



March 12, 2025

Chairman Klemin and Members of the Committee,

Thank you for the opportunity to testify today in opposition of SB2285 on behalf of the Lignite Energy Council. North Dakota has a strong regulatory framework that allows state agencies to develop practical, science-based rules that support industry compliance while maintaining environmental and safety standards. This balance has allowed industries, particularly the coal sector, to operate successfully without undue regulatory burdens from the state.

A key element of our regulatory success is the state's primacy over several environmental programs, granted by the EPA. Achieving primacy required years of legislative effort to develop policies that ensure effective state enforcement of federal standards. This process reinforced North Dakota's ability to regulate locally while meeting rigorous federal requirements, providing stability and predictability for industries. The North Dakota Department of Environmental Quality (NDDEQ), the North Dakota Industrial Commission (NDIC), and the Public Service Commission (PSC) administer key environmental and resource management programs, ensuring regulations are enforced effectively while preserving local decision-making authority.

SB2285 threatens this well-established system by removing the courts' ability to defer to administrative agencies' interpretations of statutes, regulations, or rules. This fundamental change undermines the role of agencies in applying their specialized expertise to regulatory matters, leading to increased legal uncertainty and inconsistent enforcement. While concerns about judicial overreach are understandable, and primarily occur at the federal level, this bill introduces legal uncertainty, increases litigation, and undermines the ability of state agencies to apply regulations consistently. Judges rely on agency expertise to ensure informed and stable rulings—without this deference, regulatory enforcement could become inconsistent and unpredictable.

Furthermore, this bill could put North Dakota's primacy status at risk. If state agencies face legal challenges that hinder their ability to interpret and enforce regulations effectively, the EPA may determine that North Dakota is not meeting federal oversight requirements. This could result in the loss of primacy, shifting regulatory authority to federal agencies, reducing local control, and creating additional obstacles for industries like coal that rely on stable, state-driven regulations.

For industries making long-term investments, clear and predictable regulations are essential. SB2285 would introduce unnecessary risks, leading to delays in permitting, inconsistent enforcement, and an

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uncertain regulatory environment. Our current system ensures that agency expertise is considered alongside judicial oversight, maintaining an effective balance that supports both regulatory compliance and economic stability. Disrupting this balance could have serious consequences for North Dakota's economy and regulatory framework.

I urge the committee to reject SB2285 with a "Do Not Pass" recommendation to preserve North Dakota's well-functioning regulatory framework. Thank you for your time and consideration.

Sincerely,

Jonathan Fortner
Vice President of Government Relations and External Affairs
Lignite Energy Council