

2013 HOUSE ENERGY AND NATURAL RESOURCES

HB 1383

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1383
February 7, 2013
18511

Conference Committee

Emineth

To provide a waiver or retroactive approval of state water commission permit requirements for certain count or township transportation projects; and to provide for retroactive application.

Minutes:

Rep. Porter: We will open the hearing on HB 1383.

Bruce Englehardt: Director of the Water Development Division and the N.D. State Water Commission. We have had several cases after the flood of 2011 where local water resource districts and counties either drained or pumped water out of areas that were impacting roads to try and get the water off the road. The way the law is now they should get an emergency drain permit from the state engineers' office to do that. The problem is a lot of the people that were doing it weren't of that regulation. This is more a problem in the western where they haven't had much of an experience dealing with floods as they do in the Red River Valley.

FEMA implemented a new policy that they would pay disaster damages on those situations where the proper permit hadn't been obtained and there is no mechanism for the water commission to go back and issue retroactive emergency permits. I think that is the reason for it there is a lot of good reasons for having those permits.

Rep. Porter: If this language were to be adopted is it narrow enough so that it covers a onetime event that took place that someone didn't get the emergency drain permit that now could get some FEMA cost recovery for a specific project?

Bruce Englehardt: The way it stands right now it says before January 1, of 2013 so it would only be things that have happened in the past and I believe with the FEMA situation it is probably things that occurred during the flood of 2011 that would be covered by this. I think it is very important not to take out that line about the commence of January 1, 2013 because without that line it would be a free for all.

Rep. Froseth; Should it have a date as to how far back it can go because of the flooding activity in 2009 and some of those instances could have happened then?

Bruce Englehardt: I wouldn't object to that I couldn't tell you what the proper time frame should be.

Rep. Porter: Would there be any FEMA funds available to do a project back that far though?

Bruce Englehardt: I don't believe so and FEMA put that in 2011 so I think if you put January 1, 2011 to January 1, 2013 it would cover what it is trying to cover.

Rep. Hofstad: Is there any component here that is more important and that is that we also need an environmental assessment work done and if these projects did not have that done there still not going to be eligible for an FEMA funding.

Rep. Porter: I think these are for emergency ones so they wouldn't have to have that.

Bruce Englehardt: One of the things that we brought into it with the water commission is if you got materials from an unimproved pit that is enough that they won't cost share.

Rep. Hofstad: If any construction is done of any kind you still have to have that environmental assessment done even if it is an emergency they don't let you off without doing that.

Rep. Keiser: On line 8 the disaster area do we need to designate as a federally declared disaster area or be more specific?

Bruce Englehardt: I think you are right on that.

Rep. Skarphol: HB 1383 is the result of a lot of the townships up in my region which is serious financial difficulty over some unfortunate lack of knowledge of dealing with the complicated issues associated with FEMA. We are to get FEMA to do some reimbursing that hasn't happened.

Rep. Porter: Do you see my notes on there about the start date and the disaster. The start date would be January 1, 2011.

Rep. Skarphol: That date would work.

Rep. Porter: We will close the hearing on HB 1383.

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1383
February 14, 2013
18946

Conference Committee

Minutes

To provide for retroactive application

Minutes:

Rep. Porter: We will open HB 1383 this is the bill that allows for retroactive approval of an emergency water permit that was never asked for.

Rep. Silbernagel: Did we talk about adding a start date to close the window?

Rep. Porter: We had a couple of different things that we talked about on line 8 in front of disaster to put the language federally declared and we also talked about after area putting a start date of January 1, 2011 so that it would be limited to one event.

Rep. Hofstad: I have an some experience with this issue during the disaster that we encountered in the Devils Lake Basin because we were declared a disaster area and because of many of the roads that were FEMA related projects many times the township and the county got out in front of the process and when that happens those federal agencies are not very receptive to going back. I believe that this bill will have any impact at all.

Rep. Porter: Do you think that we should amend it and then kill it?

Rep. Hofstad: Yes

Rep. Damschen: Note that FEMA has no problem going back in time when they think we have collected too much and they will require that we pay it back.

Rep. Porter: We should get a motion to put those amendments on so that we make it so that it is a workable piece of legislation. We have a motion from Rep. Froseth and a second from Rep. Hofstad to amend HB 1383 to include the verbiage on line 8 "federally declared "and then insert a start date on that federally declared disaster not prior to

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January 2011. Voice vote motion carries. We have an amended bill in from of us we have a motion Rep. Silbernagel and a second from Rep. Hofstad for a do not pass HB 1383 as amended.

Rep. Froseth: I will vote no on that.

Rep. Silbernagel: I am concerned that we give a lot of townships a great deal of work and hope that they have to jump through a lot of hoops.

Rep. Porter: Motion Carries. Carrier Rep. Anderson

Yes 7 No 5 Absent 1

February 14, 2013

1/14/13
CJW

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1383

Page 1, line 8, after "a" insert "federally declared"

Page 1, line 11, replace "is retroactive in application" with "applies retroactively to federally
declared disasters arising after December 31, 2010"

Renumber accordingly

Date: 2-14-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1383

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Froseth Seconded By Rep Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunsakor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: voice vote
Carries
So Amended

Date: 2-14-13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1383**

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hofstad Seconded By Rep. Silbernagel

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh		✓
Rep. Jim Schmidt	✓		Rep. Corey Mock		✓
Rep. Glen Froseth		✓			
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel		✓			
Rep. Mike Nathe	✓				
Rep. Roger Brabandt		✓			
Rep. George Keiser		-			

Total (Yes) 7 No 5

Absent 1

Floor Assignment Rep. Anderson

If the vote is on an amendment, briefly indicate intent: motion carries
A motion for a do not pass HB 1383 as amended

REPORT OF STANDING COMMITTEE

HB 1383: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1383 was placed on the Sixth order on the calendar.

Page 1, line 8, after "a" insert "federally declared"

Page 1, line 11, replace "is retroactive in application" with "applies retroactively to federally declared disasters arising after December 31, 2010"

Re-number accordingly