NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

NATURAL RESOURCES COMMITTEE

Wednesday, September 20, 2017
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Jay Seibel, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Jay Seibel, Dick Anderson, Roger Brabandt, Mike Brandenburg, Tom Kading, Vernon Laning, Alisa Mitskog, Todd Porter, Greg Westlind; Senators Diane Larson, Larry Luick, Merrill Piepkorn

Members absent: Representative Vicky Steiner; Senator Bill Bowman

Others present: Emily Thompson, Legislative Council, Bismarck

See Appendix A for additional persons present.

At the request of Chairman Seibel, the Legislative Council staff reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management*.

HIGH-LEVEL RADIOACTIVE WASTE DISPOSAL

At the request of Chairman Seibel, the Legislative Council staff presented a background memorandum entitled *Regulation of High-Level Radioactive Waste Disposal - Background Memorandum*.

Chairman Seibel called on Mr. Chuck Volk, Pierce County, for testimony (Appendix B) regarding state and local level regulation of high-level radioactive waste disposal and the size, scope, and location of high-level radioactive waste material deposits in the state.

In response to a question from Senator Luick, Mr. Volk said the containers the Secretary of Energy had identified were 18 inches in diameter and emitted a continuous blue glow. He said 40 containers would be stacked into a 3-mile deep hole into the ground with no chance of retrieval because the containers would melt and be permanently sealed. He said a straight hole has never been drilled that deep. He said a 4-mile deep hole was drilled in Russia, but was drilled in a zig-zag formation because of technological drilling limitations.

In response to a question from Senator Piepkorn, Mr. Volk said both short- and long-term exposure of radioactive nuclear waste could have some effects on people. He said he is not an expert on the potential effects of short- or long-term exposure of radioactive nuclear waste on the human body, but any exposure is worse than no exposure.

Senator Piepkorn said additional scientific or medical data regarding any potential negative effects on the human body caused by short- or long-term exposure to high-level radioactive waste would strengthen Mr. Volk's case.

In response to a question from Chairman Seibel, Mr. Volk said Senate Bill No. 2156 (2017) was a step in the right direction, but additional legislative steps are needed to permit and promote early involvement and input at the local community level.

Chairman Seibel called on Mr. Edward Murphy, State Geologist, Geological Survey, Department of Mineral Resources, for testimony (Appendix C) regarding state and federal regulation of high-level radioactive waste disposal, the federal location selection process for high-level radioactive waste material deposits, how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits, the mechanisms for calling a special legislative session to approve the depositing of high-level radioactive waste material in the state, and the notice of disapproval requirements under federal law.

In response to a question from Representative Porter, Mr. Murphy said he would defer all legal questions to the Attorney General's office. Ms. Margaret Olson, Assistant Attorney General, said many states that had statutes prohibiting the federal government from depositing high-level radioactive waste in their state were preempted and held unconstitutional.

Representative Porter said Wyoming's statutes regarding the depositing and disposal of high-level radioactive waste may be a good model for North Dakota to implement legislatively because the Legislative Assembly cannot call themselves into a special legislative session if there are no legislative days remaining. He said there would be separation of powers questions with a statute requiring the Governor to call the Legislative Assembly into a special legislative session. He said it would be ideal to find a group of elected officials whose responsibility would be to issue a notice of disapproval relating to high-level radioactive waste disposal when the Legislative Assembly is not in session.

Chairman Seibel called on Mr. David Glatt, Section Chief, Environmental Health Section, State Department of Health, for testimony regarding state responsibility and regulation of low- and high-level radioactive material and disposal. He said the three types of radioactive material are high-level, low-level, and technologically enhanced naturally occurring radioactive materials (TENORM). He said North Dakota has no authority or role in regulating high-level radioactive materials because that regulatory authority belongs to the Nuclear Regulatory Commission. He said the Nuclear Regulatory Commission regulates the transportation, handling, disposal, and storage of high-level radioactive material. He said North Dakota has the authority to regulate low-level radioactive materials with oversight from the Nuclear Regulatory Commission. He said North Dakota is in a compact with South Dakota, Arizona, and California and said the states in the compact have located a site in Texas that takes the low-level radioactive waste from the four states on an annual basis. He said North Dakota generates about 12 to 14 tons of TENORM per quarter and keeps track of TENORM via state regulations.

In response to a question from Senator Piepkorn, Mr. Glatt said companies in North Dakota must report the amount of TENORM they generate per quarter and the companies must be licensed to generate TENORM. He said a lot of time is spent with licensed companies to verify they are reporting accurately. If a company is reporting inaccurately, he said, the company is fined.

In response to a question from Representative Mitskog, Mr. Glatt said radioactive waste generated above 5 picocuries is transported by truck to Montana. He said Montana will accept up to 30 picocuries. He said the radioactive waste generated above 5 picocuries also can be transported to Colorado or Idaho. He said the radioactive waste typically is disposed in a constructed landfill cell.

Chairman Seibel called on Mr. Wesley D. Peck, Principal Geologist, Geosciences Group Lead, Energy and Environmental Research Center, for testimony (Appendix D) regarding the Energy and Environmental Research Center's relevant experience and observations with respect to the accommodation of scientific discovery.

In response to a question from Representative Laning, Mr. Peck said the 8-inch hole size was the best option considering the depth of the hole being 3 miles and the amount of testing materials needed to fit into the hole. He said a smaller hole size may have caused constrictions. At the final stages of the development of the hole, he said, a heat generation unit would have been placed at the bottom of the hole and the sizing for the unit would require, at minimum, an 8-inch hole.

Chairman Seibel called on Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, for testimony (Appendix E) regarding local input and location of high-level radioactive waste material deposits in the state. Mr. Birst said counties always have been supportive of industry for the economic development brought to the county, the state, and the nation. He said the Association of Counties does not take a position on whether the counties should have high-level radioactive waste, but requests any future legislation include a mechanism whereby local residents have procedural input and involvement on the matter.

Mr. Dallas Hager, Pierce County, provided information (Appendix F) regarding state- and local- level regulation of high-level radioactive waste disposal and the potential after effects of high-level radioactive waste disposal on North Dakota agriculture.

Ms. Rebecca Leier, Pierce County, provided information (Appendix G) regarding nuclear waste disposal projects in the state, legislative regulation of high-level radioactive waste disposal and bore hole drilling, and promoting early procedural involvement and input from the local community concerning permitting any high-level radioactive waste disposal project or site.

It was moved by Representative Porter, seconded by Senator Luick, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft with input from the Department of Mineral Resources and the State Department of Health, to permit the Industrial Commission to issue a notice of disapproval in regard to high-level radioactive waste disposal when the Legislative Assembly is not in session.

ENERGY CONVERSION FACILITIES

Chairman Seibel called on Ms. Emily Thompson, Legal Counsel, Legislative Council, for testimony (Appendix H) regarding a conflict between 2017 House Bill No. 1144 and 2017 Senate Bill No. 2286, relating to energy conversion facilities. Ms. Thompson said House Bill No. 1144 and Senate Bill No. 2286 were passed by the 65th Legislative Assembly and address siting requirements for gas and liquid transmission facilities. She said if two bills are passed addressing the same section of North Dakota Century Code, it is the Code Revisor's duty to attempt to harmonize the two bills into the section. If the two bills cannot be harmonized, she said, the Code Revisor must see whether one of the bills supercedes the other. She said usually the bill passed last will prevail over any other conflicting bills. She said Senate Bill No. 2286 passed on April 3rd and House Bill No. 1144 passed on April 4th. She said Senate Bill No. 2286 expanded the guidelines governing gas or liquid transmission facility siting, required a gas or liquid transmission facility to be in compliance with the road use agreements of the impacted political subdivision prior to receiving a certificate of site compatibility or a route permit from the Public Service Commission, and provided any local regulations not filed at least 10 days before the hearing are deemed superseded and preempted. She said House Bill No. 1144 separated the siting requirements for electric energy facilities and the gas or liquid facilities into two separate chapters in Title 49 of the Century Code. She said the bill created Chapter 49-22.1 to address gas or liquid transmission facilities and gas or liquid energy conversion facilities, while amending Chapter 49-22 to pertain only to electric transmission and electric energy conversion facilities. She said some of the new items addressing gas or liquid transmission facilities landed in Section 49-22-16 when those items should have been incorporated in the newly created Chapter 49-22.1, which governs gas or liquid facility siting. She said there are now two different sections in Century Code, in two different chapters, which give different processes and rules for the same area of law.

In response to a question from Representative Brandenburg, Ms. Thompson said a bill draft to correct the conflicts would only address how local laws, rules, and ordinances may or may not be preempted when an application is submitted for certification of site compatibility or a permit for construction of one of those facilities.

Mr. Todd Kranda, representing the North Dakota Petroleum Council, provided information regarding the conflict between House Bill No. 1144 and Senate Bill No. 2286. He said he was involved with both House Bill No. 1144 and Senate Bill No. 2286 and therefore is very familiar with the history of both bills. He said he believes the conflict between the bills relates back to the time of passage. He said the sequence of passage was the reverse of what the sponsors of each bill had intended and therefore created harmonization issues between the newly created Chapter 49-22.1 and the amendments to Chapter 49-22. He said he encourages the committee to do a cleanup bill to address the statutory result of the conflict between House Bill No. 1144 and Senate Bill No. 2286.

It was moved by Representative Porter, seconded by Representative Anderson, and carried on a roll call vote that the Legislative Council staff be requested to prepare a bill draft to correct the codification issues caused by the conflict between House Bill No. 1144 and Senate Bill No. 2286. Representatives Seibel, Anderson, Brabandt, Brandenburg, Kading, Laning, Mitskog, Porter, and Westlind and Senators Larson, Luick, and Piepkorn voted "aye." No negative votes were cast.

PUBLIC SERVICE COMMISSION AND LOCAL ZONING PROVISIONS

At the request of Chairman Seibel, the Legislative Council staff presented a memorandum entitled *Public Service Commission and Political Subdivisions - Background Memorandum* relating to local ordinances and zoning provisions being considered and addressed as part of the application and public hearing process.

WIND ENERGY DEVELOPMENT

At the request of Chairman Seibel, the Legislative Council staff presented a memorandum entitled *Wind Energy Development on the Environment - Background Memorandum*.

No further business appearing, Chairman Seibel adjourned the meeting at 1:50 p.m.

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Christopher S. Joseph
Counsel

ATTACH:8