



INDUSTRIAL COMMISSION OF NORTH DAKOTA

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Governor

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HB 1285
Senate State and Local Government
Testimony of Reice Haase, Deputy Executive Director
North Dakota Industrial Commission
March 24, 2023

Good morning Madam Chair Roers and members of the Committee, for the record, my name is Reice Haase, and I am the Deputy Director of the North Dakota Industrial Commission. The Industrial Commission is made up of the Governor as Chair, the Attorney General, and the Agriculture Commissioner. I am testifying today in opposition to House Bill 1285.

At its March 6th, 2023 meeting, the Industrial Commission took a position of opposition against HB 1285. The rationale for the opposition is as follows:

HB 1285 would reduce productivity and efficiency for both Legislative and Executive branches

- Filing of agency bills saves time for both agencies and the Legislature
- Agencies, as the experts in their respective fields, are resources for the Legislature
- Many pre-filed bills are red-tape reductions that lead to increased efficiencies for state government. For example:
 - 21 Industrial Commission pre-filed bills since 2013
 - 12 were red-tape reduction bills, 9 were general policy or cleanup bills
 - Only 3 of the bills were defeated
 - Average affirmative vote by the legislative body exceeding 94%

HB 1285 could jeopardize state primacy

- North Dakota has primacy over many natural resource-related programs related to air quality, water quality, and numerous permitting programs
- In particular, North Dakota was the first state to achieve primacy over EPA's Class VI underground injection program, which is managed by the Commission's Department of Mineral Resources
- Maintaining state primacy over these programs is vital for our Agriculture and Energy industries
- By regulating these programs locally vs. federally, we are able to maintain a stable regulatory environment and increase responsiveness to North Dakota citizens
- To maintain primacy, state agencies occasionally need to update definitions and rules, much of which is accomplished with agency pre-filed bills
- If an agency were unable to solicit a legislative sponsor in time for such a policy change, our State's primacy over that program could be jeopardized
- The Industrial Commission is currently tracking an alarming number of risks to our state, some of which include:
 - WOTUS, which is a major risk to all of North Dakota's industries

- Regional Haze, Coal Combustion Residuals, and Minnesota's bill related to interstate electricity sales, which could lead to premature retirements of our baseload power plants and hinder our efforts for implementing carbon capture
 - Risk to valuable baseload at a time of alarming rates of retirements (over 100 GW by 2039)
- DOI's reduction in mineral lease sales, BLM's Resource Management Plan, BLM's Venting and Flaring Rule, EPA's Climate Proposal, and the Corps of Engineers' Draft Environmental Impact Statement related to DAPL, all of which could jeopardize future oil and gas production
 - Direct financial risk to over 52% of state revenues
- At a time of federal policy shifts that are contrary to North Dakota's interests, we cannot afford any threat to our state primacy

HB 1285 would not reaffirm separation of powers

- Joint Rule 208 allows executive branch agencies and the Supreme Court to prefile policy bills only, not appropriations or resolutions
- Bills must be pre-filed by the close of business on the day after the adjournment of the legislative organizational session, bills by agencies may not be filed after this date
- The legislature still votes on agency pre-filed bills, and can still vote against any bill it sees fit
- The current rule does not preclude legislative involvement in drafting of the bills, agencies may still seek legislative sponsors and many do
- HB 1285 would restrict legislative authority by codifying a requirement that would restrict its rulemaking authority