

2019 HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

HB 1413

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau A Room, State Capitol

HB 1413
1/31/2019
31949

- Subcommittee
 Conference Committee

Committee Clerk	Kathleen Davis
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Explanation or reason for introduction of bill/resolution:

Relating to public notice of wildlife surveys and studies and to provide a penalty

Minutes:

Attachment 1,2,3,4

Chairman Porter: opened the hearing on HB 1413.

Rep. Tveit presented Attachment 1.

Jesse Flath, Hazen: The amendment of the notice to provide the date, then intent is to have some sort of burden of proof for any organization doing aerial surveys. A lot of damage that happens out there especially with the larger animals, elk and moose. Dollars are adding up. Private property landowner rights. If the organizations doing the surveys had to notify landowners so they have an idea when they're there.

Rep. Ruby: How are you going to know who caused the damage?

Flath: I understand the problem. Especially if it's an aerial survey. I understand the need to work on this bill, I don't have the answer. Figure out a way to make this work.

Rep. Lefor: Wouldn't you be entitled to damages without this in code?

Flath: Once again it's all about the burden of proof. It's all about knowing when they are there. There's nothing that says they have to notify private landowners. There are laws about flying drones over private property.

Chairman Porter: There's still a burden of proof.

Flath: It's a step to finding out a way of who was in the area.

Chairman Porter: Most of that space in western ND is class g airspace, there's no minimum requirement for anybody, including aerial spray planes.

Flath: That is a point of problem, we put this out there to get the discussion on the table.

Chairman Porter: further testimony in support? Opposition?

12:00

11:41

Jeb Williams, ND Game and Fish Dept: presented [Attachment 2](#).

Rep. Keiser: I agree it won't work as written. Would it be unreasonable to have a posting on your website these surveys to see if there's one coming up? The landowners could check daily or periodically.

Williams: I think that's reasonable and we've talked about it. We can get that info out in social media.

Rep. Keiser: We can kill this bill and solve this problem without legislation, put it on the website.

Rep. Eidson: You could post to your website, with the accessibility of unmanned aerial systems and anyone can buy them and fly them where they want to, I'm inclined to think it's not your agency that's causing these problems. It's more than likely civilian aircraft. Would you know anything about that?

18:00

Williams: We've had complaints when we've done low level surveys. But they've been rare. The majority of our complaints are of inconvenience versus damage.

20:00

John Bradley, executive director, ND Wildlife Federation presented [Attachment 3](#).

21:30

Bill Helfrey, ND Bow Hunters Association: That's class g airspace. If this bill were to pass it were to pass that would be trying to usurp FAA requirements on class g airspace.

Rep. Eidson: Isn't class g airspace not controlled by FAA? That's anything below 700 AGL. I'm under the impression that's not controlled by the FAA.

Helfrey: Called uncontrolled airspace but controlled to an extent. Minimum elevation you have to have to be able to recover if you need an emergency landing, you have to leave enough space so you can recover. They have some criteria, even though it's called uncontrolled airspace.

Chairman Porter: further questions? Further opposition? Closed the hearing.

[Attachment 4](#): Michael McEnroe, ND Chapter of the Wildlife Society, didn't speak but submitted testimony.

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau A Room, State Capitol

HB 1413

2/1/2019

31978

Subcommittee

Conference Committee

Committee Clerk

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to public notice of wildlife surveys and studies and to provide a penalty

Minutes:

Chairman Porter: called the hearing to order on HB 1413, notification of wildlife surveys and damages.

Rep. Eidson: I appreciate what this is trying to do. I think it's pointed at the wrong people. I do sympathize with the fact that as unmanned aerial systems become more prevalent and cheaper to buy, I believe there are people trying to get a cool shot of people running. I believe there's some harassment going on. MT has a bill similar to this. If we were to look at making it illegal to harass wildlife with unmanned aerial systems, I'd be willing to have an amendment on that.

Chairman Porter: I'm pretty sure that's already against the law. Can't use it for the purpose of hunting or harassing.

Rep. Keiser: I move a Do Not Pass on HB 1413.

Rep. Zubke: Second.

Rep. Keiser: Sometimes we have a bill come forward and the solution comes at the podium. The department is willing to put notice on their website for the landowners to check and see.

Rep. Anderson: We're only a couple years away from insurance agencies coming out with them using a drone to cover crop damage. They'll be doing all their claims using a drone.

Chairman Porter: Discussion? The clerk called the roll on a Do Not Pass to HB 1314.
12 yes 0 no 2 absent Motion carried. Rep. Anderson is carrier.

Date: 2-1-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1413**

House Energy and Natural Resources 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. Keiser Seconded By Rep. Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor		AB
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep Bosch	✓		Rep. Ruby	✓	
Rep. Devlin	✓	AB	Rep. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Eidson	✓	

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Anderson

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

REPORT OF STANDING COMMITTEE

HB 1413: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
HB 1413 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1413

HB 1413 - Testimony to the House Energy and Natural Resources Committee
Representative Todd Porter, Chairman
Coteau Room A, 2:30 PM, 31 January 2019

Mr. Chairman and Committee members.

For the record, I am Representative Bill Tveit, I serve District 33, which is all of Mercer and Oliver Counties as well as the northern and western parts of Morton County.

HB 1413 is: A BILL for an Act to create and enact a new section to chapter 20.1-02 of the North Dakota Century Code, relating to public notice of wildlife surveys and studies; and to provide a penalty.

Mr. Chairman, HB 1413, a constituent driven bill, is simply asking for, and requiring a courteous notification from an agency or group that plans to conduct a wildlife survey, and in the famous words of Paul Revere, "*if by land or by sea*" and also adds, "*by air*", an approach that Paul would have never needed to consider.

4. SECTION 1. A new section to chapter 20.1-02 of the North Dakota Century Code is created

5. and enacted as follows:

6. Aerial surveys and ground studies - Public notice- Damages

7. At least thirty days before undertaking a wildlife survey or study in the air or on the ground,

8. A person that lacks an ownership interest in, or other license or privilege to enter, property

9. reasonably expected to be affected by the survey or study shall provide public notice of the

10. survey or study in the official county newspapers in the area reasonably expected to be affected

11. by the survey or study, and, if any, on the person's website and social media accounts. The

12. notice must provide the date, time, location, and manner of the survey or study. A person whose

13. property is damaged as a result of a wildlife survey or study is entitled to damages

Mr. Chairman and committee members, the bill is simple and courteous, I ask you to give it a "DO Pass"

And send it on for further approval on the House Floor.

I will stand for questions at this time.

Thank You, Mr. Chairman



House Energy and Natural Resources Committee
Testimony in Opposition to HB 1413

North Dakota Game and Fish Department
Jeb Williams, Wildlife Division Chief
January 31st, 2019

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Jeb Williams and I am the Wildlife Division Chief with the North Dakota Game and Fish Department. The Department has been conducting both aerial and ground surveys for decades and both are instrumental in how we collect information which helps our managers make the best decisions possible. The Department contacts local law enforcement when we are in the area flying various surveys. We routinely contact private landowners for permission if access is needed for any ground survey. If the Department is conducting a study within a specific area, all landowners are contacted and made aware of the activity and to obtain permission to their property if needed.

The Department has concerns with HB 1413 for the following reasons:

- The use of aerial surveys are critical for the Department's big game program. While some are planned and predictable, many are not. Weather plays a big role in many of our survey flights and also provides for a very unpredictable schedule. For example, our winter white-tailed deer survey takes place in between January 1st and March 15th. The survey is dependent upon adequate snow cover which provides for the ability to easily view and count deer from the air. On numerous occasions, a single snow event can make the difference in whether there is enough snow cover (10-12 inches on the level with minimal open, bare spots) on the ground to fly these surveys and within 3-4 days we can be in the air. The above example would impact our ability to fly these surveys if a 30-day notice was required.
- HB 1413 states that the public notice must provide the date, time, location, and manner of survey or study. This language is not realistic for our Department due to a variety of weather events which immediately change survey plans especially for an aircraft. Each year there are date, time, and location adjustments made to our surveys due to high winds, thunderstorms, snow storms, and mechanical repairs.
- HB 1413 states a person whose property is damaged as a result of a wildlife survey or study is entitled to damages. This language is very subjective and leaves many questions. What kind of documentation would be required? Who would review the cases and determine damage claims?

As an agency that strives to make decisions based on sound biological data, the passage of this bill would result in some substantial challenges. As written, the Department respectfully asks for a Do Not Pass on HB 1413.



Elk Research Project

Why Study Elk?

An increasing elk population the last five years has coincided with changes in areas where elk are commonly located. It is essential that North Dakota Game and Fish Department (NDGF) understands these changes in elk abundance and distribution in order to responsibly manage elk into the future. It remains the goal for the NDGF to manage elk within the capacity of the habitat, tolerance of landowners, while providing hunting opportunities for sportsmen.

Research Project Contacts:

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Welcome to the first issue of The Elk Research Project Landowner Newsletter. We aim to answer your questions and keep you informed as the project initiates and progresses. In this issue, we'll provide you information about why we are conducting this research, our objectives of this study, how we plan to complete our work, and our contact information for your questions.

Elk Management in North Dakota

- The NDGF is the primary agency responsible for elk management in ND.
- As population dynamics and distributions change, NDGF is responsible for collecting pertinent information to account for these changes in order to manage elk within tolerance limits of landowners and habitat capacities while also providing hunting opportunities.
- Biologist estimate elk trends from annual surveys and manage the harvest by regulating elk permits, hunting unit boundaries, and landowner zone eligibility.
- Elk management is also affected by elk numbers and movements in Theodore Roosevelt National Park (TRNP).
- There is great need for information about elk movements and resource selection to better understand the timing, direction, and duration of habitat use.
- Additionally, there is a need for methods to monitor abundance, survival, and recruitment annually that are not cost prohibitive so biologists can effectively manage this valuable population.

Research Objectives

- Determine movement patterns of elk in western North Dakota including home range and migration strategies and corridors.
- Identify seasonal areas of concentration to annually monitor elk abundance and calf production using ground or aerial counts.
- Evaluate resource selection of elk in western North Dakota.
- Monitor herd health by testing for important diseases such as brucellosis and bovine TB.
- Develop a monitoring strategy for elk in western North Dakota that will provide methods to determine abundance, harvest rates, natural survival and recruitment rates annually using harvest data, already collected by NDGF.

Access: Working With You

We respect and care about private lands. We understand that our research can affect you and we will work hard to minimize any inconvenience our activities may cause. We are committed to working with all landowners within our study area to maintain a positive working relationship throughout the duration of the project.

Our research will include elk throughout western North Dakota. As such, we will need your cooperation as some of the captures will occur on private lands. We intend to communicate our planned capture efforts well in advance of the actual activity. Since data will be collected using GPS collars, daily collection of elk locations from vehicle or airplane will not be necessary. However, we may need access to your land in the case of a mortality or to conduct herd classifications but these efforts will be limited.

We don't anticipate any damage to landowner property or infrastructure from our research and will take all precautions necessary to avoid any conflicts. Should such an incident arise, we will work with you to remedy the situation as swiftly and comprehensively as possible.

We look forward to working with you on this project and providing you with valuable information about the elk populations using your lands.

If you want to learn more about the Elk Research Project, please contact one of the project team members (listed on the front).

Approach

GPS-Radio Tracking

- We will fit Global Positioning System collars on a subsample of the elk population.
- The collars will remain deployed for 3 years.
- GPS radio-collars are the most accurate and efficient means to monitor elk locations and survival in this study area.
- The use of GPS radio-collars allows us to record locations of elk throughout the day and during all weather conditions.
- The collars also have VHF transmitters with mortality sensors which allow researchers to monitor and locate the animals in the field when necessary.
- Mortality alerts will be sent to us as soon as they are triggered and we will attempt to locate the animal as soon as possible.
- Depending upon the condition, tissue samples will be collected.

Elk Capture

- We will capture and collar approximately 60 adult cow elk throughout western North Dakota and 20 bull elk in TRNP during the winter of 2019.
- We will capture annually to maintain this sample size.
- Our focus is females because they are the most important segment of the elk population from a demographic standpoint.
- Radio-collaring 20 bull elk in TRNP will allow us to evaluate elk movement and harvest rates outside the park.
- We will use helicopter net-gunning in order to target specific age and sex classes of elk.
- We are contracting capture services with an experienced company and will work closely with them to ensure animal safety and minimize disturbance to livestock.
- Net-gunning and use of a professional and very experienced capture crew not only ensures the highest level of safety to elk, but is the most efficient and logistically feasible approach to collaring animals.
- All captures will take place during winter (Jan – Mar) to ensure temperatures will not be too warm, elk will be in large groups, and visibility of elk will be high.

North Dakota Wildlife Federation

Ensuring abundant wildlife, wildlife habitat, and access to wildlife recreational opportunities

HB 1413
1.31.19
Attachment 3



**TESTIMONY OF JOHN BRADLEY
NORTH DAKOTA WILDLIFE FEDERATION
HOUSE BILL 1413
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
JANUARY 31, 2019**

Chairman Porter and Members of the House Energy and Natural Resources Committee:

For the record, I am John Bradley, Executive Director of the North Dakota Wildlife Federation (NDWF). I'm here today representing our 1,500 members in 15 affiliated wildlife and sportsmen's club across North Dakota.

NDWF believes in science-based management of our wildlife resources. For that reason we oppose HB 1413. HB 1413 requires that persons, or agencies that conduct wildlife surveys give 30-day notice in the official county newspaper and on any websites or social media accounts prior to conducting the survey or study. Most State and Federal agencies wildlife surveys are conducted along roadside transects or from the air. As such they do not enter on to private land. When the State or Federal agencies have to conduct wildlife surveys on private lands, its standard practice for them to first obtain permission from the landowner.

Wildlife surveys are weather dependent. Simply put, surveys would not get done (or be completed poorly) if State and Federal agencies have to



plan 30 days and give notice. For instance, snow cover is required to effectively survey big game species. Strong winds or precipitation can ruin roadside counts of pheasants, waterfowl or other species. Final decisions as to when to conduct the survey often are a day-to-day decision, and sometimes are cancelled or given the go-ahead by the weather.

Lastly, the State and Federal agencies, as well as the universities are already liable for any damages they would cause on private land.

For these reasons, the North Dakota Wildlife Federation respectfully asks for a "Do Not Pass" recommendation on HB 1413.

Thank you for the opportunity to testify. I will stand for any questions.



North Dakota Chapter

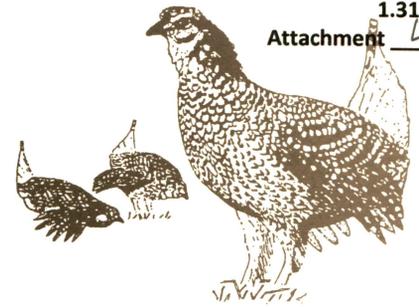
THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502

HB 1413

1.31.19

Attachment 4



**TESTIMONY OF MICHAEL McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
HOUSE BILL 1413
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
JANUARY 31, 2019**

Chairman Porter and Members of the House Energy and Natural Resources Committee:

For the record, I am Mike McEnroe, representing the North Dakota Chapter of The Wildlife Society. The Chapter is a professional organization comprised of some 350 wildlife biologists, land managers, educators, law enforcement officers, and natural resource administrators in North Dakota.

I apologize for not being able to attend today's hearing. Weather conditions have proven somewhat difficult the past few days.

HB 1413 requires that persons, or agencies that conduct wildlife surveys give 30-day notice in the official county newspaper and on any websites or social media accounts prior to conducting the survey or study. Most State and Federal agencies wildlife surveys are conducted along roadside transects or from the air. As such they do not enter on to private land. From my experience, when State and Federal agencies, and I suspect State universities, conduct wildlife surveys on private lands, they first obtain permission from the landowner. Providing public notice is not necessary.

In addition, such surveys are largely weather dependent, requiring snow cover for big game survey, or days without strong winds or precipitation for roadside counts of pheasants, waterfowl or other species. Final decisions as to when to conduct the survey often are a day-to-day decision, and sometimes are cancelled or postponed by the weather.

The agencies or universities are already liable for any damages they would cause on private land.

HB 1413 seems to be redundant, somewhat impractical, completely unnecessary, and does not need to be included in the Century Code.

For these reasons, the Chapter respectfully asks for a "Do Not Pass" recommendation on HB 1413.