

2009 HOUSE NATURAL RESOURCES

HB 1322

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1322

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 1-30-09

Recorder Job Number: 3267

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Vice Chairman Damschen – We will open the hearing on HB 1322.

Chairman Porter – There is a provision the governor may appoint ongoing members as he sees fit. There is a section that talks about taxation. That is part of the FN and should be \$100,000. Sect. 3 is a water resource study. The water commission is onboard with that. The last part of the study is a livestock feeding facility permitting process. The use of byproducts from the biofuels production as a feedstock. Questions?

Rep. Scott Kelsh – We learned a diverse group of lawmakers can unanimously agree on several proposals to further our energy developed in ND. I applaud our commission and the work they did. I strongly support the authorization of the commission. I will only add the committee saw fit to expand the commission by a member or two, including a representative of consumers and that would be done at the discretion of the governor. I also support an addition of a member from the REC's. Questions

Ron Ness – ND Petroleum Council - Your work last session has proven fruitful. Questions

Shane Goettle – ND Dept. of Commerce – See **Attachment # 1**. Questions

Mr. Robert Shaver – ND State Water Commission – See **Attachment # 2**. I would present the idea to have a representative from the water community, maybe the state engineer. Questions

Mike Hillman – See **Attachment # 3**. Did not sign registration sheet. Questions.

Cindy Klein – See **Attachment # 4**.

Mike McEnroe – ND Chapter of the Wildlife Society – See **Attachment # 5**. Wants to add 4 additional members – in the field of natural resources of water, grassland agriculture, recreation and fish and wildlife. Questions?

Verle Reinicke – This commission is heavily weighted to existing energy resources. I don't see in here or in the public conversation a great deal about dealing with the realities of climate change. It is a reality, the national oceanic administration came with the statement about the fact that we need to change the way we do things. If we don't we do it to our detriment. We can continue to deny that is a reality, but it is not. In the discussion and deliberation with this group of people, I would hope that is a significant chunk of their discussion and decision making process. Questions?

Chairman Porter – Further testimony in support of HB 1322? Any opposition of HB 1322? If not we will close the hearing on HB 1322.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1322

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 2-05-09

Recorder Job Number: 8835

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter – Open the discussion on HB 1322. We will amend out sect. 2. We have a motion from Rep. Keiser and a 2nd from Rep. DeKrey to remove sect. 2. All in favor – unison unanimous voice vote. Motion carries. We will have to ask for a new FN. We can hammer out the discussion on the extended membership of this committee and get moving. We created this energy commission last session; they did a wonderful job and moving things forward in the state. I'm inclined to, at least for the year; leave it the way it is. It is popular enough that everybody wanted to be on it.

Rep. Drovdal – Inaudible

Chairman Porter – What you see in front of you is what is currently going on.

Rep. DeKrey – I move Do Pass

Rep. Keiser – 2nd

Chairman Porter – Rep. Kelsh in his testimony did ask for an amendment that would allow us the opportunity to express that.

Rep. Kelsh – I don't have a formal amendment, and I think it is fine if we pass it out as it. Give us another 2 years, although I would like to see some expanded membership. Particularly

consumer wise because a lot of the policies will determine cost to the consumers. I think that would be a useful voice on the commission. I don't have any heartburn if you don't have it.

Rep. DeKrey – I move a Do Pass.

Chairman Porter – Rep. DeKrey has moved a Do Pass on 1322 as Amended. Rep. Keiser 2nd.

Chairman Porter – Just for the committees understanding we will ask for a new FN. It has been our understanding the removal of sect. 2 will take the FN to 0.

Rep. Kelsh – The budget for the meeting and staff time are within the dept. of Commerce.

Rep. Pinkerton – I didn't understand that Rep. Kelsh had an amendment he wanted to put on.

Chairman Porter – He just wanted to discuss that part of it. Any other discussion?

Rep. Keiser – Just for the record if you look on page 2 line 10 the governor can appoint additional members to that committee. I would like the record to reflect the committee had a discussion relative to appointing a consumer advocate type of member to the committee.

Chairman Porter – So noted – that is in there that the governor may appoint any nonvoting members. Any other discussion. Seeing none the clerk will call the roll on a Do Pass as Amended.

Yes 13 No 0 Absent 0 Carrier Rep. Kelsh

Chairman Porter – We will ask for a new Fiscal Note on this.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1322

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 2-12-09

Recorder Job Number: 9318

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter – Take out HB 1322. We need a motion to reconsider our actions. We have a motion from Rep. DeKrey and a 2nd from Rep. Keiser to reconsider our actions on HB 1322. Any discussion? All in favor – unanimous voice vote - opposed none motion carries. If you pull out Mr. Shaver's testimony on 1322, on the back side of it we missed when we were working on that bill. They wanted to further define how their water study would take place and what they would actually be looking at.

Rep. DeKrey – I move we accept the Shaver amendment.

Rep. Nottestad – 2nd

Chairman Porter – We have a motion from Rep. DeKrey and a 2nd from Rep. Nottestad on the Shaver amendment. Any discussion? All in favor – unanimous voice vote – opposed none – motion carries.

Rep. DeKrey – Move Do Pass As Amended.

Chairman Porter – I have a motion from Rep. DeKrey and 2nd from Rep. Hofstad for a Do Pass As Amended. Any discussion? Seeing none the clerk will call the roll on a Do Pass As Amended. There is a new FN on that bill and it is 0.

Yes 12 No 0 Carrier Rep. Kelsh

FISCAL NOTE
Requested by Legislative Council
02/16/2009

Amendment to: Engrossed
 HB 1322

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill creates an energy policy commission and tasks it with developing a comprehensive energy policy, reviewing progress made toward established goals, and continued updating of the policy. This bill also includes a study of water resources.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 creates a permanent energy policy commission.

Section 2 directs the State Water Commission to study the effect of energy development on the state's water resources.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department of Commerce will use existing resources to cover any costs associated with the energy policy commission.

Contact: Justin Dever, Department of Commerce 328-7258

The Water Commission will use existing staff to conduct the study resulting in no material fiscal impact.

Contact: David Laschkewitsch, State Water Commission 328-2750

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

continuing appropriation.

Name:	David Laschkewitsch	Agency:	ND State Water Commission
Phone Number:	328-2750	Date Prepared:	02/16/2009

FISCAL NOTE
Requested by Legislative Council
02/09/2009

Amendment to: HB 1322

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill creates an energy policy commission and tasks it with developing a comprehensive energy policy, reviewing progress made toward established goals, and continued updating of the policy. This bill also includes a study of water resources.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 creates a permanent energy policy commission.

Section 2 directs the State Water Commission to study the effect of energy development on the state's water resources.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department of Commerce will use existing resources to cover any costs associated with the energy policy commission.

The Water Commission will identify water use and water quality constraints for each energy sector (petroleum, ethanol, electrical, biodiesel); estimate projected growth and associated water use by sector; provide a qualitative assessment of the state's water resources, and identify areas having significant water development potential. The Commission will use existing staff to conduct the study resulting in no material fiscal impact.

Contact: Dave Laschkewitsch, State Water Commission 328-1956

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

continuing appropriation.

Name:	Justin Dever	Agency:	Department of Commerce
Phone Number:	328-7258	Date Prepared:	02/09/2009

FISCAL NOTE
Requested by Legislative Council
01/13/2009

Bill/Resolution No.: HB 1322

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$125,000		\$25,000	
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill creates an energy policy commission and tasks it with developing a comprehensive energy policy, reviewing progress made toward established goals, and continued updating of the policy. This bill also includes studies of energy taxation and water resources.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 creates a permanent energy policy commission.

Section 2 calls for a study of the issues related to the taxation of the energy industries in the state. This study includes three parts: 1) An analysis of the use and effectiveness of existing income and sales tax incentives to promote energy development; 2) An analysis of the traditional tax framework for lignite and electric generation projects to determine which incentives may be expanded to provide for new projects that allow for the future growth of the lignite industry; and 3) Consideration of property taxation of wind farms based upon installed capacity and production.

Section 3 directs the State Water Commission to study the effect of energy development on the state's water resources.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department of Commerce estimates it would cost \$25,000 for the energy policy commission to complete its work as outlined in section 1 of the bill. This cost would occur during the 2009-2011 biennium and future bienniums, as long as the energy policy commission is in place.

The Department of Commerce estimates it would cost \$50,000 to hire a consultant to assist the energy policy commission in conducting the study of the taxation of the energy industries as called for in section 2. This cost would

occur during the 2009-2011 biennium.

The Tax Commissioner estimates it would cost \$50,000 to assist the EmPower ND Commission in conducting the study of the taxation of the energy industries as called for in section 2. This is comprised of \$10,000 to compile the information necessary for part 1 of the study and \$20,000 each for parts 2 and 3 of the study to compile the necessary information and convene working groups. This cost would occur during the 2009-2011 biennium.

Contact: Cory Fong, Tax Commissioner 328-2770

The Water Commission will identify water use and water quality constraints for each energy sector (petroleum, ethanol, electrical, biodiesel); estimate projected growth and associated water use by sector; provide a qualitative assessment of the state's water resources, and identify areas having significant water development potential. The Commission will use existing staff to conduct the study resulting in no material fiscal impact.

Contact: Dave Laschkewitsch, State Water Commission 328-1956

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

There is not an appropriations to cover the expenditures in this bill or elsewhere and was not included in the executive budget.

Name:	Justin Dever	Agency:	Department of Commerce
Phone Number:	701-328-7258	Date Prepared:	01/29/2009

February 5, 2009

VR
2/6/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1322

Page 1, line 2, remove "to provide for an energy policy commission"

Page 1, line 3, remove the first "study;"

Page 2, remove lines 24 through 31

Page 3, remove lines 1 through 10

Renumber accordingly

Date: 2-5-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By DeKrey Seconded By Kei

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Kelsh

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

REPORT OF STANDING COMMITTEE

HB 1322: Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1322 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "to provide for an energy policy commission"

Page 1, line 3, remove the first "study;"

Page 2, remove lines 24 through 31

Page 3, remove lines 1 through 10

Renumber accordingly

VR
2/13/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1322

Page 2, replace lines 25 through 27 with:

- "1. During the 2009-10 interim, the state water commission shall conduct a study to:
 - a. Determine unit water use for each sector of energy production, including:
 - (1) Petroleum;
 - (2) Ethanol;
 - (3) Electrical generation; and
 - (4) Biodiesel;
 - b. Identify water quality constraints for each energy sector;
 - c. Estimate projected water use in each energy production sector based upon growth projections provided by the energy policy commission; and
 - d. Provide a qualitative assessment of the state's water resources and identify specific sources that have the potential of providing significant quantities of water energy development.

2."

Page 2, line 29, after the period insert:

"3."

Renumber accordingly

Date: 2-12-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By DeKrey Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal			Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Kelsh

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

REPORT OF STANDING COMMITTEE

HB 1322, as engrossed: Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1322 was placed on the Sixth order on the calendar.

Page 2, replace lines 25 through 27 with:

- "1. During the 2009-10 interim, the state water commission shall conduct a study to:
 - a. Determine unit water use for each sector of energy production, including:
 - (1) Petroleum;
 - (2) Ethanol;
 - (3) Electrical generation; and
 - (4) Biodiesel;
 - b. Identify water quality constraints for each energy sector;
 - c. Estimate projected water use in each energy production sector based upon growth projections provided by the energy policy commission; and
 - d. Provide a qualitative assessment of the state's water resources and identify specific sources that have the potential of providing significant quantities of water energy development.

2."

Page 2, line 29, after the period insert:

"3."

Renumber accordingly

2009 SENATE NATURAL RESOURCES

HB 1322

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1322

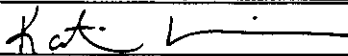
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 5, 2009

Recorder Job Number: 10262

Committee Clerk Signature



Minutes:

Senator Lyson opens the hearing on HB 1322, relating to an energy policy commission.

Representative Todd Porter introduces the bill. This bill is the reauthorization of what we had done last session. Most of you know this committee as the EmPower committee. They have done a lot of work so that there is a focused approach to future energy development and future energy needs of the state of North Dakota when it comes to energy. We were very careful when we created our membership. The governor has the ability to add any individual as a nonvoting member to this committee. There is no real restriction to the size of the committee except for the core voting members. There was a finance and tax study in the bill that was removed by the House and it carried a \$100,000 fiscal note. We were asked by the empower to remove that. The other section we expanded from the input from the State Engineer. We expanded section 2 so that the water resources study was very focused on what it would do. Section 3 deals with livestock feeding facility permitting process. Which is another study because of the bi-products off the renewable processes it was felt that it needed to be looked at to be sure we were maximizing and not hindering future bio fuels type plants by not having a place for them to get rid of their bi-products.

Senator Lyson Are you looking at having the committee that is already formed to do this study on livestock feeding?

Representative Porter section 3 is a legislative council study, it is not part of empower. The water resource study would be performed by the Water Commission and be reported back to Legislative Council. Those are not EmPower responsibilities.

Senator Schneider Was there any discussion about having someone from the larger transmission companies to sit for observation or advisory capacity?

Representative Porter the governor can put anyone on that he feels necessary to get the job done.

Representative Mike Brandenburg I am here to offer my support for HB 1322 and also to the commission working on this. I think it has merit.

Shane Goettle, Commissioner of the North Dakota Department of Commerce, testified in favor of the bill.

Kevin Kramer, President of the North Dakota Public Service Commission, I am in support of the bill and I have an amendment (see attachment #2) to offer. One way to avoid the need for a lot of other entities on the board would be to have the public Service Commission appoint one member. We actually do comprehensive energy policy every single day. We look out for ratepayers, landowners, environmental and cultural resources.

Senator Triplett did you make this offer to the House too?

Kevin Kramer we did not make this suggestion on the House side, if we had caught it sooner we would have.

Robert Shaver, Director of Water Appropriations Division of the State Water Commission, Testified in favor of the bill (see attached testimony #3).

Senator Triplett when you refer to the proposed amendments, you mean those that changed the bill and have been engrossed already?

Robert Shaver yes the wording was very different in the original and then we proposed an amendment to the House.

Senator Erbele asks Mr. Goettle about what he was hoping to accomplish with section 3 of the bill that isn't already being done with our extension research facility?

Shane Goettle during our discussion on this particular provision, it was recognized that it should be a real high priority to develop a product at our ethanol plants. This is just putting and emphasis on that and giving it a real high priority. We also know that as those markets develop it can become as important to revenue source to ethanol plants and their longevity. We thought it was important to energy and for that matter we are trying urge the legislature to give this real high priority and this is the means we chose to do that.

Senator Triplett you used the term real high priority many times, but in the language it states that we may urge legislative council to study this, but if it was that big of a priority we would have just told them to study it. Is that your request?

Shane Goettle I know there are other priorities that need to be balanced. I am not recommending a change in terms of a must. I am hoping as you balance those priorities in the legislative council that this is flagged as one of the issues that deserves attention.

Senator Lyson closed the hearing on HB 1322.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1322

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: March 5, 2009

Recorder Job Number: 10329

Committee Clerk Signature



Minutes:

Senator Lyson opens the discussion on 1322.

Senator Schneider Do you think Public Service Commission involvement was deliberately left out of this bill to begin with or do you think it was an oversight?

Senator Lyson the Governor can appoint someone to the committee so why didn't they just go down and ask him instead of putting it into the law?

Senator Triplett I believe the bill says all members appointed by the Governor are non voting members.

Senator Erbele Well we could change the language to say additional voting members could be appointed by the Governor if we didn't want to go with specifically PSC.

Senator Triplett I was approached by Sandi Tabor who was lobbying against putting a PSC member on the committee. She was suggesting that these were industry groups and why would we want to put a regulatory group on there and if we did why wouldn't we put someone from Ag or other departments on there. I think it might be a really good idea to have a member from the PSC on there who has a huge depth of knowledge and history about the inter relationship between federal policy and state policy.

Senator Freborg I think for informational purposes it would be excellent to have a PSC member on the committee.

Senator Schneider it is interesting to me that the amendment doesn't say a member of the Public Service Commission it says a member appointed by the Public Service Commission. I would assume they would appoint a member or one of their staff.

Senator Triplett moves to adopt Kramer's amendment.

Senator Erbele seconds the motion.

A voice vote was taken and the motion passed.

Senator Schneider moves a do pass as amended and re-referred to the Appropriations Committee.

Senator Erbele seconds the motion.

Roll call was taken and the bill received a do pass as amended on a vote of 6 to 0.

Date: March 5, 2009

Roll Call Vote #: #1 1322

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Kramer's

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Amendment

Motion Made By Senator Triplett Seconded By Senator Erbele

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman			Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 6 No 0

Absent Senator Hogue

Floor Assignment _____

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

Voice vote on amendment only.

Date: March 5, 2009

Roll Call Vote #: #2 1322

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Amendment

Motion Made By Senator Schneider Seconded By Senator Erbele

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman			Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 6 No 0

Absent Senator Hogue

Floor Assignment Senator Triplett

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

REPORT OF STANDING COMMITTEE

HB 1322, as reengrossed: Natural Resources Committee (Sen. Lyson, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS,
0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed HB 1322 was placed on the
Sixth order on the calendar.

Page 2, line 3, remove "and"

Page 2, line 4, after "n." insert "A member appointed by the public service commission; and
o."

Renumber accordingly

2009 HOUSE NATURAL RESOURCES

CONFERENCE COMMITTEE

HB 1322.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1322

House Natural Resources Committee

☒ Check here for Conference Committee

Hearing Date: 4-16-09

Recorder Job Number: 11908

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Damschen: Called the meeting for HB 1322 to order.

Senator Lyson: This amendment came out of the bill after discussion within the committee.

The committee, on hearing the testimony, it was brought up that a member of the Public Service Commission should also set on this. The amendment was made and that's why and that's why it's here. We're not going to get hung with a new rope if we take it off.

Rep. Keiser: Was that a motion to recede from the senate?

Senator Lyson: I was thinking that's your job to do that.

Rep. Keiser: I thought anybody could.

Senator Lyson: I guess anybody could, I think you should then I could thank you.

Rep. Keiser: I move the Senate recede from their amendment.

Senator Lyson: 2nd.

Rep. Kelsh: Was this a request by the PSC to be a member on the commission?

Senator Lyson: I talked to all the members of our committee and none of us remember where it came from. They were in the room and they didn't speak up as I recall. I have talked to them since and they said "If you want us on there I guess we will serve, but we really don't care".

Rep. Keiser: The one reason I very strongly support the motion. As legislatures we have this kind of experience where we will be invited to serve on a committee and you will walk in and sit down and people will defer to you. They will say, "Well what do you think" because you are in the legislature. The PSC purpose is to regulate, and I think it is important to separate that function from making policy and then they get to vote twice if they if they get to propose the policy and then regulate it. I think it is a very good motion to remove them.

Senator Lyson: I think that's exactly how we feel about this. We don't have a problem taking it off.

Chairman Damschen: We have a motion and a 2nd. Is there any further discussion? We will take a roll call vote.

Vote: 6 Yes 0 No 0 Absent Carrier: Vice Chairman Damschen

Motion carries.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1322 (, as (re)engrossed):

Date: 4-16-2009

Your Conference Committee House Natural Resources

For the Senate:

For the House:

Roll		YES / NO	Roll		YES / NO
P	Senator Lyson	✓	P	Chairman Damschen	✓
P	Senator Erbele	✓	P	Rep. Keiser	✓
P	Senator Pomeroy	✓	P	Rep. S. Kelsh	✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 2919 - _____

✓, and place 1322 on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4-16-2009

CARRIER: Damschen

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Keiser

SECONDED BY: Senator Lyson

OTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1322, as reengrossed: Your conference committee (Sens. Lyson, Erbele, Pomeroy and Reps. Damschen, Keiser, S. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 0919 and place HB 1322 on the Seventh order.

Reengrossed HB 1322 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1322

DEPARTMENT OF COMMERCE TESTIMONY ON HOUSE BILL 1322
JANUARY 30, 2009, 10:00 A.M.
HOUSE NATURAL RESOURCES COMMITTEE
PIONEER ROOM
REPRESENTATIVE TODD PORTER, CHAIRMAN

Same given to Senate.

SHANE GOETTLE – COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good afternoon, Mr. Chairman and members of the committee, my name is Shane Goettle, Commissioner of the North Dakota Department of Commerce. I also serve as chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and its members were appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy.

Section 1 of HB 1322 makes permanent the EmPower North Dakota Commission and places it in the Century Code. The make-up of the commission is exactly as was approved by the legislature in 2007. It tasks the commission with monitoring the progress made towards the goals outlined in the energy policy and making changes to the energy policy as needed. The commission will report biennially to the legislature.

Section 3 tasks the State Water Commission with studying the state's water resources as they relate to energy development. This study was recommended by the EmPower North Dakota Commission in the realization that water availability plays a critical role in the development of many of the energy industries. I understand that the State Water Commission will be proposing amendments to further outline this study and I support these amendments.

Section 4 is a legislative council study of the issues related to the development of livestock feeding facilities and the use of byproducts from biofuels production as a feedstock. This study was also recommended by the EmPower North Dakota Commission. The use of byproducts from biofuels production is one of the keys to making the production of biofuels economical.

Mr. Chairman and members of the Natural Resources Committee, I respectfully request your favorable consideration of House Bill 1322. That concludes my testimony and I am happy to entertain any questions.

TESTIMONY ON HOUSE BILL 1322

House Natural Resources Committee

**Robert Shaver, Director
Water Appropriations Division
North Dakota State Water Commission**

January 30, 2009

Mr. Chairman, and members of the House Natural Resources Committee, I am Robert Shaver, Director of the Water Appropriation Division at the State Water Commission, and I offer the following comments and proposed amendments to section 3 of House Bill 1322.

Based on past interaction with the Department of Commerce, there is a demonstrated need to determine unit water needs for selected energy sectors, future growth of these energy sectors, and availability of water resources to meet these needs. It is important to understand that it is not possible within the 2009-2010 interim to complete a study that accurately quantifies the current volume of ground water available for appropriation on a sustainable basis in each aquifer throughout the state. A quantitative study of this scope would take many years if not decades to complete by Water Appropriation Division hydrologists. A more practical approach is to provide a qualitative inventory of available surface and ground-water resources that can be used by the Department of Commerce and others for planning purposes.

In the proposed report, the State Engineer will provide a map showing where the potential is either good or poor for large-scale appropriations associated with energy development. For those aquifers where the potential for large-scale appropriation is good, an associated narrative will be prepared to describe the hydrogeologic setting and estimate potential well yields.

It is also important to identify water quality requirements for each energy sector. A potential water user may identify an aquifer area that could meet the volume demand but the water quality may pose limitations. The previously described narrative will also include a discussion of the water quality associated with each water source.

House Bill 1322 originated from the Department of Commerce. I forwarded the proposed amendments to section 3 (attached) to Shane Goettle, Commissioner, Department of Commerce, for his review and comment. Mr. Goettle approved the amendments without change. If amended as proposed, section 3 would read as follows:

SECTION 3. WATER RESOURCES STUDY – REPORT TO LEGISLATIVE COUNCIL. The state water commission shall conduct a study during the 2009-10 interim to:

1. Determine unit water use for each sector of energy production, including:
 - a. Petroleum;
 - b. Ethanol;
 - c. Electrical generation; and
 - d. Biodiesel.
2. Identify water quality constraints for each energy sector.
3. Estimate projected water use in each energy production sector based upon growth projections provided by the energy policy commission.
4. Provide a qualitative assessment of the state's water resources and identify specific sources that have the potential of providing significant quantities of water for energy development.

The state water commission shall cooperate with the energy policy commission in conducting this study. The water commission shall report its findings and recommendations to the legislative council before September 1, 2010.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1322

Page 3, line 12, after "shall" insert "conduct a", overstrike the first comma, and overstrike ", the effect of energy" and immediately thereafter insert "to:"

Page 3, overstrike lines 13 and 14, and immediately thereafter insert:

- "1. Determine unit water use for each sector of energy production, including:
 - a. Petroleum;
 - b. Ethanol;
 - c. Electrical generation; and
 - d. Biodiesel.
2. Identify water quality constraints for each energy sector.
3. Estimate projected water use in each energy production sector based upon growth projections provided by the energy policy commission.
4. Provide a qualitative assessment of the state's water resources and identify specific sources that have the potential of providing significant quantities of water for energy development."

Renumber accordingly

**Testimony Offered to
House Natural Resources Committee on HB 1322**

**By Michel Hillman
North Dakota University System**

January 30, 2009

Mister Chairman and members of the House Natural Resources Committee, for the record I am Mike Hillman, Vice Chancellor for Academic Affairs with the North Dakota University System. The North Dakota University System supports the concept of an energy policy commission. System institutions conduct basic and applied energy research and provide technology transfer to the energy industry in the state. System institution academic programs produce the scientists, engineers, operators and legal experts which support the state's energy industry. A higher education representative on the commission would not only be a valuable resource to the commission but would also be able to connect the commission's discussions with system institution activities. We encourage your support of HB 1322 with the attached amendment which adds a university system representative to the Commission.

Please let me know if committee members have any questions.

North Dakota University System
PROPOSED AMENDMENTS TO HOUSE BILL NO. 1322:

Page 1, after line 9, insert:

“b. A representative of the North Dakota university system appointed by the state commissioner of higher education;”

Renumber accordingly



drc

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701-483-2851
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Dakota Resource Council Testimony HB 1322

Chairman Porter and members of the House Natural Resources Committee,

Thank you for the opportunity to provide you with our testimony on House Bill 1322.

We find that there are potentially positive and negative aspects to this bill. We do not object to the formation of a formal energy policy commission; however, we feel that there should be additional voting members on this commission who represent landowners and also specific renewable energy industries.

Landowners are one of the most under-represented groups in our state, and the addition of that constituency to this group would be a valuable asset with the ability to provide the commission with a unique prospective. The development of a comprehensive energy policy that will directly affect landowners would be incomplete without their input.

Furthermore, any energy policy commission study should include not only projects to allow for the expansion of the lignite but also for expansion of specific renewable energy such as wind and solar power. Therefore, an additional member of this new energy policy commission could be a representative of the solar power industry. In addition, this study should review true energy efficiency measures that save our valuable natural resources.

Section 3 directs that the state water commission shall study the effect of energy development on the states water resources. This is an important study that is definitely necessary, but we must make sure that before we think about studying

ways to maximize the available water supply to support future energy growth, we must make sure that our water supply is able to support the farmers and ranchers of our state. After all, agriculture is still North Dakota's number one industry, and with the billions of gallons of ground and surface water that are currently under consideration for appropriation by the state water commission, we must make sure that we have a water supply that is sustainable first for domestic and agricultural needs and second for our industrial needs.

We would like to see a comprehensive aquifer study that not only identifies the current water supply, but also looks at what is currently appropriated for domestic, stock and irrigation. Finally, the study should determine what our water commission can safely appropriate for the energy industry.

Most of our farming and ranching families rely strictly on groundwater and without a good supply of fresh water their future is in jeopardy. The oil, gas and coal industries in North Dakota will not live or die based on the availability of groundwater. However, a farm or ranch will. That is how important groundwater is to our agricultural community.

In fact, there is a specific order that the state water commission must follow when appropriating water and domestic and stock water appropriations are first and foremost. When you direct the water commission to do this water resources study, we ask that those types of water use are kept the priority.

We must remember that, according to the State Water Commissions 2009 Water Management Plan, 45 percent of our state's population relies on groundwater for its drinking water needs. In the western part of North Dakota, water loss now exceeds precipitation. We must be very careful when we talk about expanding our groundwater supplies for industrial purposes and remember who comes first.

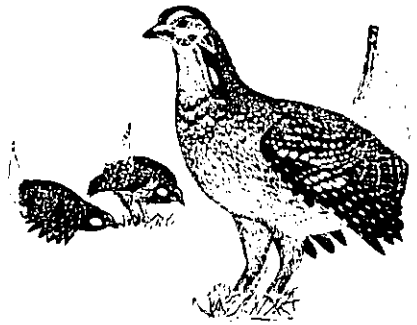
Thank you



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO HOUSE NATURAL RESOURCES COMMITTEE
JANUARY 30, 2009**

Chairman Porter and members of the Committee:

I am Mike McEnroe and I am speaking on behalf of the North Dakota Chapter of The Wildlife Society.

The Chapter supports HB 1322 and the concept of a State Energy Commission. We do have several questions for clarification and suggestions for amendments.

On page 2, lines 14-17, the Commission is to develop a comprehensive energy policy for the State. This seems redundant or contradictory to HB 1352 on the creation of a State Energy Policy, heard yesterday.

Page 2, Section 2 calls for a study related to the taxation of the energy industries in the state. While we do not object to the study, we hope the purpose of having an energy commission is more than studying taxation of the industry. Along those same concerns, Page 3, Section 2, points 1 and 2, call for an analysis of tax incentives to promote energy development and an analysis to determine which tax incentives should be expanded to provide for growth of the lignite industry. Has HB 1322 already determined the energy policy for the state?

Page 3, line 14, proposes to maximize the available water supply to support future energy growth. Does this make energy the #1 priority for water in the State, over

and above other uses such as M & I supply, agriculture, rural water, irrigation, recreation, and fish and wildlife?

We recommend the addition of four additional voting members to the commission in the natural resource fields of water, grassland agriculture, recreation, and fish and wildlife.

Much of the energy development in the State involves private or public land and/or private and public minerals. It seems that both the public and the private land owner sectors should be represented on the state energy commission that develops an energy policy for the State.

Thank you for the opportunity to comment on HB 1322.

PREPARED FOR COMMISSIONER KEVIN CRAMER
March 04, 2009

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1322

Page 2, line 3, remove "and"

Page 2, line 4, after the first period insert:

"A member appointed by the public service commission; and

o."

Renumber accordingly

TESTIMONY ON HOUSE BILL 1322**Senate Natural Resources Committee**

**Robert Shaver, Director
Water Appropriations Division
North Dakota State Water Commission**

March 5, 2009

Mr. Chairman, and members of the Senate Natural Resources Committee, I am Robert Shaver, Director of the Water Appropriation Division at the State Water Commission, and I offer the following comments and proposed amendments to Section 2 of House Bill 1322.

Based on past interaction with the Department of Commerce, there is a demonstrated need to determine unit water needs for selected energy sectors, future growth of these energy sectors, and availability of water resources to meet these needs. I have worked with the Department of Commerce to define the scope of the study that is presented in Section 2 of House Bill 1322. The study will provide a qualitative inventory of available surface and ground-water resources that can be used by the Department of Commerce and others for planning purposes.

In the proposed report, the State Engineer will include a map showing where the potential is either good or poor for large-scale appropriations associated with energy development. For those aquifers where the potential for large-scale appropriation is good, an associated narrative will be prepared to describe the hydrogeologic setting and estimate potential well yields.

It is also important to identify water quality requirements for each energy sector. A potential water user may identify an aquifer area that could meet the volume demand but the water quality may pose limitations. The previously described narrative will also include a discussion of the water quality associated with each water source.

Given the utility of this proposed study for planners and others, the Office of the State Engineer supports Section 2 of House Bill 1322.



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Dakota Resource Council Neutral Testimony HB 1322
March 5, 2009

Chairman Lyson and members of the Senate Natural Resources Committee,

Thank you for the opportunity to provide you with our testimony on House Bill 1322.

We find that there are potentially positive and negative aspects to this bill.

Regarding Section 1, we do not object to the formation of a formal energy policy commission; however, we feel that there should be additional voting members on this commission who represent landowners.

Landowners are one of the most under-represented groups in our state, and the addition of that constituency to this group would be a valuable asset with the ability to provide the commission with a unique prospective. The development of a comprehensive energy policy that will directly affect landowners would be incomplete without their input.

Furthermore, any energy policy commission study should include not only projects to allow for the expansion of the lignite but also for expansion of specific renewable energy such as wind and solar power. In addition, this study should review true energy efficiency measures that save our valuable natural resources.

Section 2 directs that the state water commission shall study the effect of energy development on the states water resources. This is an important study that is definitely necessary, but we must make sure that before we think about studying ways to maximize the available water supply to support future energy growth, we

must make sure that our water supply is able to support the farmers and ranchers of our state. After all, agriculture is still North Dakota's number one industry, and with the billions of gallons of ground and surface water that are currently under consideration for appropriation by the state water commission, we must make sure that we have a water supply that is sustainable first for domestic and agricultural needs and second for our industrial needs.

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In fact, there is a specific order that the state water commission must follow when appropriating water and domestic and stock water appropriations are first and foremost. When you direct the water commission to do this water resources study, we ask that those types of water use are kept the priority.

We must remember that, according to the State Water Commissions 2009 Water Management Plan, 45 percent of our state's population relies on groundwater for its drinking water needs. In the western part of North Dakota, water loss now exceeds precipitation. We must be very careful when we talk about expanding our groundwater supplies for industrial purposes and remember who comes first.

Thank you

Cindy Klein
Dakota Resource Council
cind@drcinfo.com