

**2013 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1407**

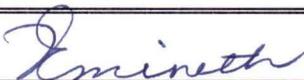
# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1407  
February 1, 2013  
18117

Conference Committee



Relating to consumer protection provisions in pipeline easements

**Minutes:**

1-4 Attachments

Rep. Porter: We will open the hearing on HB 1407.

Paul Mathews: I am a farmer from Cogswell N.D. I will mention my family struggle. (Attachment 1) Please provide the PSC the means to level this negotiation field.

Rep. J. Kelsh: This bill is the result of a study that was passed by the legislature in the 2011 session, we went through the process of a study came out with no recommendation.

Rep. Porter: Line 29 Page2 where it talks about the attorney general authority to act as the lawyer for the private citizen. Do you know of anywhere else that we have given direction to the attorney general to be someone personal attorney?

Rep. J. Kelsh: I don't know if they can be a personal attorney for anyone. I think this is to give landowners a warning of what is may be coming, what their options are, and how they can protect themselves.

Rep. Porter: It seems like that language that language that is added to this legislation taking us to a new arena that isn't afforded the private citizen.

Rep. J. Kelsh: That is if the commission says that the company is not following the law.

Rep. Keiser: I have never seen this language I don't think it can ever be in the bill because the attorney generals responsibility is to represent the state.

Rep. J. Kelsh: It was the legislative council that drew this. I think what he is trying to do is say that we are enforcing the laws of the state of N.D. and not necessarily the private citizen.

Bob Enderret: spelling? I am a farmer from Cogswell and have 2 miles of Keystone pipeline under our property. Currently there is very little incentive for a pipeline company to

negotiate. In my experience compensation is rarely the sticking point in easement negotiations but rather construction, restoration, or liability issues. In my case compensation never changed during negotiations. Please help level the playing field for N.D. Landowners.

Rep. Keiser: When you were going through the process what kind of communications did you have with the public service commission?

Bob: Outside the hearings none; I testified during the first hearing and that is all.

Todd Kranda: Attorney with the Kelsch Law Firm in Mandan; I appear before you today as a lobbyist on behalf of the N.D. Petroleum Council to oppose HB 1407 because it is ambiguous and unnecessary legislation.(Attachment 2)

Rep. Damschen: It seems like the eminent domain issue is introduced by the people that are trying to procure the easements and pipeline companies and everyone else doesn't consider eminent domain as a tool to bargain with.

Todd Kranda: I agree with that and I don't think it is intended to be a threat; It a matter of course of interest for when you come to an impasse.

Rep. Hunksor: I heard you say ambiguous, vague, ambitious, many things that shot down the bill and says it is not worth much. Wouldn't a better approach would be to say there landowners have a concern regarding easements and would be willing to help that situation?

Todd Kranda: I think that is what is done. What you have in front of you is a bill that won't work.

Rep. Kelsh: You made reference in your testimony that current laws are offering adequate protection for these types of situations yet clearly we have a number of people that weren't treated very well under the current law. What would you suggest would be a better way to approach this so that we are not here again and talking about this in the next interim?

Todd Kranda: I don't know that I have any magic potion there that can say there is not going to a bad land agent.

Bethany Abrams: the N.D. Mediation Service Administrator at the Dept. of Agriculture; We don't oppose the mediation in general; it is simply the way this clause is written and the difficulties that would be faced by our department trying to enforce that. (Attachment 3)

Rep. Keiser: In the terms of being confidential; if the party signed a release can it be made accessible on limited bases to anyone?

Bethany Abrams: I believe there is a confused as to the confidentiality it this process. Whether the party decides to disclose information from one person to another; they have the choice and the ability to do that. People need to believe that they can say things in confidence in mediation.

Rep. Keiser: I disagree with you; if both parties should choice to sign the release you should be held as accountable for any recommendation you make and you should not be able to hide behind some technicality on confidentiality.

Bethany Abrams: I agree with you. You bring up the point that brings up a lot of confusion in the mediation bill. The mediator makes no discussion the report that the mediator write is simply; these are the agreements that were reached and these are the agreements that weren't reached or there was no agreement.

Illona Jeffcoat-Sacco: General Council with the Public Service Commission; we are more in the mutual position but we are not in the mutual in the concept of this bill. (Attachment 4)

Rep. Keiser: In the situation where an agreement cannot be reached and they are going to use eminent who informs the party?

Illona Jeffcoat-Sacco: I am not sure: The commission tries to make the sighting process, how it works and how you become involved the attorney general's office has information they to get out to the people on eminent domain and how it works.

Rep. Porter: We will close the hearing on HB 1407.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1407  
February 1, 2013  
18163

Conference Committee

*Minutes*

Relating to consumer provisions in pipeline easements

**Minutes:**

Rep. Porter: We have HB 1407 in front of us this bill; this is the third time that I have heard it. Mr. Kranda gave us the same information that this is the process. This is once the order is put in place then the individuals go to court and come up with their negotiations.

Rep. Kelsh: I am going to support the bill.

Rep. Silbernagel: When we place rural water lines is the process for notifying the property owner similar to what we are doing on pipelines?

Rep. Porter: The land access process is similar the condemnation and the tools available for the water system are not there as they are for the pipeline.

Rep. Anderson: We don't pay anyone for easements or we wouldn't get the line in the ground.

Rep. Damschen: I can't stress enough that I don't believe eminent was ever intended to be a bargaining tool.

Rep. Hofstad: I move a do not pass.

Rep. Porter: We have a motion for a do not pass and a second Rep. Anderson motion carried.

Yes 9 No 3 Absent 1 Carrier; Rep. Damschen

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/25/2013**

Bill/Resolution No.: HB 1407

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

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$402,287	\$0	\$442,516	\$0
Appropriations	\$0	\$0	\$402,287	\$0	\$442,516	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for consumers notification of a gas or liquid easement/options on which a transmission line or associated facilities are to be located and for the Office of Attorney General to investigate if the terms of the easement are not in compliance with this bill.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill requires the Attorney General to investigate, when the Public Service Commission by majority vote, determines that the transmission line or associated facilities easement applicant has engaged in harassment, threats, intimidation, misrepresentation, deception, fraud or unfair tactics to acquire the easement or easement option from the landowner if the terms of the easement or easement option are not in accordance with this bill.

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

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

Not applicable.

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

This bill would require one Consumer Protection investigator and one attorney and related operating expenses. The total general fund expenditures needed to fund these positions is \$402,287 for the 2013-15 biennium and \$442,516 for the 2015-17 biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Office of Attorney General appropriation would need to be increased by \$402,287 from the general fund to carry out the requirements of this bill.

**Name:** Kathy Roll

**Agency:** Office of Attorney General

**Telephone:** 701-328-3622

**Date Prepared:** 01/31/2013

Date: 2-1-2013  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1407

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number Rep Damschen

Action Taken Rep

Motion Made By Rep Hofstad Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor		✓
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh		✓
Rep. Jim Schmidt	✓		Rep. Corey Mock		✓
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser	✓				

Total (Yes) 9 No 3

Absent 1

Floor Assignment Rep Damschen

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

Do not pass

**REPORT OF STANDING COMMITTEE**

**HB 1407: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO NOT PASS** (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1407 was placed on the Eleventh order on the calendar.

**2013 TESTIMONY**

**HB 1407**

## INFORMATION REGARDING 2013 ND HOUSE BILL 1407

### \*\*\*\*\* BACKGROUND \*\*\*\*\*

In spring of 2011, the ND Legislature passed bill HCR 3007 which requested the Legislative Management study eminent domain laws as they relate to pipeline siting.

The study was assigned to the Legislature's interim Energy Development and Transportation Committee. This Committee held hearings in November 2011 and again in March 2012.

The ND Legislative Council prepared background memorandum (<http://www.legis.nd.gov/assembly/62-2011/docs/pdf/13.9190.01000.pdf>) for the Committee.

Within that document, it describes present state law; *"under Section 32-15-06.01, the condemnor must make a reasonable and diligent effort to acquire the property by negotiation."*

The document continues to read; "In short, landowners have the following rights relating to eminent domain:

1. To negotiate for condemnation
2. To receive a copy of the appraisal showing basis of the offer.
3. To request and receive a list of neighboring property owners to whom offers have been made.
4. To ask a judge to decide whether the property is necessary for proposed use.
5. To have a judge or jury decide the amount of compensation.
6. To appeal a court decision regarding public use, necessity, or just compensation and to ask for attorney's fees and cost."

Later the same document addresses "Consumer Protection Provisions." Under present law, *"under Section 49-22-16.1, a person employed by a public utility may not use any harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of land to grant an easement."*

The document further explains, *"If at least five landowners are aggrieved, the landowners can bring action in district court to find these listed practices have happened."*

The interim Committee listened to oral testimony from previously affected North Dakota citizens who charged that existing laws needed changes. (<http://legis.nd.gov/assembly/62-2011/interim-info/minutes/edt112911minutes.pdf>)

See following page for remarks of citizen and elected officials.

One citizen presented three concerns:

1. Landowners deserve adequate warning of a pending pipeline route so they can prepare to explain concerns before the Public Service Commission.
2. Landowners deserve information on landowner's rights, eminent domain, and negotiation options.
3. Landowners deserve an adequate venue to appeal or negotiate terms of easements.

Another citizen related, *"there is not much incentive for a pipeline company to negotiate because of the power of eminent domain."*

Still another citizen examined, *"the core problem is that pipeline companies threaten landowners with eminent domain when the company does not yet have the right to eminent domain."* He presented for consideration:

1. To require the Public Service Commission and Attorney General prepare and publish a guide for landowners and require the guide be sent to landowners in advance of negotiation.
2. There should be language allowing the Public Service Commission jurisdiction to hear from aggrieved landowners.
3. To allow the Public Service Commission to withhold eminent domain if there are actions protesting the practices used to obtain easements.

Finally, another citizen testified, *"the downfall is the lack of education as to landowner's rights."*

In Committee discussions, Representative J. Kelsh stated, *"eminent domain should be available only after the negotiation process."*

Senator Wardner commented, *"it is a terrible business practice to threaten landowners before working with the landowners."*

Upon request of the Committee, Commissioner Kevin Cramer appeared in March 2012. His written testimony included, *"access is gained through private negotiations with landowners", "access granted through eminent domain is the exclusive jurisdiction of the courts", "a PSC route permit does not grant the access or easement" and "for a court to determine that acquisition tactics were so unfair, threatening, etc. that information should be made available to the PSC."* He verbally commented, *"there is a sense of helplessness from the citizens and confusion relating to the commission's role" and "the main problem appears to be an issue of public understanding and knowledge."*

During neither Committee meeting did the pipeline industry present oral or written testimony for consideration.

\*\*\*\*\* WHAT DOES HOUSE BILL 1407 ADDRESSED? \*\*\*\*\*

TEN ITEMS:

- A. In subsection 1a, the property owner will receive a cautionary message from the legislation. It also provides enough time to study a pipeline company's proposed easement. It encourages property owners to seek independent legal advice should they feel unsure of the proposal's magnitude which may infringe on their remaining property rights.
- B. In subsection 1b, the property owner will receive information regarding eminent domain and landowner rights produced by the Attorney General's office.
- C. In subsection 1c, the legislation stipulates the property owner have the above information at least 90 days prior to a Public Service Commission hearing regarding the pipeline proposal that may affects the property owner.
- D. In subsection 1d, the above notice declares the contact information of the PSC and date & location of public hearing.
- E. In subsection 1e, the legislation provides at least ten days expire before the initial proposed easement can be executed and made binding.
- F. In subsection 1f, the legislation allows confidential aspects of negotiations or terms can be shared until the easement is finally executed if both parties agree to the stipulation of confidentiality.
- G. In subsection 2, the legislation inserts that if negotiations are failing, either the landowner or the pipeline company can request mandatory mediation provided by the ND Mediation Service.
- H. Also in subsection 2, if the pipeline company still cannot secure the easement after mediation, the pipeline company must request an informal PSC hearing and only upon PSC majority consent can the pipeline company acquire the right to exercise eminent domain.
- I. If the informal PSC hearing discovers the pipeline company did not negotiate in "good faith," the PSC will not award eminent domain rights - but suggest pipeline company return to the Mediation Service for further negotiations for no fewer than 60 days before returning to the PSC for another informal hearing to demonstrate corrective measures have elevated to reach the "good faith" plateau. If not, the PSC can withhold the right to exercise eminent domain again.
- J. In subsection 3, the legislation allows the PSC to refer their knowledge gained during the above informal hearings of possible harassment, threats, intimidation, deception, fraud or unfair tactic to the Attorney General's office where the AG office will investigate and bring the pipeline company to district court if warranted.

\*\*\*\*\* CONCLUDING COMMENTS \*\*\*\*\*

- I. This legislation still allows eminent domain privileges to compliant pipeline companies who satisfy all other aspects of current law including these new additions.
  - II. The legislation codifies to allow ample time, provides basic information of landowner rights, and provides PSC hearing information. It allows landowners to initially talk to neighbors without fearing confidentiality limitation repercussions before the easement is finally executed.
  - III. The legislation defines a method of mandatory appeal (ND Mediation Service) process if either party becomes frustrated with initial negotiations.
    - i. ND Mediation Services already is available to address other energy – related issues.
  - IV. The legislation inserts an additional requirement upon the pipeline company to appear before an informal PSC hearing to demonstrate their “good faith” efforts have failed before the company is granted the existing eminent domain rights.
    - i. This follows the example of Illinois pipeline regulator’s ability to limit eminent domain privileges in that state – and that ability was successfully upheld twice in the past decades when litigated.  
(<http://caselaw.findlaw.com/il-court-of-appeals/1207128.html> )
    - ii. This also places a public safeguard since elected officials now decide if “good faith” negotiations have occurred – rather than leaving this decision only to the company whose opinion is blatantly biased.
  - V. Finally, the legislation allows the PSC to refer allegations of listed complaints to Attorney General’s office for investigation and State prosecution if deemed appropriate – rather than forcing a group of 5 landowners to coordinate to secure justice within their collective resources.
- ✓ **A pipeline company who already adheres to a policy of respecting existing landowner rights and entertains “good faith” negotiations already engages in all the facets of this legislation and has no fear of these changes.**
  - ✓ **If fact, an isolated company who may want to resist this type of state oversight & guidance suggested here could be disparaging a good and needed industry’s image and hurting progressive timely development statewide.**
  - ✓ **Please restore landowner’s faith in their state officials by insuring respect will be shown to landowners since landowners are ultimately bearing the risks of pipelines. Please help adopt these modest changes.**

Prepared by:  
Paul Mathews, Cogswell ND

**Testimony in Opposition to  
HOUSE BILL NO. 1407  
House Natural Resources Committee  
January 31, 2013**

Chairman Porter, House Natural Resources Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council to oppose HB 1407.

As you may know, the North Dakota Petroleum Council represents more than 400 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. The North Dakota Petroleum Council has been representing the industry since 1952.

The North Dakota Petroleum Council is opposed to HB 1407 because it is vague, ambiguous and unnecessary legislation. For instance, there are various situations in which lawyers may not be used for easement negotiations and yet on page 1 line 14 there is a reference to the inclusion of language that "our lawyers" drafted a document which may not necessarily apply under the circumstances. Also, there is a reference on page 1 line 15 that is made to allow "enough time" to study a proposal which clause is ambiguous and not clearly defined as to what period of time is deemed sufficient.

HB 1407 also appears to be an employment bill for lawyers. The provisions at page 1 lines 17 and 20 both refer to the hiring of a lawyer. One provision encourages the hiring of a lawyer and the other provision suggests the same lawyer be hired by different individuals.

While HB 1407 encourages a landowner in two different sentences within the same paragraph to consult with and hire a lawyer in every easement situation, there are numerous landowners who do not need to hire a lawyer. In fact, most landowners have sufficient experience and intelligence and are fully capable of making their own sound informed business decisions and are capable of completing the necessary negotiations for an easement without hiring a lawyer.

There is also a provision that requires the Attorney General's office to become involved in preparing an eminent domain and landowner rights handout. Typically the role of the Attorney General is not to represent individual landowner interests in easement negotiations nor with any eminent domain proceedings.

The eminent domain laws in North Dakota are fairly clear as provided for in the ND Constitution Article I Section 16 and Chapter 32-15 of the North Dakota Century Code. Additionally, the energy conversion and transmission facility siting act found in Chapter 49-22 is also fairly clear and already provides adequate protections for landowners with easement negotiations.

There is an unnecessary and arbitrary delay established with the provision for a 90 day advance notification period before any public hearing may be held under the energy siting act. In fact HB 1407 has the potential to restrict a private landowner from entering into a private contract for an easement. There is an arbitrary ten day delay built into the process which may be unreasonable for a landowner who has negotiated an easement and wants to enter the easement without the delay.

Also there is a provision that seems to restrict a landowner from maintaining confidentiality of his easement terms. Not all landowners want their neighbors to know everything about their individual and personal financial affairs. There also appears to be a mandatory mediation requirement with the reference to “shall submit to mediation” which is found at page 2 line 14 which process could further delay unnecessarily a proposed project and easement negotiations. There is a reference made to negotiating in “good faith” and that is a duplication of a similar and more specific requirement that already is covered and exists in the siting act which prohibits unfair tactics with acquiring land or easements.

In conclusion, the laws of North Dakota already provide for a fair process and reasonable rights with eminent domain and energy facility siting. HB 1407 is simply not necessary nor appropriate.

Accordingly, I would urge a **DO NOT PASS** recommendation for **HB 1407** and I would be happy to try to answer any questions.

COMMISSIONER  
DOUG GOEHRING



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NORTH DAKOTA  
DEPARTMENT OF AGRICULTURE  
STATE CAPITOL  
600 E BOULEVARD AVE DEPT 602  
BISMARCK ND 58505-0020

**Testimony of Bethany Abrams, North Dakota Mediation Service Administrator  
North Dakota Department of Agriculture  
House Bill 1407  
House Energy and Natural Resources Committee  
Pioneer Room  
3:00 PM January 31, 2013**

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Chairman Porter and members of the House Energy and Natural Resources Committee, I am Bethany Abrams, the North Dakota Mediation Service Administrator at the North Dakota Department of Agriculture (NDDA). I am here today on behalf of Agriculture Commissioner Doug Goehring to offer information regarding the North Dakota Mediation Services (NDMS) as it is relevant to HB 1407.

NDMS was started in 1984 to help financially distressed farmers and ranchers by providing assistance in credit and financial matters and resolving disputes. The 2011 legislative assembly expanded NDMS responsibilities to include dispute resolution of property issues related to energy development along with landowner disputes with the North Dakota Game and Fish Department related to deer depredation.

We believe mediation is important because it helps to avoid litigation, saves time and money, and improves communication between disputing parties. Mediation is voluntary and confidential. However, under the proposed legislation, mediation would be neither voluntary nor confidential.

There are three primary areas of focus from our perspective:

1. The proposed legislation provides for mandatory mediation. In part it states "At the request of a landowner or the applicant for a certificate or permit for a gas or liquid transmission line or associated facilities, each party shall submit to mediation by the

North Dakota mediation service.” One of the fundamental tenants of mediation is that it is a voluntary process between two parties wishing to resolve an issue in a mutually agreeable way. The proposed language takes away the voluntary nature of mediation. In other areas of the law with similar “mandatory” mediation clauses, they have been interpreted to mean that each party must submit to a mediation interview which meets the requirement of the statute. If this is the intention of the legislation, then it becomes significantly less problematic.

2. The proposed legislation requires a finding of “good faith” negotiation. Mediation is different from a negotiation, and findings of “good faith” are not a part of the established mediation procedure. The language states in part: “thirty days after the North Dakota mediation service has provided an (sic) mediation report, the applicant must request an informal hearing before the commission and be found by the commission, by majority decision, to have negotiated in good faith.”

NDMS, as a standard practice, provides a mediation memo to parties at the conclusion of mediation. Contained within this memo are any agreements the parties have reached, or whether no agreement was reached. The mediator is not in a position to determine, or declare, whether either party participated in good faith. Further, absent this report, it is against the confidentiality principles of the mediation program for the Mediator to be placed in a position to be required to testify as to the participation of the parties.

3. Funding for NDMS is based upon the current caseload, with the current staffing. Additional cases increase expenses for NDMS, which are not addressed in this legislation.

Chairman Porter and committee members, thank you for letting me raise these concerns. I would be happy to answer any questions you may have.

**House Bill 1407**

**Presented by:** Illona A. Jeffcoat-Sacco  
**Public Service Commission**

**Before:** House Energy and Natural Resources Committee  
**Representative Todd Porter, Chairman**

**Date:** January 31, 2013

**TESTIMONY**

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission, the Commission asked me to appear here today to note the Commission's concerns with House Bill 1407 as currently written.

The siting authority of the Public Service Commission takes into consideration issues of the environment and socio-economic impact. The commission's regulation of investor owned utilities takes into consideration need for the infrastructure, and financial impact on consumers. Private negotiations or the court system handle issues of "fairness" for the landowners. If protections are to be added, in addition to what the courts currently provide, they should come through the court system, ag mediation, or some similar entity that is more appropriately tasked with evaluating issues of "fairness."

This concludes my testimony. I would be happy to answer any questions you may have.

House Energy and Natural Resources  
North Dakota Farmers Union  
Written Testimony on House Bills 1333, 1348, 1349, 1352, 1355, 1407  
January 31, 2013

Mr. Chairman and Members of the Committee, my name is Kristi Schlosser Carlson, and I represent the 40,000 members of the North Dakota Farmers Union and the Policy and Action developed democratically by our grassroots membership. In that policy, we establish our foundational belief that family farmers and ranchers are stewards of the land. We strive for a balance among protecting the due process of landowners; producing food, fiber, and fuel; valuing natural resources; and meeting energy needs.

We recognize that balance is a difficult one to strike. Many of the bills the committee hears today appear to attempt to plug holes in current processes and an attempt to find that balance. Generally, we support many of these efforts, and encourage a comprehensive response that strives for consistency across regulatory agencies. For example, HB 1333 appears to begin a conversation about unclear jurisdiction, and we encourage ongoing discussion on those issues. We will also continue to educate our members about those processes and engaging companies in ways to address concerns.

Our policy speaks specifically to assuring landowners the same standards in energy development leases and easements that are extended to state lands, such as those in HB 1349. It also directly addresses certain process protections that should be included in these contracts, such as those in HB 1407, part 1. And it specifically enumerates that 1,320 feet is the appropriate distance between homes and wells, supporting HB 1348. We do not believe that enumerating protections and standards in statute or rule interferes with the negotiation process in a “willing seller – willing buyer” relationship. In fact, the process protections in part 1 of HB 1407 are similar to those in N.D.C.C. 17-04-06 regarding wind energy and property rights. Similarly, HB 1355 regarding the definition of “commencement of drilling operations” clarifies statute and prevents unwarranted litigation. It would be difficult to imagine that a landowner would believe that, among the more commonly negotiated terms (location, compensation, construction, etc.), he/she should have to define this term. Therefore, such a definition would be a reasonable statutory protection, and not one that would jeopardize meaningful negotiation of a contract. Additionally, in HB 1348, the negotiation process remains in place – a homeowner can waive that requirement or the commission can grant an exception.

In the spirit of balancing landowner protections and that opportunity to negotiate terms, the committee might consider adding language found in other statutes, such as “unless otherwise agreed by the parties,” in HB 1349’s specified details of certain reclamation processes, like the type of grass seeded or the depth of the topsoil. The committee can do this, but still protect the landowners by requiring that broader standards be met.

Finally, NDFU supports using the North Dakota mediation service in these processes; it’s been an accepted and welcome process by all parties.