

2019 HOUSE JUDICIARY

HB 1493

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1493
2/4/2019
32142

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek by Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Relating to private property rights and unmanned aerial vehicle systems and relating definitions; and to provide a penalty

Minutes:

1,2,3,4,5,6

Vice Chairman Karls: Opened the meeting on HB 1493.

Supportive Testimony:

Representative Simons: (Attachment #1 includes handouts from people that could not be here)

Rep. Satrom: Is there any restriction as far as height above a property?

Representative Simons: I can't really address that; we can go over that in committee. Out where I live they will be sending things with drones. However, this is about taking pictures of private property here.

Rep. Jones: Can I shoot them down now?

Representative Simons: We did look into that, and right now you aren't protected that the way we see that. They have more rights with their drone, than you do with your private property rights. There may be repercussions on that.

Julie Ellingson, ND Stockman's Association: I have not seen the content of the Christmas Tree Bill, but we didn't pass a law in regards to the rights and abilities of non-law enforcement or nonmilitary drones to be flying over private property.

Representative Jones: What was the policy that they set?

Ms. Ellingson: Requiring all non-law enforcement or nonmilitary unmanned aircraft, motor vehicle, helicopter, or camera operators gain permission from the property owner or be considered trespassers and have a penalty.

Chairman K. Koppelman: What were your main concerns of your association?

Ms. Ellingson: Some of the concerns that were stated before such as activists misconstruing video to build a case against the farmer, and that would be negative for agriculture. Knowing who is there, and disturbance of livestock were other scenarios.

Emery Melhoff, ND Farm Bureau: We also support this bill. Drones and drone operators must follow the laws of other posted lots.

Chairman K. Koppelman: Did you have a discussion about the height limit issue?

Ms. Melhoff: The main concern is people could photograph equipment to use to show things that the public in general might not approve of, but are normal farm and ranch operations. Nothing on height was discussed.

Rep. Rick Becker: The height requirement for drones is 400 feet max for operating a drone.

Opposition Testimony:

Don Larson, Grand Sky Development Cooperation: (Attachment #2)

Chairman K. Koppelman: The proposed amendments removed Section 1, line 6 through 22 on page 1. They also remove everything after and including line 12 on page 2, and all of page 3. All that is left would be the first 11 lines on page 2 and then the penalty on lines 21 and 22 on page 2.

Rep. Rick Becker: Are you tenants using your drones in a manner that would invade the privacy of land owners?

Mr. Larson: I am concerned that there would be confusion of what the reasonable expectations of privacy are. These drones are using sophisticated gear that can see far away. At this point, there would be concern as to if those would be construed as reasonable or not. I did a little research and in looking there were a few Supreme Court cases that stated that sophisticated technology not common to the public could be considered a search. So that was our concern that because there is sophisticated technology on these aircraft vehicles, they could be challenged in court.

Rep. Rick Becker: I had a bill that required a search warrant for drones. There has been no chilling affect and the industry is growing in leaps and bounds. Do you feel that the bill I'm speaking of had a chilling affect?

Mr. Larson: We had no concern with your legislation, so I cannot speak for others.

Rep. Paur: Working with the Northern Plains UAS (unmanned aerial vehicle) Site you don't fly under 400 ft.?

Mr. Larson: No the clients at Grand Sky do not generally fly below 400 feet, but there are instances where individuals would fly below 400 feet, such as with NDSU we have been given authority to do flights over people to do some videography.

Rep. McWilliams: When you are flying under 400 feet, would that be violating a willful operating when trying to get pictures of individuals that are sitting at the football game?

Mr. Larson: In that instance I think the laws would be clear that they don't have a reasonable concern for privacy. We are concerned about people flying over property, but you are looking at what is underneath the land.

Rep. McWilliams: I am looking at the Christmas Tree version, but I wouldn't think that would be a willfully operating of someone else on their property while you're inspecting a pipeline or something.

Mr. Larson: I hope that is the interpretation, but it is vague enough where it could be interpreted in many different ways. I am concerned about the interpretation, because if I am operating a new company and bringing in data collecting and other things into this state, but I have the possibility of being brought to court for inadvertently filming something without their permission, then I'd rather take my company elsewhere.

Representative Simons: That is not the intent of the bill. When filming over the football game you would be doing so over college property and would only need to permission from the college. With a pipeline or railroad that would be an easement, so you would have the right to film that.

Mr. Larson: I understand that but I don't think it is clear.

Rep. Satrom: We are talking about different things here. You are dealing with potentially two different things. Maybe there could be different classifications in the types of drones being used and then maybe that is a way we can keep you out of this problem.

Mr. Larson: There are many different types and applications of aircrafts.

Rep. Vetter: There was talk about doing flood insurance inspections with drones. Is there language that we can use to either exempt your type of operation from this or?

Mr. Larson: I would be happy to work with you on this. I don't have any off the top of my head at the moment.

Chairman K. Koppelman: We are dealing in a new world with these drones and how do we define that in law. Does your industry have any fear of litigation now, of someone saying their privacy is being invaded?

Mr. Larson: No we have not felt that concern before.

Rep. Paur: Are the drone operators licensed?

Mr. Larson: Yes, they would have a pilot's license, and they are registered.

Lisa Feldner, ND Association of Realtors: (Attachment #3)

Chairman K. Koppelman: I think that the way that reasonable privacy is understood, is that if it is out in plain sight, then there is no intention of reasonable privacy. So if you are out walking around, then you wouldn't have reasonable privacy intentions.

Ms. Feldner: We are not opposed to the concept; we are opposed to the way it is written. Crop adjusters would have a concern too.

Rep. Jones: We should be able to separate those two issues; motive and activity.

Ms. Feldner: That would work well with us.

Chairman K. Koppelman: Perhaps the motive rather than the activity.

Representative Simons: We did talk about this and what if the neighbor's house was in the background of your realty picture. That would not be illegal to do, and that is what you are saying I believe but that is not the intent of this bill.

Clint Fleckenstein: (Attachment #4 was emailed and attached later)

Rep. Jones: What law are you referring to when you talked about the harassment of agriculture?

Mr. Fleckenstein: In Title 39 that has to do with the harassment of domesticated animals, and including livestock.

Rep. Jones: That is in regards to harassing the livestock, not taking pictures without permission.

Mr. Fleckenstein: That is true, when I originally read the bill I thought it was something more to the harassment.

Chairman K. Koppelman: We had a bill several years ago dealing with neighbors where there was a security camera pointed directly in the bedroom window of their daughter.

Mr. Fleckenstein: Maybe we need to that protrusion law then.

Representative Simons: I would like to work with you and get this right. If you wanted to take a picture on a hill; what about private property rights? I understand what you're saying with the sidewalk, but if it's illegal to take a picture of something on someone's land as it is right now, why is it ok to fly on that property and take the same picture?

Mr. Fleckenstein: That is a good question. The FAA said they own the air from the ground up and it is treated as a public space. I personally don't take pictures of livestock, and I do it respectfully. This is a common sense issue, but it is vague too.

Representative Simons: Under those circumstances I could get a hoover craft and fly over someone's property and they couldn't do anything about it then. I do agree there are some issues, and we should work together to figure it out.

Christopher Maike, Geologist with the Department of Mineral Resources: (Attachment # 5)

Chad Nodland, Attorney: (Attachment #6)

Scott Nodland: If I am hired to shoot a wedding, what about the 300 people that are in the wedding. Would I then have an additional liability?

Matt Fern, Small Business Owner in Bismarck: I do videoing for farm videos and drones are a tool to help the cause in marketing and I am licensed and insurance and follow all the rules. I oppose this bill, because of the other things people have said and I am concerned about this bill.

Chairman K. Koppelman: When you took your license, was that a pilot's license that you had to get?

Mr. Fern: It is a pilot's license through FAA for UAV. I can't operate a drone over 50 pounds and I have certain restrictions I have to obtain. We have to register and insure it.

Jim Camburates, Local photographer and videographer in town: I oppose this bill. I am licensed commercially. It is a very serious thing and this law is not needed. Everything is now covered. This bill would create a lot of problems. The FAA is doing a really good job, and we should leave it in the hands of the FAA. I think people are protected. If you are worried about violating the law and getting caught, stop violating the law.

No further testimony. Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1493
2/13/2019
32709

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to private property rights and unmanned aerial vehicle systems and relating definitions; and to provide a penalty.

Minutes:

1

Chairman Koppelman: Opened the meeting on HB 1493.

Representative Simons: (Attachment #1) Went over proposed amendment. Hog house bill.

Chairman K. Koppelman: The original bill was probably unworkable. My suggestion that involves surreptitious intrusion just adds the idea that you cannot operate an unmanned aerial vehicle and do those things that are already prohibited by law.

**Motion made to move the amendment 19.1076.01003 by Representative Simons:
Seconded by Rep. Magrum**

Discussion: None

Voice Vote Carried.

Do Pass as Amended Motion Made by Rep. Magrum; Seconded by Rep. Jones

Discussion:

Roll Call Vote: 9 Yes 2 No 3 Absent Carrier: Rep. Jones

Closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1493

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 12.1-31-14 of the North Dakota Century Code, relating to interference with privacy using an unmanned aerial vehicle system; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-14 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-14. Surreptitious intrusion or interference with privacy.

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
 - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
 - b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
 - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
 - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.
3. An individual may not willfully operate an unmanned aerial vehicle system:
 - a. To capture or take photographs, images, video, or audio of another individual or the private property of another individual, without that individual's consent, in a manner that would invade the individual's reasonable expectation of privacy, including capturing or recording through a window; or
 - b. To view, follow, or contact another individual or the private property of another individual, without the individual's consent, in a manner that would invade the individual's reasonable expectation of privacy, including viewing, following, or contacting through a window.

4. An individual who violates subsection 3 is guilty of a class B misdemeanor."

DP 2/13/19

2 of 2

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1493**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.1076.01003

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. Simons Seconded By Rep. Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote Carried.

REPORT OF STANDING COMMITTEE

HB 1493: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). HB 1493 was placed on the Sixth order on the calendar.

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4. An individual who violates subsection 3 is guilty of a class B misdemeanor."

Renumber accordingly

2019 TESTIMONY

HB 1493



North Dakota House of Representatives

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Representative
Luke Simons

District 36
11509 27th Street SW
Dickinson, ND 58601-8238

lsimons@nd.gov

Committees:
Judiciary
Political Subdivisions

Peeking Tom Bill

EF,
2-4-2019 HB1493
2-4-19
891

Thank you Mr. Chairman and members of the judiciary committee. I am Luke Simons from district 36.

I Bring before you HB1493 which is a private property bill regarding drones.

Due to the weather, eight of the people who talked to me about this subject are not able to be here today.

If someone is walking around your yard or a power plant or a dairy taking pictures, is this a problem??

If so, is it a problem that they are doing this from a drone?

I believe it is The same difference.

In a time were Daris are already in all but extinction, packing plants, stock yards, and all AG is in jeopardy, not to mention factories, power plants and refineries are under threat of constant bombardment of activist using drones to spy on private property.

This is happening all around the country. To the detriment of private businesses and private property rights. I believe the timing of this bill is right.

I managed security for DPR which is a refinery right outside of Dickinson. We constantly had drones flying around the facility by protesters/activist, etc. This was a major problem, one of which there was nothing we could do to them because the law was not specific.

As this bill is currently written it is not a good bill, however I do have an amendment that I believe is a commonsense solution and approach.

We must strengthen private property rights in our state. One simply does not have the right to spy on private property without permission from the landowner. We must strengthen our century code to uphold the constitutional rights of landowners.

I look forward to working with the committee on this bill.

I will stand for any questions.

Thank you Mr. chairman and members of the committee for hearing me and the concerns of my district.

Luke R Simons

House of representatives district 36
701-260-3914

HB1493
2/4/2019
#1

RE: House Bill No. 1493
Pertaining to the trespassing of unmanned aerial vehicle systems

Dear Rep. Simons:

My name is Dustin J. Stuber, I am a resident of Stark County, North Dakota, and I am writing to you today to express my support for House Bill No. 1493. The bill is a much needed update to our very outdated trespassing laws as to how they relate to unmanned vehicle systems or other aircraft.

I would also like to share with you a couple of experiences that I have had in just the last 2 or 3 years that have led me to support this bill. I live on 300 acres in rural Stark County. I experienced one instance of a drone over my property near my residence, first noticed by my children and later my wife. What this drone was doing, how long it was there, to whom it belonged and if it took video or photographs are all UNKNOWN. I believe these unknowns are unacceptable activity on ones own private property. This would be outlawed if Bill #1493 were passed. The other instance was an aircraft that was harassing my cattle. After reporting and later meeting with the County Deputy Sherriff it was stated they were unsure what laws, if any, where even broken by the pilot of this aircraft. Again, I feel this is a great example for the need of House Bill #1493's passage.

Thank you for the opportunity to express my support. I hope that my comments will further your and the committee's understanding for the need to bring our trespassing laws further into the 21st century.

Sincerely,

Dustin J. Stuber
11960 Hwy 10
Dickinson, ND 58602
701-677-9210

HB1493
2/4/2019
#1

Members of the committee

The other day I reviewed the House Bill No.1493 and I'm in full support of it. Knowing the capabilities of some of these drones can be a little discerning because of the payloads and optics they use. I do not want drone operators to fly over my property to spy on my family or take any type of photos or videos with out my permission.

Thank you for your time.
Brandon Pryor

From: Matt Burke <mattburke9@hotmail.com>
Date: February 4, 2019 at 9:33:38 AM CST
To: "lukersimons@me.com" <lukersimons@me.com>
Subject: Support of Bill HB1493

Good morning Luke,

I am in full support of this bill, providing protection against drones.

From: Mikki Pryor <mikkipryor@gmail.com>
Date: February 4, 2019 at 8:29:03 AM CST
To: lukersimons@me.com
Subject: HOUSE BILL NO. 1493 Drone Bill

Hi Luke,

I was given HB 1493 to review. As a landowner I feel there is a definite need to address the advancement of drone regulations to protect landowners and their animals and property. I fully support this bill.

Thanks,

Mikki Pryor

From: Kasey Burke <kaseyburke@hotmail.com>
Date: February 4, 2019 at 9:46:26 AM CST
To: "lukersimons@me.com" <lukersimons@me.com>
Subject: Support of bill HB1493

I support this bill relating to private property rights and unmanned area vehicles systems.
Kasey T. Burke

HB1493
2/4/2019
#1

February 4, 2019

Dear Rep Simons,

RE- HB 1493 (Drone Bill)

- I) North Dakota trespass laws need to be updated to address the intrusion of drone overflights of private property without permission.
- II) A person's home and property should be a private sanctuary free from the intrusion of flying cameras/eavesdropping devices of unknown origin or ownership. There is no difference between this intrusion and a peeping tom.
- III) I do not think anyone (including government agencies) should be able to publish photographs of my person/property to the internet or elsewhere without my permission. I consider myself and my property copyright protected.
- IV) As with trespassing, the law does not completely stop the event but does provide recourse for the person/property owner. There are ample places to fly drones without trespassing (their own property, public property).

Dudley J. Stuber
PO Box 337
Medora, ND 58645
701-623-1964
Ranch Owner, Billings/Slope/Golden Valley Counties

Law now states person must be in the act of trespassing to be

-Trespass from Page A1-

Water and natural resource attorney, and past candidate for Wyoming governor, Harriet Hageman stated about the original intentions of the bill, "There is no question that we live in a time of federal overreach and overregulation. We have heard horror stories of the EPA destroying landowners for building stock ponds, straightening irrigation ditches, and similar type of activities, all under the auspices of (and misinterpretation of) the 'Clean Water Act.' I believe that the Wyoming Legislature was simply trying to find a way to protect our private property owners."

Sen. Ogden Driskill, a co-sponsor of the bill, broke the law down into 3 parts.

Under the law, an individual was to be prosecuted:

1. If they are caught trespassing on private land and have collection equipment
2. If they are caught trespassing on private land and have in their possession samples etc. collected on the private ground
3. If they have crossed (trespassed) private land to access public lands to collect samples

The late October ruling struck the third portion of the law and now states that the person must actually be caught in the act of trespassing to have the law apply, as opposed to having proof that the person trespassed but not having caught them in the process.



The late October ruling struck the third portion of the law and now states that the person must actually be caught in the act of trespassing to have the law apply, as opposed to having proof that the person trespassed but not having caught them in the process. Shutterstock

Although he was not happy with the ruling, Driskill said it could have been much worse.

For ranchers such laws are insurance against radical environmentalists with nefarious intentions who may sneak onto an operation and create a case against an innocent civilian. Championing private property rights was a goal at the forefront of the legislation. Sen. Driskill went on to say that not only were these laws in place to prevent independent environmentalists but government agencies as well who had been taking part in trespassing in order to build their databases.

Since its inception the law has obviously been opposed by those on the other side of the aisle calling them "ag-gag laws" and claiming it squelches one's right to free speech.

As early as 2015, the same year in which the date trespass bills became law suits had been filed to strike down the laws.

In her opinion, Hageman explained that younger generations are placing less value on fundamental rights such as private property rights.

"I think that in the last 10 years we have seen a fundamental shift in the way that some people view our foun-

dational constitutional right and the need to protect the Those in agriculture view property ownership as a fundamental right — one that differentiates Americans from much of the world. One of the most important 'sticks' in the 'bundle of sticks' of property ownership is the right to decide who may enter. There are many people who simply do not agree with that principle. I believe that we have failed to teach each successive generation of the importance of liberty, of freedom, and of the benefits of a limited government. That failure has led to many of our young people professing to be socialists, professing a belief in the socialist mantra. Socialism and private property ownership simply cannot co-exist. They never have and they never will."

Hageman holds a hope for the preservation of private property rights.

Torrington Livestock Markets
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Lex Madden: 307-532-1580
Michael Schmitt: 307-532-1776
Chuck Petersen 307-575-4015

Merry Christmas

from the Staff at Torrington Livestock

Thank You for Your Business

states person must be caught in act of trespassing to be charged



The late October ruling struck the third portion of the law and now states that the person must actually be caught in the act of trespassing to have the law apply, as opposed to having proof that the person trespassed but not having caught them in the process. Shutterstock

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tional constitutional rights and the need to protect them. Those in agriculture view property ownership as a fundamental right — one that differentiates Americans from much of the world. One of the most important 'sticks' in the 'bundle of sticks' of property ownership is the right to decide who may enter. There are many people who simply do not agree with that principle. I believe that we have failed to teach each successive generation of the importance of liberty, of freedom, and of the benefits of a limited government. That failure has led to so many of our young people professing to be socialists, or professing a belief in the socialist mantra. Socialism and private property ownership simply cannot co-exist. They never have and they never will."

Hageman holds out hope for the preservation of private property rights.

"The law of trespass in Wyoming still stands. Landowners continue to have protection from someone coming onto their property without their permission. None of the plaintiffs in that case are entitled to access private property and collect data unless the landowner allows them to do so." She continued, "I believe that there are other ways to address concerns about federal overreach and overregulation. The current administration in Washington, D.C., has taken a much more pragmatic and legally defensible approach to enforcement of federal law, including the Clean Water Act and the Clean Air Act."

As the first environmentalist, before the term was hi-jacked by those activists attempting to end production agriculture, farmers and ranchers have worked hard to care for the land knowing that by caring for the land the land will care for them in return. As American consumers continue to be distanced from a shared agricultural background the concepts of something as primary as private property rights will continue to be misconstrued and used as a political pawn.

Agriculturists in Wyoming must remain diligent to support those promoting laws like the data trespass legislation while also explaining to their city-dwelling counterparts that private property rights aren't just advantageous to large land owners but that they matter to those with a house in town and a lawn they'd like to keep private. In fact, landowners must emphasize that in a country like the United States individuals either have the right to own property or indeed they risk being property.

arkets
82240
2.2040
k.com



Lex Madden: 307-532-1560
Michael Schmitt: 307-532-1776
Chuck Petersen 307-575-4015

Merry Christmas

the Staff at Torrington Livestock
Thank You for Your Business

DAY DEC 17TH - 1606 HEAD



Your Proven
Partner Serving
Ranching &
Farming

AZ
HB 1493
2-4-19
pg 1

HB 1493
February 4, 2019
House Judiciary Committee

Good Afternoon, my name is Don Larson and I am here today representing Grand Sky Development Company. For those of you that might be unfamiliar with Grand Sky, it is an unmanned systems airport and flight test center in Grand Forks.

Grand Sky Development Company and our tenants, Northrop Grumman and General Atomics employ over 160 people engaged in developing and working with the largest and most sophisticated unmanned systems in the world. This employment generates over \$11 million in wages every year in the region. To date, not including wages, our tenants have invested nearly \$50 million to grow their presence.

North Dakota maintains a leadership position in the UAS industry and part of that leadership is a result of our state's investment in research and development. With the help of the Northern Plains UAS Test Site, we are working to extend the range of UAS operations to include beyond visual line of site flights across the state of North Dakota. This development will allow UAS to be economically used to:

- Fly agricultural land to inspect crop health and determine the need for chemical application,
- Inspect pipeline routes using infrared and other imaging tools to determine leak sites before they are visible to the naked eye, and
- Inspect other infrastructure like train tracks, electric transmission lines, highways or bridges more often, with higher accuracy at a lower cost than when done by humans in the air or on the ground.

The research, development and testing of unmanned aerial systems is happening around the country and across the globe right now. Because of strong support by the state of North Dakota, our state is a leader in this developing technology. While it is well intentioned, House Bill 1493 will have a chilling effect on this growing industry in our state. Therefore, I ask the committee to give House Bill 1493 a Do Not Pass recommendation.



#3
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2-4-19
pg 1

Testimony in Opposition of House Bill 1493
February 4, 2019
North Dakota Association of Realtors

Chairman Koppelman and members of the House Judiciary Committee, my name is Lisa Feldner and I am providing testimony in opposition to HB 1493 on behalf of the North Dakota Association of Realtors. The association has about 1,900 Realtor members and 250 Business Partners such as banks, title companies, and others. Realtors are in the business of selling property. As I'm sure you are aware, photos and videos are some of the primary resources realtors use in their property listings. In recent years, video footage taken by UAVs has provided an excellent view of the property, its boundaries, other structures as well as the conditions of the roofs.

We think the bill is redundant and problematic.

- Invasion of privacy is already covered in NDCC chapter 12.1-31-14: Surreptitious intrusion or interference with privacy.
- The FAA governs the national airspace and state law cannot supersede federal law. Therefore, Section 2, subsection 7, is not necessary.

Our concerns are many.

Realtors hire commercially licensed UAV operators to capture video footage of the properties they are listing. The footage will naturally show boundaries, and thus portions of the neighbors' properties. This bill requires the owner to get permission from his neighbors. However, if the realtor used a video camera and walked the boundaries of the property, they don't need permission.

- Section 2, subsection 1. Part a. and b. What is an individual's reasonable expectation of privacy? Mine might be a lot different than yours, or than those of my neighbor.
- Why are UAV's singled out when cameras and cell phones can also be used in a similar manner?
- Section 2, subsection 1. Part d. The term harass is not defined.
- Subsection 5 - What if a neighbor doesn't like the owner, does he have a cause of action under this section?

What about insurance adjusters and crop adjusters? When they are flying the field, it's likely the footage will contain areas of the adjoining properties. Does that mean the adjuster will need to get permission from area landowners? Time is typically of the essence when it comes to crop insurance. Getting permission from out of state landowners may be problematic.

In conclusion, we ask for a Do Not Pass on HB 1493. Thank you for your time.

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#4

House Judiciary Committee Testimony // HB1493 // Clint Fleckenstein – Bismarck, ND

Mr. Chairman and members of the committee, thank you for allowing me to come before you to express my concerns with bill 1493. I'm testifying as a private citizen, an FAA-licensed commercial UAS pilot, and a recreational UAS hobbyist and landscape photographer. I fear that this bill as introduced will make many flight operations illegal without cause, or expose UAS pilots to unwarranted litigation if passed.

Unmanned aerial systems are already quite regulated; however, few people are aware of the laws already in place. Commercial UAS operators are required by the FAA to pass a rigorous knowledge test regarding safe and appropriate flight in order to receive their license, and they must re-test every 24 months. As of last fall, with the FAA reauthorization act, even recreational or hobbyist users are now required by federal law to pass a knowledge and safety test and carry proof of passing that test on their person any time they fly. They must also provide that documentation to law enforcement upon request. The industry is policing itself to make sure that operators are trained, licensed, and accountable.

Many of the provisions in this bill are already covered by existing state law. For instance, subdivisions a and b of subsection 1 are already covered in multiple parts of Title 12 of Century Code dealing with "surreptitious intrusion". Subdivision c is already addressed in Title 39, which deals with harassment of domestic animals (the definition of which includes livestock). That's not even counting abuses which would run afoul of federal aviation law.

One thing about unmanned aerial systems – they have a bad reputation. I bet if you polled a random group of people on their gut reaction to the word “drone” you’d get a negative response, aside from those of us who use them regularly. As such, I expect that this bill would result in photographers being pursued for “harassment” simply because someone doesn’t like the idea of something flying near their property or any propeller noise caused by the legal operation of an aircraft involved in a legitimate mission. People also seem to think that UAS cameras are able to “zoom in” and capture them in intimate detail, when for the most part the opposite is true. In fact, even this bill applies penalties to people who take photos via UAS that don’t apply to other technologies under the Surreptitious Intrusion chapter of the criminal code.

I have an analogy that I think can convey my concern for the UAS pilot under the provisions of this bill. I ride fast motorcycles and used to engage in roadracing, knee-dragging on a closed race course. We call this type of motorcycle “sport bikes”, but they are labeled with terms such as “crotch rocket” just like a UAS is likely to receive a scowling label of “drone”. People look at a motorcycle like that in the parking lot and get mad, because they figure it’s going to be ridden in a reckless and dangerous fashion as soon as the rider climbs aboard. Thanks to sensationalism in the media and, yes, a few irresponsible and likely untrained operators, I believe that same prejudice applies in many instances to UAS vehicles. With that in mind, I would expect many UAS operators carrying out legitimate missions with their vehicles to find themselves accused of violating someone’s “reasonable expectation of privacy” without cause. And they’ll have to pay to defend themselves in court every time someone objects simply to them being in the air. Legislation that produces this kind of result, where people risk having to go to court for clarification and vindication, is dangerous. Vague law is bad law.

The most disturbing part of this bill for me is in subdivision a regarding photographing private property. I feel that this portion of the bill is problematic for the following reasons:

- “Private property” is too vague. The purpose and appeal of aerial photography is to gather perspectives that are not attainable from the ground. The wide angle lenses utilized by most UAS cameras often make it difficult if not impossible to capture images of one specific subject without capturing its surroundings. In an aerial photo with a typical UAS camera, it is reasonable to expect that property surrounding the intended subject of the photo will appear in photos taken by such an aerial camera.
- For example, an open field is private property. A hill, a tree, a pond...all are private property. In fact, outside of a state park you’d be hard pressed to find anywhere in North Dakota where you could take a photo from an unmanned aerial system without the risk of running afoul of this bill. **Everything** is “private property.” All this bill requires is that someone take offense to such property appearing in an aerial photo for the pilot to find themselves in civil or criminal court.
- I couldn’t find a specific legal definition of an “expectation of privacy”, but I think it must be considered differently when talking about aerial imagery. I fear that taking aerial imagery will be, by default, considered equivalent to climbing someone’s fence to peer over it. Because the use of small UAS systems is becoming more and more common, an “expectation of privacy” cannot be taken to simply exclude any aerial imagery whatsoever. And with consumer UAS becoming common (over 1 million as of January 2018, according to the FAA), one might argue that aerial photography in scenic locations should be expected, and the expectation of privacy to be different when pertaining to UAS operations.

- Under specific circumstances, a UAS operator can get FAA permission to fly over people. Not all of those people may be happy about this, even if they're in a public place. People tend to be as ignorant of the law pertaining to photography in public places as they are of law pertaining to UAS operations; therefore, it's reasonable to assume that under this bill any UAS operator who legally acquires video or photos around people still runs the risk of having to defend each flight against civil suits or even criminal charges from such people.
- There are legitimate reasons for taking picture of private property by private businesses, utilities, and even government agencies not associated with law enforcement but with regulatory responsibilities. None of them are exempted in this bill.

The increase in use of unmanned aerial systems is bringing up numerous challenges for aviation law, and obviously for state and local law as well. It's important, though, that we take the unique nature of UAS operations into consideration when drafting legislation such as this bill. As it's drafted, I fear that the bill has some serious flaws and should not be passed in its current form.

I wouldn't come here to testify against the bill without providing some ideas for an alternative solution. I suggest:

- Amend existing Century Code regarding surreptitious intrusion, harassment of persons, and harassment of livestock to specifically include the use of UAS in the criminal behavior named in those sections, where the language is already more specific, rather than singling out UAS operations in this bill,;
- Remove the "private property" provision from this bill. It's too broad and problematic.

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In closing: right now, North Dakota is considered to be at the forefront of UAS innovation. We're trying very hard to earn that distinction in public sector, private sector, and education sector. Therefore, it's important that we get this sort of thing right the first time. We need to embrace innovation, encourage responsible use, and allow for the technology to integrate itself into the way we live.

Thank you for your time. I'd be happy to answer any questions.

Clint Fleckenstein

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House Bill 1493

House Judiciary Committee

February 4, 2019

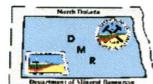
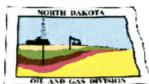
Comments of Christopher Maike, Geologist
Department of Mineral Resources
FAA Licensed Drone Pilot since May 2017

I am opposed to House Bill 1493, not in its intended purpose, but because I am concerned that state employees performing duties pursuant to their agency's mission may indirectly photograph a person and/or property and be subject to the proposed penalties. I think this could be avoided with a simple amendment to the exception section in the existing law NDCC 29-29.4-04.

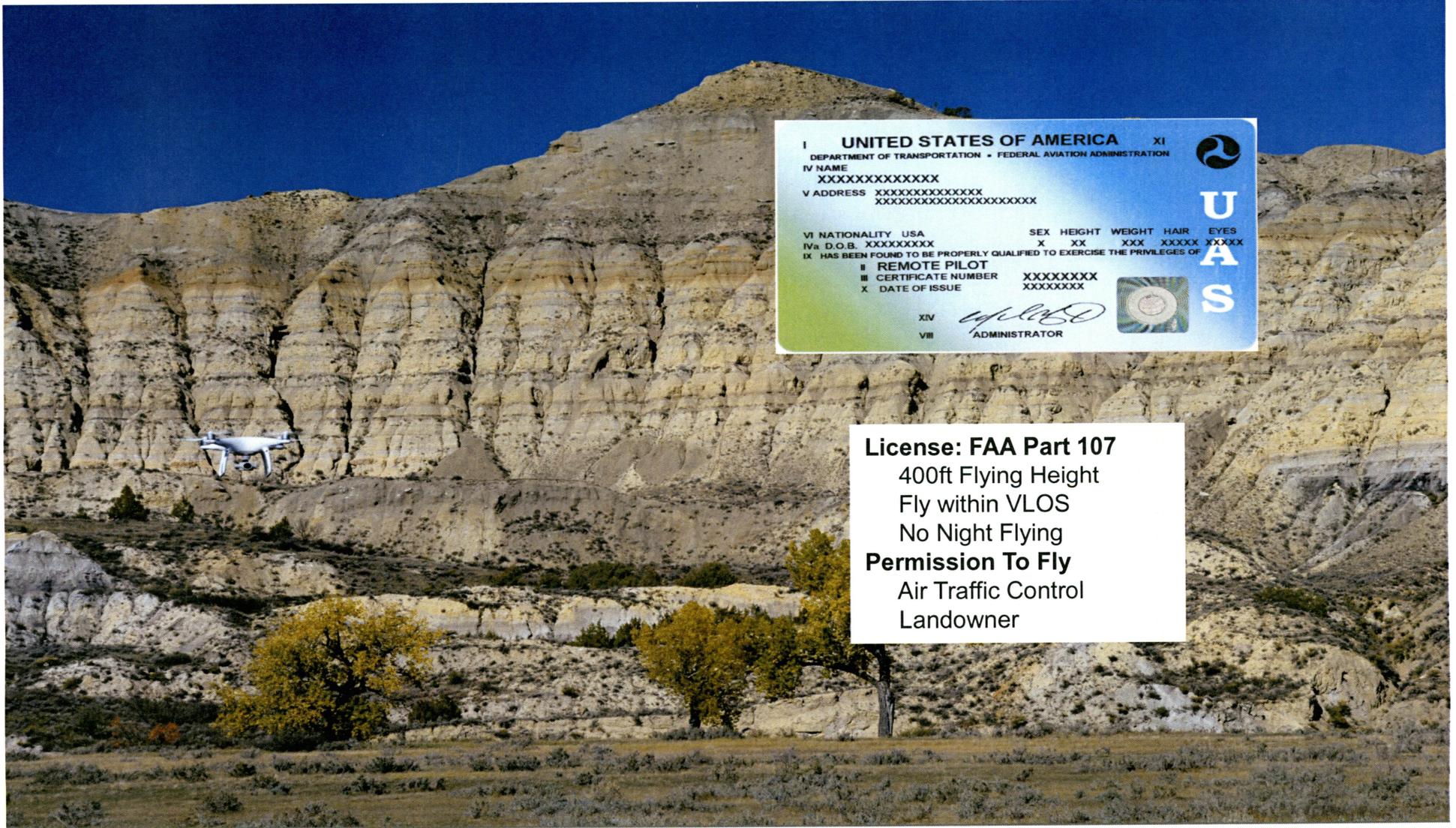
DMR has five drones and nine licensed drone pilots.

In a typical year, DMR drone pilots take ~2,000 photographs.

- Landslides
- Rock outcrops (stratigraphy, rare earth elements, proppant sand, etc)
- Well pad reclamation
- Pipeline corridors
- Flooding of oil and gas infrastructure



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I UNITED STATES OF AMERICA XI
DEPARTMENT OF TRANSPORTATION • FEDERAL AVIATION ADMINISTRATION

IV NAME
XXXXXXXXXXXXXX

V ADDRESS XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX

VI NATIONALITY USA **SEX** HEIGHT **WEIGHT** **HAIR** **EYES**
IVa D.O.B. XXXXXXXXX X XX XXX XXXXX XXXXX

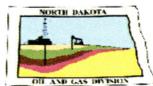
IX HAS BEEN FOUND TO BE PROPERLY QUALIFIED TO EXERCISE THE PRIVILEGES OF

II REMOTE PILOT
III CERTIFICATE NUMBER XXXXXXXX
X DATE OF ISSUE XXXXXXXX

XIV *[Signature]*
VIII ADMINISTRATOR

UAS

License: FAA Part 107
400ft Flying Height
Fly within VLOS
No Night Flying
Permission To Fly
Air Traffic Control
Landowner

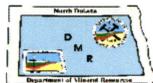
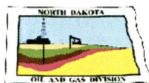


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Landslide Impacting Hwy 22- Dunn County (October 2017)

During flights above permitted locations an individual or private vehicle may be indirectly captured by the photography.

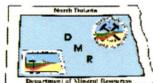
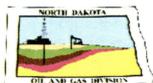


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Landslide Impacting I-94 Valley City (August 2017)

During UAV operation above a right-of-way, the landscape may be visible in the background for several miles. In urban areas, the background of these photos may secondarily include the private property of dozens or hundreds of individuals in low detail.

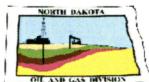


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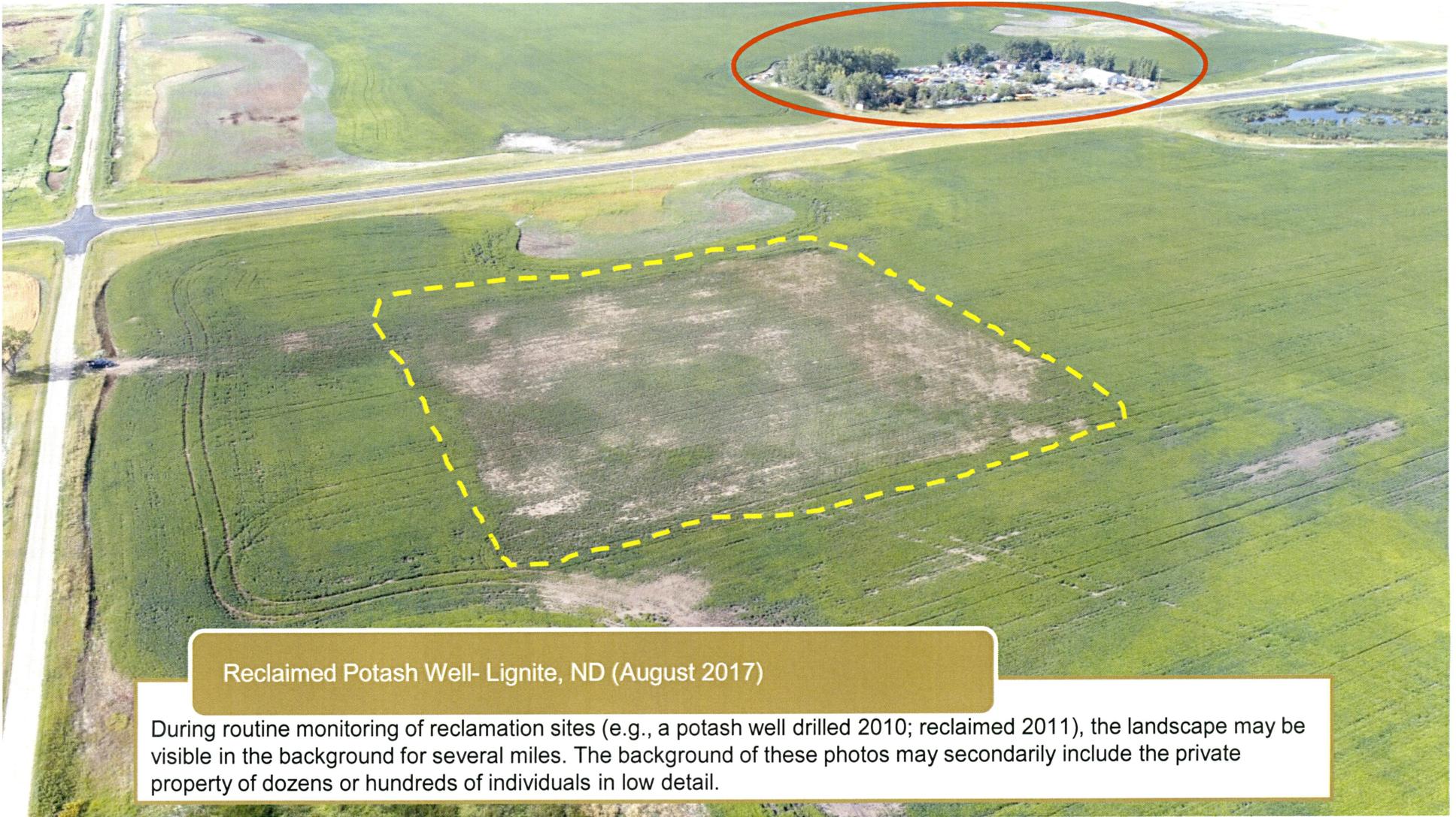


Landslide impacting Belle Fouche Pipeline- Billings County (May 2017)

- During oblique aerial photography collection at a permitted location (e.g., photographing a pipeline during routine monitoring activities), an individual may be indirectly captured.

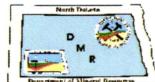
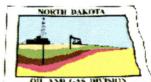


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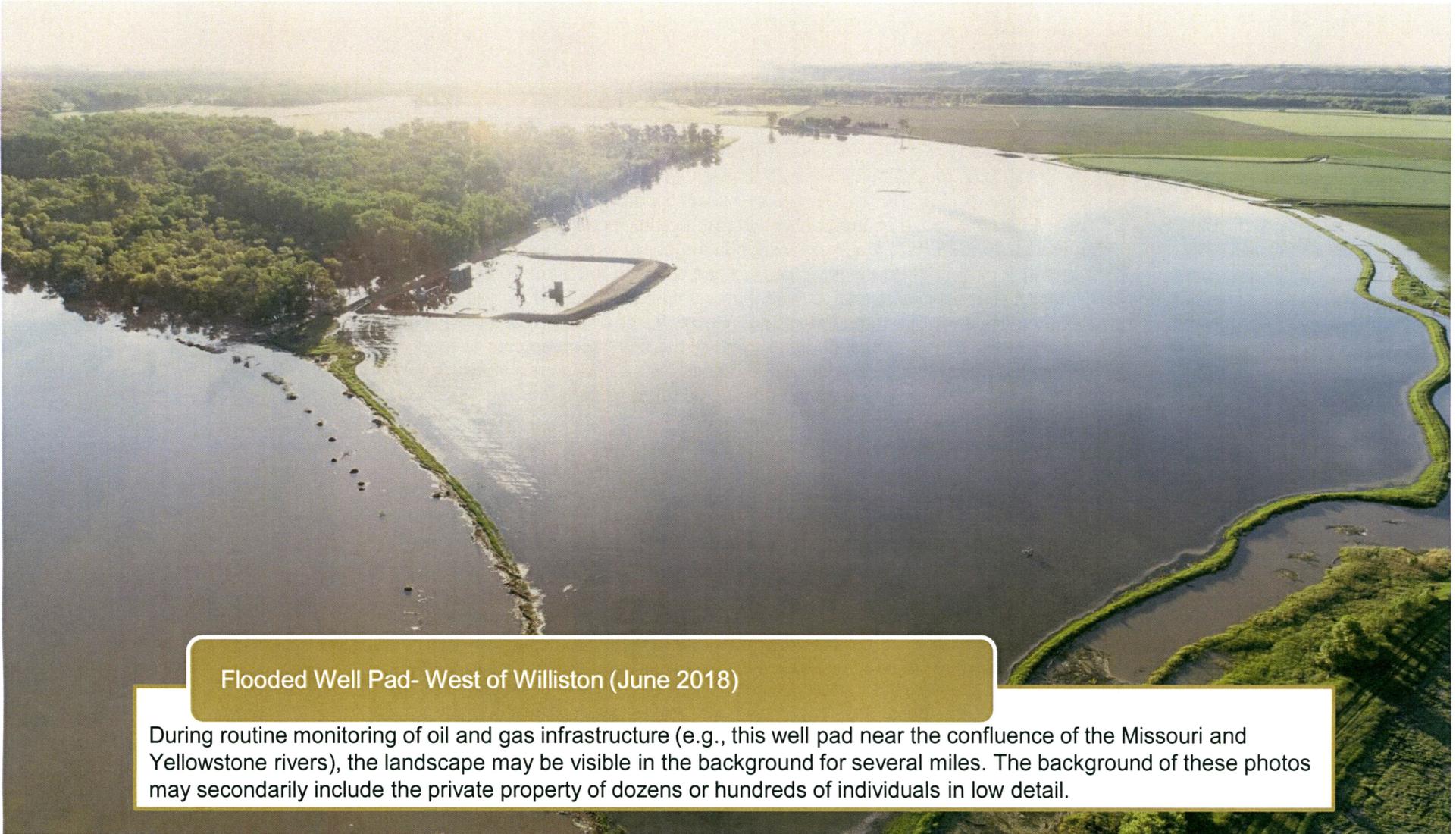


Reclaimed Potash Well- Lignite, ND (August 2017)

During routine monitoring of reclamation sites (e.g., a potash well drilled 2010; reclaimed 2011), the landscape may be visible in the background for several miles. The background of these photos may secondarily include the private property of dozens or hundreds of individuals in low detail.

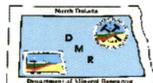
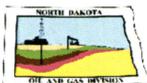


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Flooded Well Pad- West of Williston (June 2018)

During routine monitoring of oil and gas infrastructure (e.g., this well pad near the confluence of the Missouri and Yellowstone rivers), the landscape may be visible in the background for several miles. The background of these photos may secondarily include the private property of dozens or hundreds of individuals in low detail.



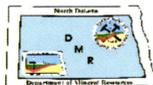
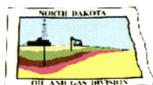
Amendment Proposed by the Department of Mineral Resources

Although much of the work we do could possibly be interpreted as falling within the exceptions noted in NDCC 29-29.4-04 (3 and 4), we are asking that an exception be added that specifically exempts state employees that are performing tasks pursuant to their agency missions.

29-29.4-04. Exceptions.

This chapter does not prohibit any use of an unmanned aerial vehicle for surveillance during the course of:

1. Patrol of national borders. The use of an unmanned aerial vehicle to patrol within twenty-five miles [40.23 kilometers] of a national border, for purposes of policing that border to prevent or deter the illegal entry of any individual, illegal substance, or contraband.
2. Exigent circumstances. The use of an unmanned aerial vehicle by a law enforcement agency is permitted when exigent circumstances exist. For the purposes of this subsection, exigent circumstances exist when a law enforcement agency possesses reasonable suspicion that absent swift preventative action, there is an imminent danger to life or bodily harm.
3. An environmental or weather-related catastrophe. The use of an unmanned aerial vehicle by state or local authorities to preserve public safety, protect property, survey environmental damage to determine if a state of emergency should be declared, or conduct surveillance for the assessment and evaluation of environmental or weather-related damage, erosion, flood, or contamination.
4. Research, education, training, testing, or development efforts undertaken by or in conjunction with a school or institution of higher education within the state and its political subdivisions, nor to public and private collaborators engaged in mutually supported efforts involving research, education, training, testing, or development related to unmanned aerial vehicle systems or unmanned aerial vehicle system technologies and potential applications.
5. The use of an unmanned aerial vehicle by a public agency of the state is permitted when the drone is used to perform tasks within the scope of the agencies responsibilities and authority.



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House Judiciary Committee
House Bill 1493
February 4, 2019

Good afternoon. I am Chad Nodland. I'm a part 107 licensed commercial drone pilot here in Bismarck, and also an attorney. I'm here as a citizen and not on behalf of anybody else.

By way of background, I should tell you I have a sister and brother in law who do quite a bit of commercial drone work. They're based in Wisconsin, but have done commercial drone work all over the country, including in North Dakota. Having seen the amazing videography and photography they were doing, I decided to purchase a drone about two years ago. I bought it on a bit of a whim and then flew it a couple times when I realized I really didn't know much about drone safety or rules and laws relating to flying drones. So I spent some time studying for the part 107 (commercial drone pilot) test, took the test, passed with a high score and have never actually used my commercial drone pilot license since becoming licensed. I've only ever flown my drone as a hobby and for fun. Mostly, I've flown in remote, rural areas, but have also flown in town a time or two, after notifying the Bismarck Airport tower, as is required by the FAA's rules. I do try to keep up on technology and legal developments relating to drones.

I learned about HB 1493 late last week, reviewed it and am here to testify in opposition to the bill. I've gone through HB 1493 nearly line-by-line and have compiled my comments and thoughts as follows:

A. **Page 1, lines 14-15.** Defines "operator" to mean "an individual exercising control over an unmanned aerial vehicle system during flight."

The word "individual" is used in this definition. Individual is defined in NDCC 1-01-49(3) as being "a human being" and does not include corporations. By passing this provision, the legislature will be saying it is not okay for a human being to invade my privacy with a drone, but it is okay for a corporation to do so.

B. **P. 2. Line 2 --** Defines prohibited use of an unmanned UAV, and penalty. In line two, makes the law applicable to "individuals." As noted above, the word "individual" is used. The bill, in this same line, also uses the word "operate." There is a lot of technology involved here that I don't believe this bill takes into consideration. For example, there is software that makes it possible for drones to operate without anybody "operating" them during the flight. So if Amazon -- or my next door neighbor -- devises a drone-controlling program or uses an app that automatically sends the drone over my backyard to take photos to track my behavior within my completely fenced in backyard, that will be okay. But if I incidentally capture an image that includes your back yard while filming from 380 feet up in the air, that could be a crime and a civil tort, if it is determined that you have a "reasonable expectation of privacy" behind your eight foot tall fence.

C. **P. 2, lines 4 - 7.** As may be apparent from my comment above, I am trying to figure out what is meant by “reasonable expectation of privacy” in this context. That phrase is language that has been reviewed by courts and evolved over the years, but almost exclusively in the context of analysis of whether there was a need for a criminal search warrant. That is fine, but you have to wonder how many people -- including drone operators -- in North Dakota are familiar with the case law on “reasonable expectation of privacy” and could regulate their conduct based upon their knowledge that history of analysis. I wonder how many members of this committee can tell me whether a guest at your home has a reasonable expectation of privacy, or whether a person who rents a room in your home has a reasonable expectation of privacy in your home.

If I put up an 8-foot-tall fence around my property, I have to wonder how many on this committee know whether they have a reasonable expectation of privacy while mowing their lawn. If two photographs are taken from the 18th floor of the capitol building, and those photos both look over your fence and see you mowing my lawn, and one is taken with a drone I'm holding in my hand, and the other is taken with my 400mm telephoto lense, the image I capture with my telephoto lense is perfectly fine under the language in this bill, but the image I capture with my drone is evidence of a crime and the basis for a \$5,000 tort claim, plus attorney fees. This does not make a lot of sense.

D. **Page 2, lines 8-11** -- Viewing, following or contacting an individual or private property without consent. I have the all the same concerns about this “reasonable expectation of privacy” provision that I have have with the previous provision. While window peeping with a drone should be prohibited, this bill does more than that. It doesn't just make illegal taking a photo through a window from 10 feet away, but also puts drone operators at risk if they incidentally capture an image of someone's house from a half-mile away and 300 feet up, where you can sort of make out the form of a human looking out a window. This bill seems to treat those two the same.

E. **Page 2, lines 12 - 13.** Harrassing livestock/domestic animals. I believe this is already a crime.

c. To chase, actively disturb, or otherwise harass or frighten livestock or any other domestic animal owned by another individual;

NDCC § 39-08-19. Penalty for harassment of domestic animals. Any person operating a motorcycle, snowmobile, or other motor vehicle who willfully harasses or frightens any domestic animal, is, upon conviction, guilty of a class B misdemeanor. If injury or death results to the animal due to such action, such person is liable for the value of the animal and exemplary damages as provided in section 36-21-13.

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39-01-01(46). "Motor vehicle" includes every vehicle that is self-propelled, every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and, for purposes of motor vehicle registration, title registration, and operator's licenses, motorized bicycles. The term does not include a snowmobile as defined in section 39-24-01.

F. **P. 2, line 14** -- Making "harassment by drone" illegal. This provision in the bill does not define "harassment." There is a criminal law that defines "harassment" already. NDCC § 12.1-17-07. The definition in chapter 12.1 does not seem to make sense in this context. Should that same definition be used in this proposed new law? Would it be better to put a provision in the criminal code defining harassment by drone?

G. **P. 2, lines 15-16**. Making it a crime to use a drone to violate a court order. This would already be a violation of the court order, and -- as such -- both a violation of a civil order (subject to civil sanctions under the order), criminal contempt and any other relevant crimes. It also seems to assume there is a set "distance that would violate a disorderly conduct restraining order." This is not true. Courts set that distance in each individual DCRO, depending upon the circumstances. There is no generic DCRO distance.

H. **P. 2, line 17**. Makes it a crime to disregard the safety of another individual or property. It is hard to discern what this means. It is unclear what specific conduct would "disregard the safety of another individual or property." Is flying over someone's property sufficient to be a crime? Flying quickly? This is a very vague law and perhaps unconstitutionally vague.

I. **P.2, line 18-19**. This should be a crime, if it isn't already. There are federal laws and rules on this and, as of July of 2016, there is a federal civil penalty of up to \$20,000 for interfering with law enforcement and first responders. 49 USC § 46320

J. **P.2, lines 23 - P.3, line 4**. Prohibiting people from exercising their second amendment rights using drone technology. Not sure why this only should apply to "individuals" and not "persons." It would be interesting to hear why we should give corporations rights that human beings don't have.

K. **P. 3, lines 5-6**. Operating a drone with the intent to interfere with a manned aircraft. This seems fine.

L. **P.3, lines 7 - 20**. Creating a civil tort to stop people from using their drones. All the same concerns I've raised, above, apply here, too. But, additionally, this seems to be an invitation for a lot of litigation. If you see a drone in the sky, you have virtually no way of knowing whether it is capturing an image or video of you. But, if you see a drone

in the sky, you will know you can probably make \$5,000 by calling the cops and reporting it if you are in your fenced-in backyard. The cops will come, likely seize the drone. If they have incidentally captured an image of your fenced in back yard, you can sue the person. If they don't offer you a nuisance settlement, the drone operator will risk having to pay a judgment for \$5,000 and attorney fees if a jury believe you have a reasonable expectation of privacy for yourself or your property sitting in your back yard.

M. **P.3, lines 21-24.** Gives permission to FAA authorized drone operators to operate a drone so long as they comply with state law. It is difficult to discern what this adds to the law. Essentially what it seems to say is that the other provisions in this law apply to all "individuals," regardless of whether they have a part 107 license or any other FAA authorization. But if this part were removed, that would also be true. So this must contribute something; what is it? Furthermore, if this does add something to the law relating to federal licensure, it is likely preempted by the applicable federal law.

As a citizen, a drone operator and a lawyer, I see this bill as likely having good intentions but feel it lacks the benefit of a lot of input and thought from experts in the various relevant field. I reached out to an aviation law professor at UND to see if he was tracking this, and he apparently was unaware of the bill.

If your objective is to kill private, retail sale of drones in North Dakota, this is probably a good way to accomplish that goal. If your objective is to If the objective is to kill a small and budding industry for commercial drone pilot businesses, this is probably a good bill. If your objective is to create a new area of specialization for trial lawyers who want to make a bunch of money filing what would otherwise be frivolous lawsuits, this is a good bill to pass. If your objective is to protect people from peeping toms using drones and reckless drone operators, this bill is overkill.

I would ask that this bill be amended to seek an interim study.

Respectfully,

Chad Nodland
Bismarck, ND

Addendum

North Dakota already has at least two other criminal laws in the Century Code that address surreptitious intrusion and/or invasion of privacy.

(1) NDCC § 12.1-20-12.2 – **Surreptitious Intrusion**

And

(2) NDCC § 12.1-31-14 – **Surreptitious intrusion or interference with privacy**

If neither of those two sections in the criminal code address or cover what you wish to address with HB 1493, I would suggest that – rather than passing a third surreptitious intrusion and/or invasion of privacy law, the legislature should consider amending one or both of those laws so that one or both of them would address your concern.

Title 29 is supposed to be where I would find Criminal Judicial Procedure statutes. The provision you are tinkering with relates to issuance of search warrants by the Court. With HB 1493, this body would be putting a substantive criminal law into a criminal procedure title, and would be adding a civil tort in the criminal civil procedure title. From a basic statutory drafting and research perspective, this makes no sense.

There are hundreds if not thousands of crimes defined in the Century Code. They are hard enough to find already, even for lawyers. And we expect the citizen to be able to find laws in order to follow them. HB 1493 would only make things worse.

#1
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2-13-19
P.1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1493

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 12.1-31-14 of the North Dakota Century Code, relating to interference with privacy using an unmanned aerial vehicle system; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-14 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-14. Surreptitious intrusion or interference with privacy.

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
 - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
 - b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
 - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
 - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.
3. An individual may not willfully operate an unmanned aerial vehicle system:
 - a. To capture or take photographs, images, video, or audio of another individual or the private property of another individual, without that individual's consent, in a manner that would invade the individual's reasonable expectation of privacy, including capturing or recording through a window; or
 - b. To view, follow, or contact another individual or the private property of another individual, without the individual's consent, in a manner that would invade the individual's reasonable expectation of privacy, including viewing, following, or contacting through a window.

#1
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4. An individual who violates subsection 3 is guilty of a class B misdemeanor."

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Renumber accordingly