovereign lands management plan in order to be issuing these permits. The last two years we have put together a sovereign lands management plan and have worked a working group of some other state agencies from Game and Fish, Health Department, the Historical Society and several other agencies to draft a plan to come up with twenty recommendations as sovereign lands are becoming more and more utilized all the time. We are having more and more controversy with people along the rivers and lakes and they are encroaching on the public lands. We have had issues with developers and landowners that are trying to claim sovereign lands so we feel it is important that we need to get out and take a more active role in managing sovereign lands and have a better way of handling the boundaries. We needed some changes in legislation to

