

SENATE BILL 2285
Testimony of Todd D. Kranda
House Judiciary Committee

- March 12, 2025 -

Chairman Klemin and members of the House Judiciary Committee, for the record, my name is Todd D. Kranda, I am an attorney with the Kelsch Ruff Kranda Nagle & Ludwig law firm in Mandan, ND. I am appearing before you as a lobbyist on behalf of the North Dakota Petroleum Council.

The North Dakota Petroleum Council (NDPC) represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline development, transportation, mineral leasing, consulting, legal work, and oilfield service activities in ND, SD, and the Rocky Mountain region.

NDPC is opposed to SB 2285 which eliminates judicial deference for an administrative agency's interpretation of a statute, regulation or rule under the Administrative Agency Practice Act, Chapter 28-32 NDCC.

SB 2285 apparently seeks to overturn the application of the federal Chevron doctrine in ND State Courts. However, if there is one primary take away from my testimony today, it is the fact that the ND Supreme Court never adopted the federal Chevron doctrine to begin with, and SB 2285 is nothing more than a solution in search of a problem that does not exist in ND.

In ND, there are several factors or tests that reviewing courts apply which are opposite of the Chevron decision and afford additional judicial review. In ND, the reviewing court will affirm an agency action unless: 1) a preponderance of evidence does not support the agency's findings; 2) the agency's findings of fact do not support its conclusions of law and its decision; 3) the agency's decision violates constitutional rights

of the claimant; 4) the agency did not comply with Administrative Agency's Practice Act in the proceedings; 5) the agency's rules or procedures have not afforded a claimant a fair hearing; or 6) the agency's decision is not in accordance with the law. State of North Dakota, By and Through its Tax Commissioner, vs. American West Community Promotions, Inc., 645 N.W.2d 196 (ND 2002).

While it is correct to state that our ND courts will grant deference to an agency finding where an issue is highly technical and requires specialized expertise, an agency's interpretation of a statute involving a non-technical issue or general interpretation of law is afforded little deference. And while our ND courts will give some deference to a "long-standing agency interpretation", our ND Supreme Court has held as stated in the case cited above "We will not defer to even a long-standing agency interpretation that is contrary to the intent of the legislature." *Id.* at 204.

NDPC has a significant concern with the potential impact that SB 2285 will have on ND's primacy over federal regulations. SB 2285 jeopardizes the local control ND has over federal regulations, particularly within the ND Department of Environmental Quality. SB 2285 also would unnecessarily impact state agencies that are effectively using the ND Administrative Agency Practice Act to regulate the oil and gas industry in an efficient, timely, and responsive manner. SB 2285 would erode the judicial deference granted to these agencies which will lead to unnecessary, lengthy, and incredibly costly court proceedings and negate the value these agencies bring to the table related to the technical expertise used to arrive at an agency's initial decision or ruling.

In conclusion, the NDPC opposes the passage of SB 2285 which is unnecessary, overly broad and will likely create additional litigation. NDPC urges this committee to give SB 2285 a **Do Not Pass Recommendation**. Thank you for the opportunity to provide this information. I would be happy to try to answer any questions.