

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2311

2001 SENATE NATURAL RESOURCES

SB 2311

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2311

Senate Natural Resources Committee

Conference Committee

Hearing Date 2-9-01

Tape Number	Side A	Side B	Meter #
2	X		1.6 - 51.4
2-15-01	X		7.7 - 19.0
Committee Clerk Signature <i>Janet James</i>			

Minutes:

SENATOR TOLLEFSON opened the hearing on SB 2311.

SENATOR KELSH of District 26 introduced SB 2311, A BILL RELATING TO HUNTING NEAR OCCUPIED BUILDINGS, testified that this a very simple bill. He told the Committee that he was surprised when he was campaigning that the rights of a home owner does not extend beyond the property line as far as the 440 yards rule of hunting within an occupied building. The rule is not absolute, that the 440 yards is from an occupied building only if you own the land and if you don't own the land other people can hunt up to the property line. The bill would make it absolute, but the optimum word of the bill would be "without consent".

SCOTT MUGGLI a home owner in the country, testified in support of SB 2311. He is concerned about the safety of his family and feels that his home owner rights in a rural area should be considered as much as a home owner in town.

CHERIE MUGGLI testified in support of SB 2311 and would wish the hunters would ask permission to hunt within the 440 yards of her home and that she would like to have as much property rights as those in town.

DAVID MUNSCH rural property owner testified that he would like to see that permission be required for all game hunting.

CHARLES KURSZEWSKI, owner of the Fox Hills Farm testified in support of SB 2311 (See attached testimony including maps of his property).

ROGER ROSTUET representing the North Dakota Game & Fish Department testified in opposition to SB 2311 (See attached testimony).

SENATOR FREBORG : asked if the bill was passed wouldn't a land owner be able to tie up land for private hunting.

ROGER ROSTUET confirmed that the average would be approximately 125 acres that would then become private hunting area. He further demonstrated bright orange signs that are available for public area for notice that there is occupied buildings near by. These signs should be posted out far enough into the property to give notice.

JIM COLLINS JR. testified in opposition to SB 2311 (See attached testimony).

PAUL CRARY, representing the Cass County Wildlife Club, testified in opposition of SB 2311.

MIKE DONAHUE, representing the North Dakota Wildlife Federation and the United Sportsmen of North Dakota, testified in opposition to SB 2311. They sympathize with property owners and realize there is a safety issue but feels this is not the way to fix the problem.

SENATOR TOLLEFSON closed the hearing on SB 2311.

**FEBRUARY 15, 2001**

SENATOR FISCHER reopened discussion on SB 2311.

Many of the Committee members have received e-mail messages. There was discussion regarding the Attorney General's opinion about closing public lands for hunting. If this bill is passed the system could be manipulated so that a person could surround his property with 440 yards on all sides and make it a private personal hunting area.

SENATOR FREBORG made a motion for a "DO NOT PASS".

SENATOR CHRISTMANN second the motion.

SENATOR FISCHER called for a roll vote of SB 2311. The vote indicated 4 YAYS, 2 NAYS, 1 ABSENT.

SENATOR FREBORG will carry SB 2311.

Date: 2-15-0  
 Roll Call Vote #: 1

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2311**

Senate NATURAL RESOURCES Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Freborg Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Sen. Thomas Fischer, Chairman	✓		Sen. Michael A. Every	✓	
Sen. Ben Tollefson, Vice Chair.		✓	Sen. Jerome Kelsh		✓
Sen. Randel Christmann	✓				
Sen. Layton Freborg	✓				
Sen. John T. Traynor	A				

Total (Yes) 4 No 2

Absent 1

Floor Assignment Freborg

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

**REPORT OF STANDING COMMITTEE (410)**  
February 15, 2001 1:57 p.m.

**Module No: SR-28-3539**  
**Carrier: Freborg**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2311: Natural Resources Committee (Sen. Fischer, Chairman) recommends DO NOT PASS (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2311 was placed on the Eleventh order on the calendar.**

2001 TESTIMONY

SB 2311



**TESTIMONY OF THE NORTH DAKOTA GAME AND FISH DEPARTMENT  
SB: 2311 HUNTING NEAR OCCUPIED BUILDINGS  
SENATE NATURAL RESOURCES COMMITTEE  
FEBURARY 9, 2001**

The North Dakota Game and Fish Department is very concerned about the ramifications of SB 2311. There are two areas of concern with this bill, individual private landowners right to hunt or allow hunting on their own land and the right of the public to hunt lands held in public trust, many of which are were purchased or leased for the primary purpose of hunting.

I will not directly address individual private landowner rights. Based on the number of landowner's who have contacted myself and the department I am sure their concerns will be voiced as there 59,226 occupied dwellings in North Dakota outside of municipal areas (1999 ND DOT GIS data) If each dwelling had a 440 yard buffer around it with each buffer averaging 125 total acres the maximum total acres affected would be 7,403,250 acres. The actual number of acres would realistically be considerable less because of overlaps in affected area and unknown landownership.

The area I will attempt to address are public owned and leased lands, specifically Game and Fish Department Wildlife Management Areas and Private Lands Open to Sportsmen (PLOTS).

Of concern to the department is how this law will affect our access program PLOTS and our new habitat and access program "Cover locks". To date the department has entered into financial arrangements with landowners to open over 120,000 acres of private land to public hunting . We

have tried very hard to not enter into arrangements that will aggravate or endanger adjacent homeowners, without denying a landowner his ability to earn income from his property. These areas have been very popular with hunters and in some are exceeding both landowner and department expectation of use. In rare instances there have been concerns from nearby residences, most of which have been mitigated.

It would seem a logical measure would be to simply reject all tracts that have any portion of land that is within 440 yards of an occupied building. However upon examination of all acres most recently offered and not yet accepted , 45% of the tracts had some portion of them within 440yds of an occupied buildings, directly putting 2,353 acres of the 25,006 acres offered in violation of this proposed law. This is probably very representative of the overall landownership/occupied building situation in North Dakota. Some of these tract will be rejected because of obvious conflicts as our field staff is now required to evaluate more closely there impacts on neighboring residences.

In addition there is an innate desire to live near wild land and undeveloped spaces. The often unintended reality of building a new home or cabin next to a public hunting area is that hunters and receptionists use these areas, then there is a strong desire to exclude the public from these areas.

The North Dakota Game and Fish Department urges a **DO NOT PASS** recommendation on SB 2311.

## **Lands Affected by 440 Law**

**Description:** To determine the effects of a 440 law on private land and public land.

**Data:** Data used in this procedure include 2000-2001 NDGFD PLOTS GIS data, 1999 ND DOT GIS Data, USGS Data and COE data. The ND DOT GIS data set includes locations of all cultural points. These cultural points are broken down by unique values-occupied or vacant dwellings. Occupied dwellings are broken down by another unique value which designates farm units and units other than farm units. The data does not include municipal areas. This data was then used to determine which lands were within a distance of 440 yards of occupied dwellings.

**Procedure:** ArcView GIS was used to produce a 440 yard buffer around all occupied dwellings in the state. These "buffered" dwellings were then incorporated on top of the existing tracts of land which resulted in areas of "overlap" The areas of "overlap" are the areas that will be affected by the 440 law. The acres for the affected "overlap" areas were then calculated using GIS to produce the following results.

### **TOTAL Lands**

\*There are 59,226 occupied dwellings in the state (1999 ND DOT GIS data) If each dwelling had a 440 yard buffer around it, with each buffer averaging 125 total acres, the total acres affected would be 7,403,250. Take into consideration that the ND DOT data does not include municipal areas.

### **Existing PLOTS Lands**

- \* 258/729 (35%) are within 440 yards of an occupied dwelling.
- \* 8874.731 acres are affected by areas of "overlap"
- \* In reality, portions of 42,958.300 out of a total of 120,000 acres of PLOTS lands will be affected by a 440 law, these PLOTS may no longer be acceptable.

### **Proposed "New" PLOTS Lands**

- \* 45/99 (45%) are within 440 yards of an occupied dwelling.
- \* 2353.974 acres are affected by areas of "overlap".
- \* In reality, portions of 12,503.600 out of a total of 25006.000 acres of new PLOTS lands will be affected by a 440 law, these PLOTS may no longer be acceptable.

Re: Senate Bill 2311 (SB 2311)

\*\* Involves the amending of the North Dakota Century Code as it relates to hunting near occupied buildings.

To: Senate Committee on Natural Resources, Sen. Tom Fischer, Chairman; Sen. Ben Tollefson, Vice-Chairman; Sen. Randy Christmann; Sen. Layton Freborg; Sen. Jack Traynor; Sen. Mike Every; and Sen. Jerry Kelsh.

From: Charles and Donna Kurszewski  
Fox Hills Farm  
210-81st SW  
Linton, ND 58552  
(701) 254-4913

*Feb. 9, 2001*

Dear Committee Chairman Fischer and Committee Members;

On behalf of myself and my wife, I wish to state our support for the passage of SB 2311. The attached sketch of the layout of our house, barn, and other buildings clearly demonstrates our concerns regarding hunting on public lands adjacent to our place.

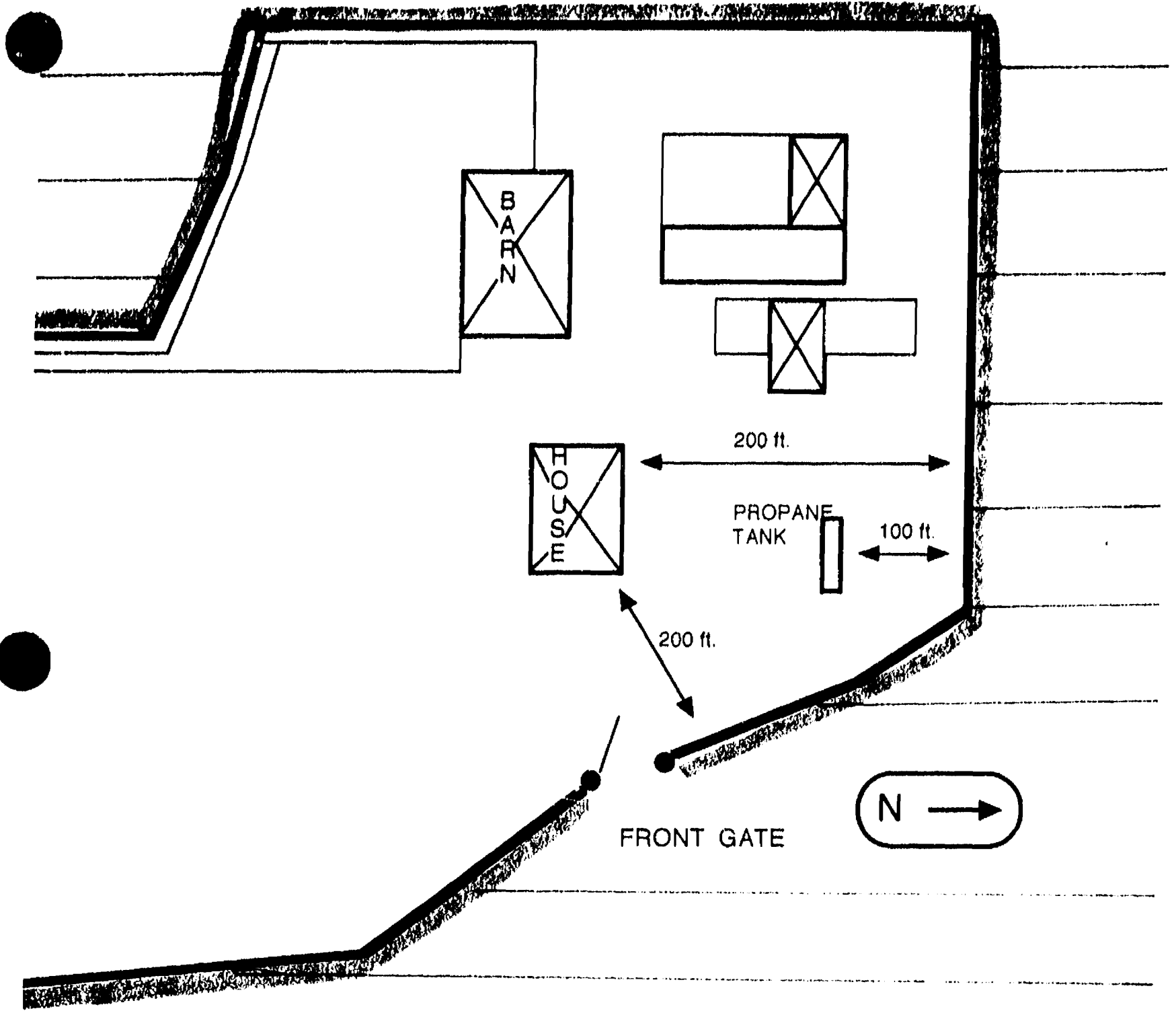
In 1998, we were told by our local state game warden and, in a separate meeting, by the deputy head of Fish and Game, that as the law was written we had no recourse to prevent hunters from hunting just outside the fence line surrounding our farmyard.

Every reasonable hunter we have asked has told us their understanding of an adequate safety zone is that a hunter stays four hundred and forty yards from occupied buildings.

SB2311 clearly states what common sense should dictate and, that is, there should be no hunting within this safety zone, regardless of whose premises you are on. There is already enough friction between hunters and property owners. Passage of this bill, we feel, clearly sets guidelines for all parties.

Thank you.

# FOX HILLS FARM : FARMSTEAD LAYOUT



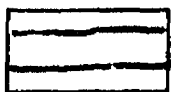
## KEY:



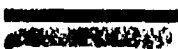
Livestock pen



Occupied Structure



Corps of Eng. land



Corps of Eng. fence line

Testimony on Senate Bill No. 2311

Chairman Fischer, Members of the Committee,

My name is Jim Collins Jr., and I am here today to speak in opposition to SB 2311.

My major concern with this piece of legislation is the effect it has on the property rights of individual landowners. As written, this bill will impose non-hunting regulations on properties that are not those of the occupied property owner. Please refer to the two case studies (Appendixes 1&2) attached to my testimony.

In case number one, the owner of the shooting preserve would quite possibly lose his/her right to make a living if the adjacent property owners would not give their consent for the owner to hunt on his/her own land.

In the second example, hunters on a certain publicly owned wildlife management area (WMA) would not be allowed to hunt on a portion of the public land because the 440 yard exclusion zone will extend into the WMA.

It is my feeling this legislation, although well intended, is a shotgun approach to a neighborly issue.

I understand the issue this legislative change is trying to address, safety for the occupant of the building site. However, this bill is not the answer. Education of the hunters and landowners is essential. Two avenues that are open to provide this type of education are the ND Landowner Sportsmen Council and the hunter education program, administered by the ND Game & Fish Department. Each of these could apply added emphasis to the importance of maintaining the 440 yard safety zone around occupied building sites to adult and youth hunters.

In conclusion, I urge you to give a DO NOT PASS recommendation to SB 2311.

Respectfully,

Jim Collins Jr.