

2019 HOUSE POLITICAL SUBDIVISIONS

HB 1243

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

1/18/2019

HB 1243

Job # 31070

Subcommittee

Conference Committee

Committee Clerk: Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to recording of easements

Minutes:

Handouts 1-5

Chairman J. Dockter: Opens the hearing on HB 1243

Rep. Louser: Introduces the bill. Recording of property easements was brought to my attention by a constituent. In my business we represent buyers and sellers and the process has always been the same. We have a transaction in writing and we submit that to the title company to do a search of title and that lead us to closing. Either the seller has an abstract of title which takes them back to when North Dakota became a state and shows the chain of title and all the transactions that have occurred on that property. Or the owner has that opportunity to buy a title insurance policy to guard against any title defects. An easement is the right to cross over or use somebody's property. That is a legal document that is a written document. We rely on companies to search title. If an easement was granted by a property owner and was never recorded there is no way, the title company or anybody doing a search can find that agreement. Someone has the right to use that property and the new property owner have no knowledge or record that someone has the right to cross onto their property. The offers to purchase that we use have language that says the seller will provide clear title. There is nothing in law that says those easements need to be recorded. Someone can get an easement and hold it for years then say I have a right to cross over and use your property. Deeds are recorded, this is a legal description on a property and I believe should be recorded. This bill does not suggest retroactively record easements. The intent of this bill is for all easements going forward if it were to pass to record all easements within 180 days. The lack of recording an easement is unsafe to the current and future property owners.

Rep. Johnson: Could you give us the type of easements?

Rep. Louser: We are talking about an easement in writing that was negotiated between the property owner and the person requesting the easement. The easement is not underground, but the utility more likely is what is underground. The easement is the document that is being recorded, that grants the right to use the property. That right follows the property.

Rep. Johnson: Within the statute is there a provision for abandonment of easements?

Rep. Louser: Not in the proposed bill draft, no.

Rep. Johnson: Anywhere in the code after a certain number of years any unrecorded easement that may crop up is deemed abandoned after so many years?

Rep. Louser: That would best be answered by someone who will be speaking in opposition to the bill regarding the title industry.

Rep. Adams: How would this statute affect rural water easements? Sometimes it takes years to get those in place.

Rep. Louser: This would be for all easements going forward to be recorded within 180 days. If it takes a couple of years to get the easement in place, once the easement is granted and in place this statute would require it to be recorded within 6 months. If there are multiple easements for multiple property owners for that purpose, the person receiving the easement would either record each one individually or as long as they are within the 180 days would require the easement to be recorded for public record.

Rep. Ertelt: On the second page regarding unrecorded instruments that would be valid, unless it falls within the 16 categories of easements any other instrument would not fall under this?

Rep. Louser: That is correct.

Rep. Hatlestad: Why 6 months? Why not immediately once the transfer of title?

Rep. Louser: The title companies once they do closings immediately record so that a mechanics lien can't be filed the day after closing. I thought that was appropriate time frame because I thought it was a fair compromise.

Travis Zabloney: Constituent and farmer from Minot area who bought property for ag use and for development. It's my belief that property owners rely on the systems around them to be certain they have 100% ownership of their land, many times they are unaware of things that are there. I was part of negotiating an easement with the Sandpiper Pipe line in the Enbridge Company. Those looking for easements, typically write those agreements. Those are written in their favor, not the property owners favor. Most property owners are unaware of their rights or the pitfalls in property ownership and therefore will just sign the easement agreements without further research. In relying on the title company and the attorney's opinion, all those that are there to assist you in the transaction, they missed an easement that existed that had never been recorded. I had bought title insurance on one of the properties and wanted to simplify that process. The title insurance policy says exemption from coverage easements or claims of easements not shown by public records. Even my title insurance that I rely on as a public citizen would not protect me from an undiscovered and unrecorded easement. I went through the process and closed on the land, there was no easement shown, we wrote a letter to the seller to get their sign-off on the easements that existed and they said yes this is what we know exists. It was ultimately discovered in the process of engineering, they discovered there was a water pipeline that would inhibit us from doing what we wanted to do without that pipeline being moved. Discussion with the pipeline easement person the option I was given was to move the pipeline at my cost. The easement was pulled from the files in 1974 and had never been recorded. My interest is in the future, in other property owners and in other citizens of the state. I anticipate opposition comes from the fact that the companies that have been granted easements have not completed their job to secured the agreements they have. The system is in place, but why do we have the system if it's not required to be use? They have not done their jobs by securing these easements and are here out of fear as to what could occur and what might happen in their organizations because they have unrecorded easements either intentionally or unintentionally or due to mismanagement. My interest is to prevent the situation from happening to me again and for the general public. An easement is valid regardless if it is recorded or as long as it is discoverable. What was described to me as what

discoverable means is somehow known or gotten some knowledge that it could exist.

Todd Kranda: Attorney for Kelsch Ruff Kranda Nagle & Ludwig Law Firm. (Handout #1). Mr. Kranda read his testimony.

Rep. Ertelt: Could you give detail of the specific circumstances of what would not fall in to 180 days? Also what time frame would you need?

Mr. Kranda: The speakers after me are the intended companies that have these examples.

Rep. Johnson: Is it regular practice of petroleum companies to not record easements? Or is there some out there that are not recorded and what would that cost be?

Mr. Kranda: I don't think it is cost, it's just problematic in terms of completion. The material and information they have to complete before it's even a recordable document takes time. For the pipeline, how long does it take to have a final descriptive location, pipelines may start out at a certain location and then there are adjustments. Recording an easement prematurely may not be accurate so they do have to wait for a while.

Rep. Johnson: So you are saying it is the regular practice of the petroleum companies to record easements?

Mr. Kranda: Absolutely.

Rep. Hatlestad: It says current law already provides adequate protection, the person that just spoke that does not seem correct. Can you explain?

Mr. Kranda: If his buyer knew about, there is a warrantee, a title they certify that there isn't anything. And if there is something fraudulently passed to him, he has a potential claim. There are protections other than the law saying it's not valid against you if you are an unknown good faith purchaser unrecorded documents such as that.

Rep. Hatlestad: You said fraudulently, but if I didn't know it existed and sold it to you and you discover it. How does the law protect?

Mr. Kranda: The general process is that a good faith buyer is not bound by unknown unrecorded easements or other liens or encumbrances they are void to that good faith buyer. If the seller knew and didn't disclose there might be some problem with the full disclosure and signing a warrantee deed that says I have good title no encumbrances.

Katelynn Weiss: Landman for Oasis Petroleum. (Handout #2) Read testimony.

Rep. Longmuir: After you have your as-builts then you record the easements?

Ms. Weiss: Correct.

Rep. Longmuir: So sometimes that takes longer than a year?

Ms. Weiss: Correct.

Rep. Ertelt: Can you explain as-built?

Ms. Weiss: An as-built is created and a survey drawing after the infrastructure is put in so the exact location of the pipeline is what is the record.

Rep. Hatlestad: You are not opposed to the registration or the filing of the easements but the timeline?

Ms. Weiss: Inaudible.

Rep. Adams: When you do the pipeline do you do all the easements at once or on each section?

Ms. Weiss: After the whole pipeline has been installed.

Rep. Johnson: You complete the as-built after the pipeline has been installed? Then you record easements?

Ms. Weiss: Correct

Mike Dewald: Landman with Petro-Hunt LLC. (Handout #3). He read his testimony.

Chairman J. Dockter: So basically this is a timing issue, why you are opposed to 180 days?

Mike Dewald: That's correct.

Vice Chairman Pyle: What would be a reasonable amount of time?

Mr. Dewald: It depends on the project; it could be in the works for years.

Rep. Ertelt: What type of agreement do you enter into with the landowner to allow you to do the construction prior the easement being recorded?

Mr. Dewald: We get the full easement first and that allows for the ingress or regress to put in the utility that we need to put in. We don't want to record that easement until we have the as-built survey so we have the exact location so there is one recording of the easement.

Rep. Ertelt: Would you be amenable to a provision that will allow for these certain circumstances with construction so that it would allow you to do the recording after the construction is complete? So it wouldn't fall under the 180 days, that is would allow you to do the as-built?

Mr. Dewald: I haven't seen a need for quick recording just accurate recording. So I don't think there should be a change.

Rep. Adams: What is a landman?

Mr. Dewald: Landman can review records and have the title done, oil and gas leasing is done off of that. We can contact land owners for location for well pads and pipelines, and roads.

Rep. Johnson: I believe accuracy is the issue with this bill it is recordation at all whether an easement is accurate or inaccurate. It needs to be recorded so the property purchaser is on notice that this exists. Do you get separate easements for the right away and a different one for taking of minerals?

Nick Hacker: ND Land Title Association (Handout #4)

Rep. Johnson: Can you foresee an amendment? Or a change in the language to accommodate the industries that you described?

Mr. Hacker: We believe there is already protections in statute. Not all easements are intended to be permanent.

Rep. Johnson: You are talking about a cause of action at a future date and I am talking about the purchaser of that property.

Mr. Hacker: Regardless of what numbers are picked there is unintended consequences that are created by that number. We don't feel there is an issue. The issue is unrecorded easements. To solve unrecorded easements by ordering a survey of the property and an inspection of the property. We can provide additional coverage to a buyer that asks for what's called extended coverage title insurance.

Rep. Fegley: We should be looking at some sort of intent of easements filed so at least the land purchaser would know what is happening. Do you have a comment on that?

Mr. Hacker: We don't feel this is a fix. These companies have great interest in recording the easements. We appreciate the fact they go through the work of actually surveying precisely where the pipeline was going to lay. That wasn't the practice several years ago.

Rep. Hatlestad: If there is an unrecorded easement and I buy the property and it's not disclosed that easement is dead?

Mr. Hacker: Yes

Rep. Hatlestad: The issue isn't where the easement should be recorded, the question is time? If you want to protect your easement you have to record it, is that right?

Mr. Hacker: Exactly, I may not want to protect my easement.

Rep. Hatlestad: But something over an extended timeframe, you would want to record it?

Mr. Hacker: Yes, no question.

Rep. Ertelt: About the intention to bind to future land owners, isn't that something would or could be specified in the easement itself?

Mr. Hacker: Absolutely.

Zac Smith: ND Rural Electric Cooperatives: The language in the bill says an instrument, being the easement in this case, has to be recorded within 180 days to be valid. It creates question for me, if I have an easement and it has not been recorded within 180 days. The way I read this that's invalid. I don't think the language is clear.

Rep. Johnson: It's perspective and maybe that can be written into it.

Mr. Smith: The important thing is to make it precise.

Rep. Johnson: Rep. Ertelt suggestion was because of the length of time it takes the industries to negotiate easements that the industries determine as a term of condition of that document when it is reasonable to record that document.

Rep. Simons: What is the recourse for land owner that buys land?

Mr. Smith: In our case that has not been an issue so I can't speak to it.

Rep. Simons: It is a long process and I understand why they are here talking about this. You don't want this to overcorrect, is that correct?

Mr. Smith: I represent electric cooperatives not the oil industry.

Michael Humann: Surface Division Manager with ND Dept. of Trusts Lands; (Handout #5). Read his testimony.

Rep. Longmuir: The state records no easements, is that correct?

Mr. Humann: At this time no, we put that on the companies to have them record the easements.

Rep. Hatlestad: Do you consider right of ways an easement?

Mr. Humann: Rights of ways can be easements. Rights of ways can be a permit. Rights of ways can be a letter of permission. Right of ways is a larger category that we would consider an easement to be a part of.

Rep. Hatlestad: I assume you not selling the land then, so there would be no invalidation of your agreement?

Mr. Humann: We aren't actively selling property.

Rep. Hatlestad: If we did not have a recorded easement that when I bought the property that easement that you had with someone else is invalid? Therefore, if you sell the property any agreements you had is gone because you didn't record it?

Mr. Humann: I think that is what they are trying to do with this bill, but that is not that agreement still exists because it is a contract

Rep. Hatlestad: I don't understand, he says its invalid and you say it's legal?

Dave Grarner: Assistant Attorney General Represents the Dept. of Trust Lands. It's only void against the subsequent purchaser. We aren't in the business of selling land the way other people are. It wouldn't create as common of an issue. You have issued these easements under private negotiation, if the state does sell the property there are protections shouldn't require the termination of the agreement.

Rep. Hatlestad: You are saying the state doesn't have to abide by the law?

Mr. Grarner: I'm saying land owned by the state isn't exchanged as often as privately owned property. If we do issue an easement that affects state owned property and we do sell it, it's less common than privately owned land. The state does sell property that is affected by an easement. It is then the state's obligation to inform the purchaser. The easement owner is required to inform the purchaser even if it's not recorded.

Rep. Johnson: The goal of the bill is to avoid cause of action because the purchaser is on notice of that easement that has been recorded. You could have a 100-year-old easement and someone has a right to that.

Mr. Grarner: That person has the problem not the parties that negotiated the sale of the property.

Rep. Johnson: But through this bill requiring recording easements the decision to purchase that property may change because of the easement that is recorded. We are improving title with this bill.

Mr. Grarner: You are improving title at the expense of negotiated agreements. You are invalidating properly formed agreements because the recipient of the easement has decided not to record it. Those are separate. One is purely based on notice and the other is contract law.

Mr. Humann: We are not against recording. It's the difference between the notice and the contract that has been negotiated. Recording a document shouldn't invalidate it.

Megan Carmeichel: Representing Tony Weiler Executive Director for the ND Bar Association. We are also against this bill.

Chairman J. Dockter: Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

1/24/2019

HB 1243

Job # 31451

Subcommittee

Conference Committee

Committee Clerk: Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to recording of easements

Minutes:

Chairman J. Dockter: Opens HB 1243 for committee work.

Rep. Longmuir: Shared his credentials and work experience. Most easements are recorded quickly except for pipelines and transmission lines, sometimes it can be 5 to 7 years. This is not a practical bill.

Chairman J. Dockter: I agree with you and have talked to several industries about this. To put a time line on this is just not practical.

Rep. Longmuir: The ND Land Title Association they are in opposition to this because of the timing of when something has to be filed.

Rep. Fegley: Could we have a study that says we need an instrument they file with the county so people are notified. When they buy land they would know what's going on.

Chairman J. Dockter: Our options are kill it or put it into a study.

Rep. Toman: The burden is on the companies to get those recorded. If they did not get it recorded they need to negotiate with the new land owner.

Rep. Hatlestad: Nick Hacker said if you do not know and no one told you and you buy land easement is null and void.

Rep. Johnson: The issue is not a cause of action for redress, the issue is notice to a potential purchaser and change of decision someone might make to purchase or not.

Rep. Ertelt: There were two main issues the first being the as-built and the other being the effect on the existing easements. The effect on the as-built is an easy amendment and you could put in an exception to the 180 days. The other thing stated there is an existing easement already in place. It's just not yet recorded but they have an easement to do the

work on the property. That easement could be recorded and then amended later as there is already the mechanism in law after the project has been completed. I don't have language for those amendments but Legislative Council could work on it. I would like to wait and have an amendment drafted up.

Rep. Toman: There are unrecorded easement so if we allow an amendment are we going to allow unrecorded easement are we going to require that to be recorded then?

Vice Chairman Pyle: We can't go back and undo what was not known at the time.

Rep. Hatlestad: Can't we set the start bill that anything from this point on?

Rep. Longmuir: Inaudible.

Rep. Longmuir: Made a do not pass motion.

Rep. Adams: Second the motion.

Vote: yes 10, no 4, absent 0

Carrier: Vice Chairman Pyle:

Carrier was later changed to Rep. Longmuir off the recording.

Date: 1-24-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1243**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Longmuir Seconded By Rep. Adams

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	/			/	
Vice Chairman Pyle:	/			/	
Rep. Ertelt:		/			
Rep. Fegley:	/				
Rep. Hatlestad:	/				
Rep. Johnson:		/			
Rep K. Koppelman:	/				
Rep. Longmuir:	/				
Rep. Magrum:	/				
Rep. Simons:		/			
Rep. Toman:		/			
Rep. Strinden:	/				
Rep. Adams:	/				
Rep. Guggisberg:	/				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Longmuir

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

REPORT OF STANDING COMMITTEE

HB 1243: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1243 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1243

#1
1-18-19
Pg 1

Testimony in Opposition to
HOUSE BILL NO. 1243
House Political Subdivisions Committee
January 18, 2019

Chairman Dockter, House Political Subdivisions Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Ruff Kranda Nagle & Ludwig Law Firm in Mandan. I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council (NDPC) to oppose HB 1243.

NDPC represents more than 500 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, and has been representing the energy industry since 1952.

HB 1243 provides for a significant change with the recording process for easements. Initially it might be helpful to review and understand the types of easements being impacted by HB 1243 which are defined under Section 47-05-01 NDCC, copy shown on reverse side.

HB 1243 requires easements to be recorded within 180 days to be valid. If not recorded within that time period the easements are invalid. Not all easements are ready and available to be recorded within the time period identified. The change significantly impacts and substantively creates problems for individuals who negotiate an easement but cannot promptly record it. The current law in North Dakota already provides adequate protection for any unknown unrecorded documents outside the chain of title. HB 1243 unnecessarily causes substantial problems with the recording process in existence.

In conclusion, NDPC urges your opposition to **HB 1243** and respectfully requests a **Do Not Pass** recommendation. Thank you and I would be happy to try to answer any questions.

Otherwise, at this point I would also like to introduce Katelynn Weiss of Oasis and Mike Dewald of Petro-Hunt, NDPC members, who will provide additional testimony regarding HB 1243.

CHAPTER 47-05
SERVITUDES

#1 AB1243

1-18-19

pg 2

47-05-01. Easements attached to other lands.

The following land burdens or servitudes upon lands may be attached to other land as incidents or appurtenances and then are called easements:

1. The right of pasturage.
2. The right of fishing.
3. The right of way.
4. The right of taking water, wood, minerals, and other things.
5. The right of transacting business upon land.
6. The right of conducting lawful sports upon land.
7. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.
8. The right of receiving water from or discharging the same upon land.
9. The right of flooding land.
10. The right of having water flow without diminution or disturbance of any kind.
11. The right of using a wall as a party wall.
12. The right of receiving more than natural support from adjacent land or things affixed thereto.
13. The right of having the whole of a division fence maintained by a coterminous owner.
14. The right of having public conveyances stopped or of stopping the same on land.
15. The right of a seat in church.
16. The right of burial.



House Bill No. 1243
Testimony of Katelynn Weiss
House Political Subdivisions Committee
January 18, 2019

Members of the House Political Subdivisions Committee, my name is Katelynn Weiss, Landman for Oasis Petroleum. I appear before you in opposition of House Bill 1243.

These changes to the North Dakota Century Code related to recording of easements are arbitrary, particularly when considering the manner in which they would dismantle common practices within the oil and gas industry. Similar to our peers, Oasis Petroleum spends a significant amount of time planning, acquiring, and constructing infrastructure within easements across North Dakota. As part of this process, the executed easement is commonly not recorded until an as-built has been drafted and attached to the agreement as an exhibit. Given the scale of these projects, the time between execution of an agreement and the generation of an as-built can sometimes take longer than a year.

By implementing the requirement to record an easement within a short timeframe, operators would need to foresee all hurdles, delays and obstacles that can occur during the acquisition of easements across the entire length of proposed infrastructure, which is not possible. The current process allows for adjustment to easement routes without causing confusion in title or confusion as to the physical location of the easement as it is shown of record.

These are some of the more significant reasons, Oasis Petroleum opposes House Bill 1243. Thank you for the opportunity to testify.

PETRO-HUNT, L.L.C.



P.O. Box 935
Bismarck, ND 58502-0935
Phone: (701) 255-5684 FAX: (701) 258-1562
Email: mdewald@petrohunt.com

#3
1-18-19
HB 1243

Mr. Chairman and members of the Committee, my name is Michael Dewald, Landman with Petro-Hunt, LLC. I grew up and live in Bismarck, ND and have worked in the oil and gas producing counties in North Dakota for the past twelve years. I am a current member of the Landman's Association of North Dakota and serve as their Director to the American Association of Professional Landmen. I appear before you today to oppose House Bill 1243.

Petro-Hunt, LLC is an exploration and production company that has been active in North Dakota since the 1950's. Through my position, I have obtained numerous easements in support of Petro-Hunt, LLC's exploration and production activities. House Bill 1243's 180 day recording requirement is unreasonable, burdensome, and bad for the energy sector.

One of the first steps taken on projects for pipelines, roads, and other utilities is it to procure easements from landowners. This can take months to years before actual construction begins, depending on the project. Once all easements are in place, proper permits obtained, materials purchased, and contractors lined up construction can begin. Upon completion of construction, a registered professional land surveyor completes an as-built survey. The as-built survey depicts the actual location of the utility and is made part of the easement and recorded. In my experience, this process almost always takes more than 180 days.

For a survey to be recorded, North Dakota Century Code 43-19.1-30 requires the survey to be prepared by a registered professional land surveyor. With the possibilities of route deviations during construction, Petro-Hunt, LLC waits to record easements until construction is completed so an as-built can be recorded that is prepared by an registered professional land surveyor to be in compliance with North Dakota Century Code 43-19.1-30. House Bill 1243 would force Petro-Hunt, LLC to record inaccurate easements that ultimately would have to be amended. This will create a cloud on title and more importantly add misleading information to record title. An easement with an accurate location of a utility is of absolute importance, as future generations will be reviewing these documents to locate utilities.

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1-18-19

I have not seen the need for the quick recording of easements but for accurate easements. This bill would be counterproductive to this and I urge you to oppose House Bill 1243.

House Political Subdivisions Hearing on H.B. 1243
Testimony from North Dakota Land Title Association

#4
1-18-19

HB 1243 is an amendment to NDCC 47-19-46, a statute section which is part of the "Record Title" chapter of the century code which contains many of the statutes most relevant to our industry. NDCC 47-19-46 makes clear that unrecorded instruments (deeds, mortgages, easements, etc.) are valid between the parties to that instrument even if they are not recorded. This bill adds an exception for easements, stating that those documents must be recorded within 180 days of "creation" of the easement to be valid. The bill states that the term "easement" is as defined in NDCC 47-05-01, and the definition in that statute includes a broad class of easements including rights of way, party wall, natural adjacent support, obtaining or discharging water, etc.

We oppose this bill as we think it is a solution in search of a problem given the protections already found in North Dakota law. Under North Dakota's race-notice recording act, NDCC § 47-19-41, an unrecorded easement is void against a bona fide (good faith) purchaser who records their interest. By way of example, if the owner of a property grants an access easement allowing someone to drive across that owner's land, that easement never gets recorded, and then a buyer purchases the property not knowing anything about that easement and the deed to that buyer is recorded, that easement is void as to that buyer, meaning that the buyer is not bound by that easement. The same would be true of a mortgage lender who obtains a mortgage without notice of the unrecorded easement. There should not be real concern that an unrecorded easement is binding on the people who signed it because those are the very people who agreed to the easement in the first place. I think the current law protects the parties who should be protected and does not the parties who do not need that protection.

Second, if this bill were made law it would impede our ability to insure easements such as access easements or walkways over roads as well as for various entities to obtain valid easements. Many easements such as utility, highway, and conservation easements require the signature of many grantors. There may be other administrative steps in finalizing the easement. It isn't clear what is meant by "creation" in the bill, in a parcel with multiple owners, is an easement "created" when the first party signs or when the last signs? Or in the case of an easement with the Bureau of Reclamation, is the easement created when the property owner signs to grant it or when it is approved for use by the Solicitor who then signs for acceptance? If these easements must be recorded within 180 days of being signed (or the first of many grantors signing), some easements we insure may run the risk of being invalid and uninsurable if there are many grantors whose signatures need to be obtained or if there are other tasks or processes which must be completed due to the nature or complexity of the easement. This bill would negatively impact not only us as insurers of title interests, but also the parties acquiring these easements: the public, government entities like Department of Transportation or United States Department of Agriculture (NRCS easements), utility companies, or others.

Third, this bill makes a change to a very basic and bedrock tenant of North Dakota real estate law: the race-notice recording act which makes clear that real estate instruments are binding between the parties but not binding on parties who pay value for their interest and record that interest. One particular issue shouldn't warrant a change to such a basic and fundamental part of the law that governs North Dakota real estate.

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1-18-19

1707 North 9th Street
PO Box 5523
Bismarck, ND 58506-5523
Phone: (701) 328 – 2800
Fax: (701) 328 – 3650



Jodi A. Smith, Commissioner

www.land.nd.gov

**TESTIMONY OF MICHAEL HUMANN
Surface Division Manager
North Dakota Department of Trust Lands**

House Bill 1243

House Political Subdivisions Committee
January 18, 2019

Chairman Dockter and members of the House Political Subdivisions Committee, I am Michael Humann, the Surface Division Manager with the North Dakota Department of Trust Lands (Department). I am here to testify on House Bill 1243.

The Department is the administrative arm of the Board of University and School Lands (Board), serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the Common Schools Trust Fund.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

Revenues are generated through the prudent management of trust assets, which assets include approximately 706,600 surface acres and 2.6 million mineral acres. The mineral acres are available for oil, gas, coal, gravel, and scoria leasing. The surface acres are leased to ranchers and farmers. In addition numerous right-of-way applications for trust lands, mostly due to energy development, are processed each year with application fees and negotiated consideration payments for issued right-of-way agreements providing revenue to the various trusts.

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Surface Acres by County					
As of June 30, 2017					
County	Acres	County	Acres	County	Acres
Adams	17,097.52	Golden Valley	28,983.55	Ramsey	2,056.50
Barnes	2,803.32	Grant	33,517.76	Ransom	1,120.00
Benson	11,999.60	Griggs	1,741.24	Renville	1,910.12
Billings	30,927.06	Hettinger	9,892.50	Richland	513.68
Bottineau	3,271.94	Kidder	28,643.79	Rolette	6,226.08
Bowman	29,310.48	LaMoure	1,435.72	Sargent	1,128.17
Burke	16,137.16	Logan	9,421.53	Sheridan	25,826.44
Burleigh	27,891.66	McHenry	22,720.56	Sioux	23,411.56
Cass	40.00	McIntosh	6,209.87	Slope	23,605.98
Cavalier	556.47	McKenzie	64,586.70	Stark	6,150.13
Dickey	3,981.51	McLean	20,890.99	Stutsman	15,627.81
Divide	20,791.24	Mercer	15,129.38	Towner	8,076.00
Dunn	25,673.31	Morton	18,101.82	Walsh	160.00
Eddy	10,292.81	Mountrail	32,445.59	Ward	10,798.98
Emmons	13,533.97	Nelson	2,694.45	Wells	5,251.89
Foster	3,111.51	Oliver	7,588.41	Williams	38,380.84
Grand Forks	1,274.77	Pierce	13,664.93	Total	706,607.30

The Surface Management Division manages surface acres owned by the various trust funds under the control of the Board of University and School Lands. The major source of income from these lands comes from agricultural leases (grassland, crop and hay land uses), with significant revenue generated from right-of-way, surface damage agreements and construction aggregate mining. The objective of surface management is to obtain a "fair market" return from the trust lands while maintaining or improving the condition and value.

Professional staff work day-to-day on land management projects that result in the generation of surface revenue and land improvement on school trust lands. These projects include:

- Linear easements.
- Oil well pad, saltwater disposal sites, pipeline and road siting and reclamation.
- Developing water wells, pipelines, dams, and dugouts for livestock water and wildlife enhancement.
- Grazing management plans for improving range condition and productivity.
- Cooperative trash site clean-up and abandoned water well sealing.
- Gravel and scoria mine site reclamation.
- Noxious weed chemical and biological control.
- Coal mine reclamation.
- Monitoring flood affected tracts.

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- Seismic permitting.
- Lessee and right-of-way contacts and public inquiries.

There were approximately 450 rights-of-ways issued the 2015-17 biennium. Most of the requests for rights-of-way are directly related to oil and gas development activities. Rights-of-way activity continues to be much greater than the pre-oil development activity period, with this continued high activity expected to continue until sufficient pipelines and electrical lines have been installed to support the new wells. Rights-of-way consideration payments have generated considerable revenue for the trusts.

House Bill 1243 as currently written would invalidate any easement as defined in N.D.C.C. § 47-05-01 unless the easement is recorded within 180 days of creation. The provisions required by this bill would interfere with contract agreements between two parties and would render any easement negotiated between two parties invalid unless the easement is recorded. It appears this provision is making notice a requirement to the continued validity of a properly formed easement. This is contrary to the intent of recording and notice, which is simply to make the public aware of title to property including any encumbrances affecting such title. Notice is not designed to interfere with such title or the effect of a properly formed agreement. We cannot support this bill as it would interfere with easements we issue for trust lands.

We look forward to working with the committee on these issues and would be happy to answer any questions.