

House Bill 1434

Presented by: Jonathan Emmer, Director, Reclamation and AML Division
Public Service Commission

Before: House Political Subdivisions Committee
The Honorable Donald Longmuir, Chair

Date: January 30, 2025

TESTIMONY

Good afternoon, Chair Longmuir and members of the House Political Subdivisions Committee. My name is Jonathan Emmer, Director of the Reclamation and Abandoned Mine Lands Division at the Public Service Commission (PSC). I am here to testify in opposition to HB 1434.

HB 1434 provides for the expiration of administrative rules ten years after their publication or at a date of expiration determined by the governor for our existing administrative rules. The PSC maintains a number of areas of administrative rules and regularly reviews these areas of code to maintain their effectiveness and consistency with the legislative intent. A review and reenactment of many of the administrative rules every ten years will likely take a considerable amount of resources and cost, particularly for an agency like the PSC that runs lean in resources and staff. That being said, a review and readoption is doable for the PSC's jurisdictions with one exception.

The PSC serves as the primary regulatory authority for coal mining and reclamation in North Dakota under the federal Surface Mining Control and Reclamation Act (SMCRA) of 1977. North Dakota obtained regulatory primacy in 1980 by meeting the requirements of SMCRA and Title 30, Chapter VII of the Code of Federal Regulations

(CFR). To maintain this authority, North Dakota's laws and rules must remain as stringent and effective as federal standards. Any proposed changes to our laws or rules must be submitted to and approved by the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) before they can be adopted.

From 1982 to 2016, the PSC submitted thirty-seven program amendments and OSMRE reviewed these amendments anywhere from three months to three years before the approval was published since they are not constrained to a review timeline. The PSC has two outstanding administrative rule changes that were submitted in 2022. To our knowledge, there are other states with amendments under review with even longer timelines. If the PSC's administrative rules were to expire, our regulations would no longer comply with the requirements of 30 CFR Chapter VII, placing our regulatory authority over coal mining in North Dakota at risk. In this scenario, regulatory oversight could shift to OSMRE, which could have severe and potentially devastating consequences for the lignite industry in North Dakota.

Therefore, we respectfully request that the PSC's Reclamation (N.D.A.C. Article 69-05.2 and N.D.A.C. Ch. 43-02-01) and Abandoned Mine Lands (N.D.A.C. Article 69-05.3) programs be exempt from the requirements of HB 1434. This concludes my testimony. I am available to stand for any questions.