

**2013 HOUSE INDUSTRY, BUSINESS, AND LABOR**

**HCR 3026**

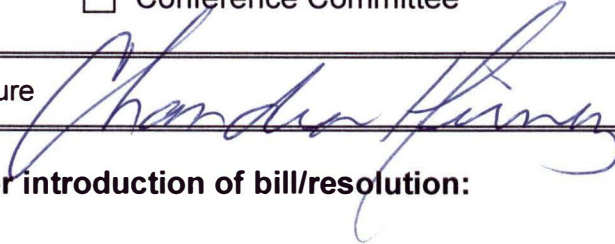
# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HCR 3026  
February 11, 2013  
Job 18689

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Urging EPA to refrain from enacting regulations that place unreasonable economic burden

### Minutes:

Attachment 1

Committee meeting called to order. Roll call taken.

**Chairman Keiser:** Welcomed students from Hazen

### Hearing opened..

1:42 **Representative Belter of District 22:** This resolution is support for our electrical energy industry produced by coal. Provided statistics and examples relating to amount of coal and the impact of coal on the world's energy supply. Coal has had a long history of creating low-cost energy. That has been evident here in North Dakota, and it has been a tremendous asset for us. We all love our oil energy. I am not being negative about the oil industry, but coal has not had the same negative impact on the environment, the infrastructure, and the communities as has oil. Right now, there seems to be a move to kill coal. It is important that we in North Dakota express an interest in coal. What this concurrent resolution does is to ask the Environmental Protection Agency to recognize the value of coal. We have already spent significantly to clean up coal, and we have done a great deal. It is important that we as a state legislature work with our congressional delegation to make sure that coal stays on the forefront of our energy resources. One thing we need to be concerned about is that natural gas is gradually creeping as far as the amount of electrical energy being generated. That might be good. But when reach a point when we are using so much natural gas for electrical energy use that we end up paying more for home heating fuel because we are burning the gas to generate electricity.

### Support:

**Sandi Tabor, vice president for governmental affairs with the Lignite Energy Council:**  
Refer to written testimony, attachment 1.

15:03 **Chairman Keiser:** Does the EPA treat flexcrete any differently than loose ash?

**Sandi Tabor:** They don't treat it any differently now because they have allowed the states to look at how you're able to dispose of fly ash. In North Dakota, we have allowed this beneficial use to occur. Back in 2008, there was a breach of an impoundment at the Tennessee Valley Authority's station. It allowed some of wet ash which had been disposed of in the impoundment to flood into a river. That is what started the churning of the question of whether this should be deemed a hazardous waste so that there will be cradle to grave regulation versus allowing it still to be regulated under the nonhazardous landfill disposal regulations. That is how the state is now regulating them.

16:24 **Representative Kreun:** When you talk about the regional haze issue, is the methodology changing from plain modeling rather than taking actual air quality samples to make sure that we're meeting it? My understanding has been that this has always been just a modeling situation that they've come up with which has not been proven.

**Sandi Tabor:** The regional haze issue is about visibility. There is still a significant issue between the state of North Dakota and EPA on about how you determine whether you have met the goals under the visibility program. It does have to do with modeling. In this particular issue, it's the basis for the modeling itself. Emissions are not a component of regional haze; it's just visibility. The EPA has a modeling standard, which basically takes a second guess at what visibility was like pre-industrialization, and the state's Health Department has taken a more reasonable approach looking at where we should have the baseline from which you design the modeling. When you were asking about modeling versus monitoring, that is actually an emissions issue. The state of North Dakota has filed a lawsuit against EPA with regard to the sulfur dioxide rules. The only issue there is the issue that we have probably more monitors than nearly any other state. We have a number of monitors, and we get actual emissions data and have gotten it for years. EPA would like to push monitoring. Because of North Dakota's lawsuit, EPA has actually gone back to the drawing board and is now suggesting that if you have actual monitoring data, you should be able to use that to determine if you're in compliance, as opposed to looking at a model with all sorts of things instilled in it which may not really reflect reality in North Dakota.

19:35 **Representative Kreun:** In the modeling, weren't a lot of other components taken into consideration as far as visibility goes?

**Sandi Tabor:** In the visibility issue, they have not looked at things like precursors, including drift from Canada. They did not include that in their modeling. That is another huge debate between the entire western part of the United States and the EPA.

**Dale Niezwaag, representing Basin Electric Power Cooperative and Dakota Gasification Company:** Thanks to the legislature for being supporting of what we have done within the lignite industry and the power generation industry. The state has also always worked together with us to try to find solutions for problems. As Sandi Tabor talked about, the regulations are already out there for new coal plants that pretty much eliminate the ability to build new coal plants. Another thing you'll hear about is Section 111D, which is another section of the Clean Air Act which applies to existing units. We're working on ways to try to make that a tolerable regulation, one which we could meet with technology and keep the plants running. Thank you for your help, and we support this resolution.

**Chairman Keiser:** At what point or phase in the process are these various regulations within EPA?

**Dale Niezwaag:** They all are in various phases. Some are proposed rules; some are finalized; some are going out. The rules on coal ash have been repeatedly delayed. Rules for mercury are already done. Rules on sulfur oxide are continuing. Regional haze is renewed, but when we get through this fit in 2012, we have another fight coming up in 2018.

**Al Christianson, Great River Energy:** We ask for your support of HCR 3026. The role the state has always played and continues to play in our industry is very important.

**Chairman Keiser:** Encouraged students who are visiting the committee to get involved with this issue.

**Opposition:**

**Neutral:**

**Hearing closed.**

**Motion on a do pass** made by Representative Ruby and seconded by Representative N. Johnson.

**Representative Vigesaa:** Can we add to this motion that this be placed on the consent calendar?

**Chairman Keiser:** We could, but I think this might be worth discussing. So we'll hold that. This is an important issue for North Dakota.

**Roll call vote on motion for a do pass. Motion carries.**

**Yes = 12**

**No = 0**

**Absent = 3**

**Carrier:** Representative Louser

**Chairman Keiser:** Presented committee members with the schedule for this afternoon and for tomorrow. Provided brief update on the two bills awaiting committee action and the bill which will be heard next week.

Date: 2-11-2013

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 3026**

**House Industry, Business, and Labor Committee**

Legislative Council Amendment Number \_\_\_\_\_

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

Motion Made By Ruby Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle		nb	Rep. Edmund Gruchalla		nb
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper		nb			
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 12 No 0

Absent 3

Floor Assignment Louser

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

**REPORT OF STANDING COMMITTEE**

**HCR 3026: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING).  
HCR 3026 was placed on the Eleventh order on the calendar.

**2013 SENATE INDUSTRY, BUSINESS AND LABOR**

**HCR 3026**

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol


HCR 3026

March 13, 2013

Job Number 19845

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

An concurrent resolution urging the United States Environmental Protection Agency to refrain from enacting regulations that place unreasonable economic burden on electric consumers living in the Northern Great Plains.

### Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Representative Belter: Introduced and explained the bill.

Sandi Tabor, Lignite Energy Council: Written Testimony Attached (1).

Discussion and questions (8:33-22:20)

Al Christianson, Greater River Energy: In support of the bill. North Dakota burns about thirty-five million tons of lignite. That produces 3.5 to 4 million tons of coal residuals. If the coal residuals were ruled hazardous, we couldn't even put them in North Dakota because by state law we can't have a hazardous waste facility. (23:00-26:17)

Senator Murphy: Asked if the ruling came down from the EPA that it was hazardous, could we change the state law.

Al Christianson: Said we would have to change that law but trying to get a landfill put in could be a long battle. (26:50-27:35)

Senator Murphy: Said if we remove it from the ground why can't we put it back in the ground after it is processed?

Al Christianson: Said the regulations do not allow them to do that at this time. (27:55-29:02)

Senator Andrist: Asked how much the resolution would help them.

Al Christianson: Said he believes the state should have the right to rule on this. He said the state has the best reclamation program and the best department of health on ash



regulations. What it does, if it ever happens, it would be on record that the state of North Dakota understands what they want to fight about. (29:55-30:35)

David Straley, North American Coal: In support. (31:40-32:15)

Dale Niezwaag, Basin Electric Power Cooperative and Dakota Gasification Company: In support of the resolution. The last few years Basin Electric has looked at the feasibility of capturing CO2. They were going to use the Antelope Valley Station and set up a system to test capture. Two things they ran into; one is a lot of people say they can do it on a test bench but there are fewer people who can actually do it. It got to the point that it was going to cost over three hundred million dollars just to do the slip stream and to do the testing on it. The other part is, in order to run that equipment it was going to take between twenty and thirty percent of the output of the plant to run the equipment to capture as well. It can be done but not feasibly at this time. (32:30-34:41)

Chairman Klein: Closed the hearing.

Senator Andrist: Moved a do pass on HCR 3026.

Senator Sorvaag: Seconded the motion.

Roll Call Vote: Yes - 6 No - 0 Absent - 1

Floor Assignment: Senator Unruh

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 3026**

Senate Industry, Business, and Labor 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 Senator Andrist Seconded By Senator Sorvaag

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen			Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Unruh

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

**REPORT OF STANDING COMMITTEE**

**HCR 3026: Industry, Business and Labor Committee (Sen. Klein, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HCR 3026 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**HCR 3026**

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HCR 3026

2-11-2013

**Testimony on SB 3026  
Presented by Sandi Tabor  
Lignite Energy Council**

**February 11, 2013**

As you know the lignite industry is responsible for over 21,000 direct and indirect jobs in North Dakota which are some of the state's highest paying jobs. This means that nearly one out of every 22 jobs in North Dakota has ties to the lignite industry. We contribute over \$100 million in state tax revenue and over \$3.5 billion in business activity annually. Our industry owns over \$15 billion in capital assets and infrastructure in the North Dakota. And most importantly we consistently provide some of the lowest priced energy to consumers living in the Northern Great Plains.

Our ability to continue to be an economic driver in the State, however, is in jeopardy. While House Concurrent Resolution 3026 does not review every regulatory initiative proposed or finalized in the last four years, it does focus on three efforts that together (and perhaps individually) could significantly impact our industry's ability to continue to produce low-cost energy.

HCR 3026 provides a brief overview of the three critical regulatory initiatives pursued by the U.S. Environmental Protection Agency (EPA) during the 2011-2013 interim: a) the attempt to categorize coal ash as a hazardous waste, b) the debate over the proper technology for the first phase of regional haze compliance and c) the proposed regulation of carbon dioxide emissions from new coal-fired plants. The most recent activities related to each issue are outlined in the resolution.

**Coal Ash** – Also known coal combustion residuals, EPA issued proposed regulations providing an option to regulate coal ash as a hazardous waste or non-hazardous waste under the Resource Conservation and Recovery Act. If EPA decides to regulate coal ash as a hazardous waste, a thriving national beneficial use program where over 40 percent of coal ash is recycled for use in construction materials like flexcrete would be eliminated. This percentage is consistent with North Dakota's beneficial use program, although Great River Energy recycles nearly 60 percent of its coal ash.

**Regional Haze-** The regional haze program requires each state to design plans that will bring visibility in Class 1 areas to pre-industrial levels by 2064. In other words the regional haze program is about how far you can clearly see in places like national parks. For North Dakota the issue has centered on what technology electric generation plants must installed in order to meet the first phase of the long-term regulatory plan. The state believed it had reached agreement to some degree with the EPA in March 2012 when EPA decided to approve the technologies included in North Dakota's State Implementation Plan. But, in December 2012 EPA announced that it was reopening the process in response to a petition filed by a number of environmental groups.

**Carbon Dioxide Emissions** – If finalized by the EPA, an April 2012 proposal would require new North Dakota lignite plants to reduce carbon dioxide emissions by at least 60 percent. The practical effect of this requirement is that no new coal plants (other than those with an existing permit) will be built until carbon capture and storage technology is commercialized. Another twist to this issue is that when an existing plant makes “significant modifications”, the Clean Air Act requires the plant to undergo a new source review to evaluate emissions from the modified plant. When a new source review is triggered the existing plant is required to comply with new emission standards. It is arguable that when our North Dakota plants undergo modification to comply with all of the new emission rules, a new source review will be triggered and the existing plant will be required to meet the new plant carbon dioxide standard. This scenario would have devastating consequences for our existing lignite fleet.

In light of the potential impact on consumers in North Dakota, the resolution urges EPA to take four specific actions:

- 1) Refrain from enacting regulations that regulate coal ash as hazardous waste;
- 2) Support its March 2012 decision related to North Dakota’s state implementation plan and delegate to the state the responsibility for working with Basin Electric Power Cooperative and Great River Energy to achieve the federal implementation plan for the Antelope Valley Station and the Coal Creek Station respectively;
- 3) Refrain from requiring lignite-based electric generation units to meet the carbon dioxide emissions of a combined cycle natural gas plant prior to the development of commercially viable carbon dioxide capture and storage technology; and
- 4) Work with the state and the industry to design regulatory programs based on sound science and that make economic sense for the consumers of North Dakota lignite.

Finally, the resolution finds that the North Dakota legislature supports the lignite industry’s efforts to find common sense technology solutions and our efforts to challenge regulations that will significantly impact the industry’s ability to continue to generate electricity from our existing plants.

The 350 member companies of the Lignite Energy Council urge the committee to recommend a **Do Pass** on HCR 3026.

**Testimony on HCR 3026  
Presented by Sandi Tabor  
Lignite Energy Council**

**March 13, 2013**

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