MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

1303

DESCRIPTION

2003 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1303

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1303

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 1-31-03

Tape Number	Side A	Side B	Meter #
1	x		0-32.5
Committee Clerk Signature	Jodey Rourke		

Minutes: Chairman Klein: called the meeting to order on HB 1303. All members were present.

Sandy Clark, North Dakota Farm Bureau: spoke in favor of HB 1303, and the Farm Bureau supports this bill.

Representative DeKrey: sponsored the bill, but did not show up to testify in favor.

There was no testimony in favor of HB 1303.

Benny Graff, Judge, South Central Court, Burleigh County: appeared in opposition of HB 1303 I believe it will have a great impact on the judiciary. If you pass this measure it will tear the guts right out of the administrative hearing process. Its like having a brand new trial right after you've gone through the administrative process, it would mean 60 more trials for South Central District. If this would pass it could take up to a week for trials, it would add us a lot of work. As you know we have cut way back in the last few years, we are from 54-42 we think we are stream-lined, and you are going to just add us a lot of work. I want you to know the ramifications at our level.

Doug Bahr, Director, Civil Litigation Division, Office of Attorney General: appeared in oppostion of HB 1303. **(SEE ATTACHED TESTIMONY).**

Bruce Hicks, Assistant Director, Oil and Gas Division, of the North Dakota Industrial Commission: appeared in opposition of HB 1303. **(SEE ATTACHED TESTIMONY).**

Christine Hogan, Executive Director, State Bar Association of ND: appeared in opposition of HB 1303. **(SEE ATTACHED TESTIMONY).**

Illona Jeffcoat-Sacco, Director, Public Utilities Division, PSC: appeared in opposition of HB 1303. **(SEE ATTACHED TESTIMONY).**

Joe Ibach, ND Real Estate Appraiser Qualifications and Ethics Board: appeared in opposition of HB 1303. **(SEE ATTACHED TESTIMONY).**

DeNae Kautzmann,Appeals Supervisor, Department of Human Services: appeared neutral on HB 1303. **(SEE ATTACHED TESTIMONY).**

Bonnie Fetch, Adminstrative Law, Director of the Office of Administration Law: I'm hear not to give any testimony but will answer any questions.

Jod, Bjornson, Workers Compensatior. appeared in opposition of HB 1303 and recommend a DNP.

Tom Tupa, Lobbyist: appeared in opposition of HB 1303.

Jody Campbell: would like to go on record in opposition of the bill.

Hearing closed.

Representative Grande: made a **DO NOT PASS** motion on HB 1303.

Representative Devlin: **SECOND** the motion.

VOTE 14 YES 0 NO 0 ABSENT.

Date: 1-31-03

Roll Call Vote #: ~~1~~ 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1303

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DNP

Motion Made By Rep. Grande Seconded By Devlin

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	✓		B. Amerman	✓	
Vice Chairman B.B. Grande	✓		L. Potter	✓	
W.R. Devlin	✓		C. Williams	✓	
C.B. Haas	✓		L. Winrich	✓	
J. Kasper	✓				
L.R. Klemin	✓				
L. Meier	✓				
M. Sitte	✓				
W.W. Tieman	✓				
R.H. Wikenheiser	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 31, 2003 12:05 p.m.

Module No: HR-19-1432
Carrier: M. Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1303: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman) recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1303 was placed on the Eleventh order on the calendar.

2003 TESTIMONY

HB 1303

TESTIMONY BEFORE THE HOUSE
GOVERNMENT & VETERANS AFFAIRS COMMITTEE
IN OPPOSITION TO HOUSE BILL NO. 1303

Douglas A. Bahr
Director, Civil Litigation Division
Office of Attorney General

January 31, 2003

My name is Doug Bahr. I am the Director of the Civil Litigation Division of the Office of Attorney General. I am appearing today on behalf of Attorney General Wayne Stenehjem in opposition to House Bill No. 1303.

Section 28-32-42, N.D.C.C., provides for the appeal of a determination of an administrative agency. Under current law, the district court's review of an agency decision is based upon the record made at the hearing before the agency and in accordance with specific statutory standards. N.D.C.C. § 28-32-46. House Bill 1303 would change the nature of the appeal of an agency's decision by permitting the party to request a de novo review by the district court.

It is unclear from the bill what is meant by "de novo review." There are at least two possibilities. Each creates both logistic and constitutional concerns.

"De novo review" could mean a "trial de novo." A trial de novo is when the appellate court acts as if there has been no prior proceeding and tries the matter again. Thus, if "de novo review" means "trial de novo," there would be a new evidentiary hearing or trial. At the hearing, the district court could hear the same expert and lay witnesses and see the same physical or documentary evidence admitted at the administrative hearing. At the trial de novo, the parties could also present witnesses or introduce evidence not presented to the administrative agency. A trial de novo could also open up the possibility that the parties would conduct discovery anew, meaning parties could serve interrogatories (written questions to other parties), requests for production of documents, and take depositions (oral questions under oath).

"De novo review" could also mean an "appeal de novo." An appeal de novo is an appeal in which the appellate court uses the trial court's record but reviews the evidence without giving any deference to the trial court's factual findings. If this is what is meant by "de novo review" in HB 1303, the district court would review the record of the administrative proceeding and, without taking any new evidence or testimony, decide the case without giving any deference or consideration to the administrative agency's decision.

Whether "de novo review" means a "trial de novo" or "appeal de novo," requiring de novo review of an administrative agency's determination is contrary to sound public policy and unconstitutional. A de novo review would violate the separation of powers doctrine embodied in the North Dakota Constitution. It would also ignore the very purpose and function of administrative agencies. The advantage of the experience and expertise of the administrative agency would be lost. Permitting de novo review of administrative agency decisions will also likely increase the frequency of appeals from administrative agency decisions, placing a substantial and unmanageable burden on an already taxed judiciary. A "trial de

novo" would also unnecessarily increase the costs of administrative proceedings and unduly prolong resolution of controversies before administrative agencies.

DE NOVO REVIEW WOULD VIOLATE THE SEPARATION OF POWERS DOCTRINE

Under the North Dakota Constitution, the legislative, executive, and judicial branches are coequal branches of government, with each branch supreme in its own sphere. This principle, known as separation of powers, precludes courts from substituting their judgment for that of executive agencies. When statutes authorize judicial review of administrative determinations, the principle of separation of powers requires that the judiciary's role be limited to a review, judicial in scope, as defined by statute and case law, which avoids a substitution of the judgment of the judge for that of the administrative agency. Thus, when judicial review of an administrative agency is authorized, the judicial review is very limited.

A district court's de novo review, whether appeal de novo or trial de novo, would not be the limited review required by the principle of separation of powers. By its very nature, a de novo review would permit the judiciary, a separate branch of the government, to substitute its judgment for that of an agency of the executive branch. HB 1303 violates the doctrine of separation of powers.

THE ADVANTAGE OF AGENCY EXPERTISE IS LOST BY DE NOVO REVIEW

The legislature establishes administrative agencies to deal with highly sensitive and technical issues, such as environmental protection, regulation of public utilities, taxation, regulation of numerous professions and industries, etc. The staff of administrative agencies typically have specialized education and training in the areas within the agency's jurisdiction. Because of their expertise, the legislature typically authorizes agencies to promulgate administrative rules and hold administrative proceedings to resolve factual and legal issues within the realm of the agency's statutory authority. This regulatory authority is provided to agencies because of their experience and expertise.

Adoption of H.B. 1303 goes against this fundamental purpose of administrative agencies. It forces judges, despite their lack of experience or expertise in the area, to make decisions in extremely technical and complex areas. This would eviscerate the benefits of agency experience and expertise. As the courts have repeatedly stated, administrative agencies are the experts and their decisions regarding technical matters are entitled to appreciable deference.

DE NOVO REVIEW WOULD IMPOSE AN ADDITIONAL BURDEN ON THE COURTS.

A party dissatisfied with a decision of an administrative agency is more likely to appeal that decision if it knows it can have a "second bite of the apple." This is particularly true if the "de novo review" means "trial de novo."

Trial de novo. Based upon the information obtained at the administrative hearing, a party may feel it can present its evidence in a more favorable light to a district judge. In fact, in many cases, if trial de novo is permitted, parties may use the administrative hearing as a "trial run" to prepare for the hearing before the district court. A party could attend the administrative hearing for the purpose of conducting discovery, to see the agency's strategy, and to determine the best trial strategy at the district court. Because the district court would be trying the case anew, the administrative hearing would simply be a practice run. The administrative proceeding would be a meaningless, yet expensive and time consuming, process.

Trail de novo would require substantially more judicial time than judicial review under the current law. Judicial review currently requires the court review the administrative record and briefs of the parties. If requested by one of the parties, a 20-30 minute oral argument is scheduled. Although current reviews do require judicial time, that time is minimal in comparison to the time that could be required by a trial de novo. A trial de novo would, in essence, be a new civil case on the court's docket. Various, and in some cases numerous, discovery and pre-trial motions may need to be addressed by the court. A scheduling conference and pre-trial conference may need to be held. Then, depending on the nature of the hearing, days or weeks may need to be spent presiding over the trial. Afterwards, the court will need to review the evidence presented at trial, possibly review briefs, and then prepare a written opinion. All of the court's time spent on a trial de novo will likely be duplicative of what occurred in the administrative proceeding before the independent administrative law judge.

Appeal de novo. If review is appeal de novo, an unsuccessful party is still more likely to appeal the agency's final decision. This is because there will be no deference to the expertise of the administrative agency. There will also be no deference to the factual findings of the administrative law judge or agency. Obviously, unsuccessful parties will feel they have a better chance of prevailing on appeal when the agency receives no deference. This will likely increase the number of appeals.

An appeal de novo will also likely take more judicial time. Rather than reviewing the briefs of the parties and identified relevant portions of the administrative record, on appeal de novo the judge is more likely to have to review the entire record. Depending on the nature of the case, the record can include boxes and boxes of testimony and documents. Thus, appeal de novo will likely increase the number of appeals and time required to review the administrative decision.

The increased frequency of appeals, as well as the additional judicial time required to conduct a de novo review instead of a review on the record, would place an undue and likely overwhelming burden on an already overtaxed judiciary. The brunt of this burden would likely fall on the Burleigh County District Court because of the number of administrative appeals taken in Burleigh County.

UNIQUE CONCERNS WITH TRIAL DE NOVO

Increased cost of administrative proceedings

One of the purposes of administrative agencies is to provide a quick, efficient and less expensive method of resolving controversies. House Bill 1303 would defeat that purpose.

Trial de novo of an administrative agency determination would require the parties to the proceeding to present the same witnesses and evidence twice, first at the administrative proceeding and then again at district court. Because of the highly technical issues in many administrative proceedings, many proceedings require the testimony of multiple expert witnesses. Paying the fees and travel expenses of expert witnesses for an administrative proceeding is already an expensive proposition. Duplicating those costs so a second hearing can be held is not sound public policy. In addition to the burdensome costs of expert witnesses, a trial de novo will require duplication of time spent by attorneys representing the parties. This would, of course, also add to all parties' litigation costs. But the increased costs of de novo review go beyond out-of-pocket costs for expert witnesses and attorneys. A second hearing will divert agency staff time and resources from other pressing agency business. At a time when fiscal budgets are tight and individuals and entities are exploring alternative methods to resolve legal disputes -- methods that reduce the skyrocketing costs of litigation -- sound public policy does not warrant the unnecessary duplication of litigation costs. Requiring that a factual hearing be held twice would be completely redundant, prohibitively expensive and wholly impractical.

Increased delays

Permitting trial de novo would substantially delay resolution of the issues before administrative agencies. Many issues before administrative agencies impact the health, safety, and welfare of the citizens of North Dakota. Agency proceedings involve issues like environmental clean up; determining the rights and allowable conduct of oil companies; determining rates of public utilities; protecting the public from incompetent, unethical, dishonest, and fraudulent licensed professionals, contractors, and businesses; etc. The list is almost endless. Unnecessarily delaying resolution of those issues is not in the best interest of the citizens of North Dakota or the parties.

Under current law, judicial review of an administrative agency determination consists of the parties submitting written briefs and, sometimes, appearing at oral argument. The district court can typically issue an opinion within three or four months after the record is filed with the court. Trial de novo of an administrative determination will substantially increase the time before a final decision is reached by the district court.

First, in a trial de novo, a party may elect to conduct additional discovery, which often takes months and, sometimes, even years. The court will have to find a time to schedule the hearing on its already crowded docket. After the hearing is held, depending on the issue, the court may take the issue under advisement, request post-hearing briefs, and issue a written opinion after reviewing the brief and considering the evidence. Based upon the court's docket, except for the simplest of cases, it could easily take a year or more before a de novo appeal is resolved.

UNIQUE CONCERN WITH APPEAL DE NOVO

An appeal de novo increases the likelihood of incorrect factual findings. On appeal de novo, the district judge relies on a cold record – a transcript of what a witness states. The judge does not have the opportunity to observe and hear the witnesses. The judge does not see the witness's facial expressions, observe fidgeting, darting eyes, nervousness, etc. The judge does not hear the witness's tone inflictions, stammering, deliberateness of speech, rehearsed lines, etc. These things and others do not show up on a cold record. They are essential, however, in judging the reliability and credibility of witnesses. De novo appeal denies courts this crucial information. That is why courts give fact finders, those who observe the witnesses, deference. This is true whether the fact finder is a jury, trial judge, administrative law judge, or agency.

DE NOVO REVIEW IS UNNECESSARY.

Although de novo review will create numerous problems, it will not provide any meaningful benefits. No information has been provided to demonstrate this drastic change in administrative law is needed. The Office of Attorney General is not aware of any study or other empirical evidence demonstrating the current review process is inadequate or unfair. We are aware of no evidence indicating judicial review of past decisions would have been different if the review was de novo. And even if it is assumed some of the decisions would have been different, there is no evidence that a different decision would have been better or more accurate.

Section 28-32-46, N.D.C.C., provides specific grounds upon which a district court can reverse an agency's decision. Grounds for reversal include if the agency's decision is not in accordance with the law or violates the constitutional rights of the appellant. Reversal is also authorized if the agency decision does not comply with statutory requirements or if the administrative process did not provide the appellant a fair hearing. With regard to factual issues, the district court can reverse the factual findings of the agency if they are not supported by the preponderance of the evidence or if the agency did not sufficiently address the evidence presented by the appellant. These statutory grounds for reversing an agency decision adequately protect all parties to an administrative proceeding.

CONCLUSION

There is no evidence that passing H.B. 1303 will accomplish anything positive. The current judicial review process provides a meaningful and adequate opportunity to correct any errors that an agency may potentially make, whether legal or factual. It is undisputed, on the other hand, that passing H.B. 1303 will create numerous significant problems.

THE ATTORNEY GENERAL ENCOURAGES THIS COMMITTEE TO RECOMMEND A "DO NOT PASS" ON HOUSE BILL 1303.

jjt

e:\dlxie\cl\bahr\legislative\legis03\1303.test.doc

Testimony on HB 1303

House Government and Veterans Affairs

Christine Hogan
Executive Director
State Bar Association of North Dakota

The State Bar Association of North Dakota represents the 1800 attorneys who are licensed to practice in North Dakota. The Association opposes House Bill 1303 because the Legislative Committee and the Board of Governors of the Association believe the bill would have a significant negative impact on the legal system.

The Association has a fundamental problem with this bill. It would amend the Administrative Practices Act to allow de novo judicial review in district court in all administrative agency cases. This bill would, in effect, defeat the purpose of the administrative agency process as we know it. An entire body of case law developed for decades would be overturned and the administrative process would suddenly become useless. No good reason has been advanced to make such a drastic and far-reaching change in the law. No strong public policy rationale has been suggested as the impetus for such a major rewrite of scope of appeal of administrative decisions. In fact, this de novo review proposal is not good policy. It does not make good sense to open up an entire new review in district court, complete with new evidence and new witnesses, of every agency decision. Currently, the district courts review agency decisions on the record. There is good reason for this.

The entire purpose of requiring administrative agency decisions to be reviewed *on the record* is to give deference to rulings of agency hearing bodies. The hearing body has the expertise in the subject matter to develop the factual record to support a decision. For example, the Tax Department has specialized knowledge of taxation issues; its staff has the expertise to develop a factual record for an informed decision by the Tax Commission. The state district courts, on the other hand, are courts of general jurisdiction. They do not have specialized expertise in particular subject matter such as tax. Our state does not have tax courts or other special courts with subject–matter jurisdiction.

If this bill were passed, negative repercussions would quickly follow. Agency decisions would essentially become meaningless. And the district courts would suddenly be inundated. This would happen because, in every case, litigants could start over in district court. Rather than review the agency decision on the record, the district court would have to hear the case all over again. Each litigant would be entitled to a complete new trial in district court. The bill is not accompanied by a fiscal note, but the cost to the court system and the waste of the litigants' time and money is hard to fathom.

There is no corresponding benefit to justify such a huge disruption of the law and this incredible cost to the system. There is no good reason to change the current system.

Matters such as tax, utility regulation and workers compensation are now handled justly, efficiently and economically at the agency level, with a perfectly adequate right of appeal to district court on the agency record.

In conclusion, this bill would create a momentous change from existing law and it would impose a serious burden on the district courts. It would needlessly add to the cost of litigation. The cost to the taxpayers to support the court system contemplated by the bill has not been calculated, but it would surely be immense.

The State Bar Association respectfully submits that the fundamental legal change contemplated in House Bill 1303 is unjustified, unnecessary and, in view of the negative effect on judicial resources, inappropriate. We strongly urge you to defeat this bill.

Thank you for this opportunity to appear before you.

House Bill No. 1303
House Government and Veterans Affairs Committee Oppose

Testimony By
Bruce E. Hicks
Assistant Director
Oil and Gas Division
North Dakota Industrial Commission

Mr. Chairman and members of the House Government and Veterans Affairs Committee, my name is Bruce Hicks. I am the Assistant Director of the Oil and Gas Division of the North Dakota Industrial Commission (NDIC).

I appear in opposition to amending Section 28-32-46 of the North Dakota Century Code as proposed in House Bill No. 1303. This bill would circumvent our administrative procedure by allowing de novo review.

The NDIC is the oil and gas regulatory commission for the State of North Dakota. The Oil & Gas Division is the agency that provides the technical expertise needed for creating and enforcing statutes, rules, regulations, and orders of the Commission pertaining to geophysical exploration, drilling, development, production of oil and gas, disposal of oil field brine, and plugging and reclamation of abandoned wells. Many oil and gas development and exploration activities are subject to state review and approval. The process is usually formal.

We hold monthly hearings and average approximately 250 cases per year. Most of these cases are very technical, involving testimony from petroleum landmen, geologists, and engineers. The testimony might involve such things as calculating the location, extent, and future potential of oil and gas deposits; evaluating the porosity, hydrocarbon saturation, and permeability of oil bearing zones; and interpreting 3-D seismic analyses.

Our technical staff, which is composed of geologists and engineers, evaluates the evidence presented at the hearings. Such an evaluation requires a great deal of specialized training, experience, and computer software. Upon this review, a recommendation is made, and an order of the Industrial Commission is issued. Resolving the many highly technical matters inherent in regulating the oil and gas industry is best left in the hands of geologists and engineers.

De novo review would be very onerous to our administrative hearing process. It would cause an undue financial burden and be a tremendous waste of time and energy to all parties involved. If the standard of judicial review is changed, the rules governing the industry will become less predictable and the costs of doing business in the state will rise. Neither result would benefit North Dakota's royalty owners or the oil and gas industry.

HOUSE GOVERNMENT AND VETERANS AFFAIRS
MATTHEW KLEIN, CHAIRMAN
JANUARY 31, 2003

Chairman Klein and members of the House Government and Veterans Affairs Committee, my name is DeNae Kautzmann. I am the Appeals Supervisor for the Department of Human Services.

The Department is neutral on House Bill 1303 but we wish to point out some areas of concern.

If administrative appeals are reviewed de novo, the legal costs will significantly increase since the case will have to be tried twice instead of being reviewed on the record at the district court level. This has not been accounted for in the Department's budget. The administrative hearing cost averages approximately $ 2,500 per appeal. The costs for an Assistant Attorney General to represent the Department in an appeal doubles since the case is tried twice. The cost of representation averages about $1,000 per appeal. This will have a fiscal impact on all state agencies that conduct administrative hearings.

Another area of concern is the fact that federal Medicaid and Food Stamps require that the agency make the final decision. If the Department does otherwise, we will be in violation of federal statute. See 42 USC 1396a (a) (3) and 7 CFR 273.15 (m). If the case is heard de novo it takes the final decision out of the hands of the agency.

This bill may violate the doctrine of separation of powers and Article VI, Section 10 of the North Dakota Constitution in that it appears to impose nonjudicial duties on the court. With the court hearing the case de novo, it

is making independent findings and substituting its judgment for that of the agency. The constitution precludes the judiciary from making a legislative or administrative decision. Article VI, Section 10 states in relevant part that "No duties shall be imposed by law upon the supreme court or any of the justices thereof, except such as are judicial, . . ." See also, *Powers Fuels, Inc. v. Elkin,* 283 N.W. 2d 214 (N.D. 1979).

I'd be happy to try and answer any questions. Thank you.

January 30, 2003

House Bill No. 1303

Presented by: Joe Ibach
President, North Dakota Real Estate Appraiser Qualifications & Ethics Board

On January 27, 2003, the North Dakota Real Estate Appraiser Qualifications and Ethics Board (Appraisal Board) met via conference call to discuss HB 1303. The Appraisal Board voted unanimously to **oppose** the bill.

This proposed bill will undoubtedly result in considerably more time spent by the agency attorneys and agency representatives and their witnesses. More time translates into more costs which, therefore, translate into possibly increasing member dues. Section 1 would allow for a "de novo" review by the district court. This method of appeal could be costly and cause undue delays in our court system. Most appealing parties will undoubtedly ask for a de novo review. The case was heard once, the party was not successful, the party now knows the mistakes made the first time, and now they feel confident that appealing the matter will avoid these mistakes. This de novo process will allow the party to tell the story to the "new guy", a real judge. The result, from the Appraisal Boards' perspective, is that it will place considerably more pressure into an already taxed court system. Instead of scheduling an administrative hearing under the present system which takes a couple of hours to one-half day, the judge will have to schedule sufficient time to hear all the witnesses and arguments again. This hearing could easily take one to several days.

The entire purpose of the Administrative Hearing Process now used was to provide the court system some relief, speed up the appeal process, and reduce costs. It is the Appraisal Board's contention that this bill would do a good job of "gutting" those objectives. The only reason to pass the bill is because the present system is not working. The Appraisal Board takes exception to this observation. The present system is working!

HB 1303

Presented by: Illona Jeffcoat-Sacco
Director, Public Utilities Division
Public Service Commission

Before: House Government and Veterans Affairs Committee
Honorable Matthew M. Klein, Chairman

Date: 31 January 2003

TESTIMONY

Mr. Chairman and committee members, I am Illona Jeffcoat-Sacco, director of the Public Service Commission's Public Utilities Division. The Public Utilities Division administers the Commission's jurisdiction over telephone, gas and electric public utilities in North Dakota. The Commission asked me to appear here today to oppose HB 1303.

The Commission believes that the de novo review provided for in HB 1303 will unduly burden the courts, administrative agencies and the parties who appear before them. We are concerned that the investment of resources required for appellate de novo review will handicap other regulatory efforts without substantial offsetting benefits to litigants or the public generally. De novo review will also be unduly costly to those who participate in Commission cases.

If an electric rate increase decision is subject to de novo appellate review, the Commission, the electric company and any intervenors will essentially have to duplicate their cases on appeal. The same holds true for any adjudicative proceeding before the Commission, whether it be a utility matter, a mining reclamation case, or a grain complaint. This duplication would be directly opposed to the efforts of government to do

business efficiently and in a user friendly fashion. In addition, a similar burden will be imposed on the judiciary.

The cases heard by the Commission are often complex and of a highly technical nature. It is not unusual for a case to require the expert testimony of accountants, engineers, environmental scientists or economists. This expert testimony can be provided by Commission employees or outside consultants. The de novo review requirement could mean that an expert witness who investigates a case, prepares documentation and testifies at the agency level might be required to reproduce the same work for the appellate court, doubling the time and expense invested in the case and doubling the cost to the Commission and each party.

When Commission employees are impacted in this way, the resources of the agency are directed away from other agency business to the "second hearing" in the appeal of the case. When the Commission retains outside consultants due to limitations on in-house expertise, the added expense of retaining these consultants for the appeal could be prohibitive, causing the Commission to forego retaining the required experts at all, rather than risk an appeal without the required witnesses.

Despite imposing a substantial cost on agencies and the parties who appear before them, the de novo review requirements do not appear to result in any additional benefits or protections for agency litigants. The current appeal standards in the law provide complete protection for anyone aggrieved by an agency decision. These standards address any errors that an agency may potentially make, both legal and factual. The de novo review requirements will add another layer of work for all involved but will not add any new or expanded protections.

Our resources are limited, as are those of other agencies and the judiciary. I believe you all recognize that we are continually trying to do more with less. HB 1303 could hinder the Commission's ability to carry out its legislative mandate and deflect Commission resources from other important business without good reason.

Thank you for allowing me to appear here today. This completes my testimony. I would be happy to answer any questions you may have.