

2015 HOUSE ENERGY AND NATURAL RESOURCES

HB 1068

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1068
1/15/2015
Recording Job #22041

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kenneth M. Tabe

Explanation or reason for introduction of bill/resolution:

Relating to decisions of the Industrial Commisision.

Minutes:

Attachments #1

Vice Chairman Damschen opens hearing on HB 1068.

Todd Porter, District 34 Mandan

We had many discussions the last interim about how things are reported. It was very clear that we have two sets of regulatory agencies operating inside ND. The state of ND has no authority over a Tribal entity in the oil and gas exploration. And we don't have any regulatory on the wells and the flaring, how they do the gas capturing and how they try to capture natural gas. Each has strengths and weaknesses. Over the past month, the wells we regulate are flaring 20% . If you include the wells we don't regulate, our percentage is 26%. I think it's important we clear that up. That is the premise for this particular bill.

Ron Ness, President of ND Petroleum Council

Here today to point out some challenges we've been facing. We brought forth some targets that we said were achievable. In order to reach those targets, we were going to need cooperation from all the entities involved, which includes all the Federal agencies, the Tribal government and the State government. We have met the goals on the flaring. We are facing many difficult easements. There is more and more pressure on operators. We've got about 40 million cubic feet of gas to cross 1.8 miles of Ft Berthold Indian Reservation-owned property. I believe the gas pipeline company has walked away from that project. That gas is flaring and will continue to flare. There is no other way around. Everybody else around that route is ready to go and we cannot find agreement between the two parties. Over one-third of our flaring today is on things where we are stranded because of the challenges of easements. Now, getting the easement is as challenging as getting the drilling permit. We take a tremendous black eye on this flaring thing, and we think that we are pressing hard and investing billions and billions, and 95% of the landowners and parties at the table see it the way we do. We are somewhat stuck, and I think it's worthy for

everyone to understand what industry is up against, and when you cannot meet these targets, if you're one of the companies, you're going to be financially penalized because your production is going to be restricted. So please take that into consideration as you look at this and other pieces of legislation.

9:50

OPPOSITION:

Lynn Helms, Director of Mineral Resources under ND Industrial Commission

Attachment 1

The Industrial Commission is opposed to HB 1068. If it was a bill about reporting information or that sort of thing, it might be different, but it is not. It's a bill about using information to make decisions, to write rules, to issue orders, to create policy. And, so, from that standpoint, it takes us into the land of unintended consequences at warp speed.

The bill has enormous consequences. About 3½% of the state's wells are flaring 51% of their gas. So that, if you're the operator, that does create a problem for you, but it doesn't really solve the problem; it just creates enormous unintended consequences. In its current form, we would ask that it do not pass.

Rep. George Keiser I like what you both said. Transparency and reporting are at the heart of this thing. How can we create the transparency that might be an asset to getting operators who are on the margin or outside the limits to be recognized? And the good operators, as well, to be recognized? Would you oppose that?

Helms: We would not. If we could amend the bill to talk about the fact of...that we're required to report in any of these instances; if we're working on a rulemaking or we're reporting on the effects of a rule, or an order or a policy, in the creation of it, or even the reporting of the effects of it, that we are required to report the effects on land under commission jurisdiction, and land outside commission jurisdiction, and even the effects of that conflict, I don't think the commission would have a problem. The commission is open to granting exceptions on this gas capture rule on a needed basis. I would be happy to work with you if we are talking about transparency and reporting, and also looking at the potential effects of commission decisions.

Rep. Mike Nathe Did I hear you correctly that 3.5 % of the wells are flaring 51 % of their gas.

Helms:

They're actually responsible for 7 % of the statewide flaring. When you have a population of wells outside their parameters, they have an oversized effect.

Rep. Mike Nathe: Are these well on Tribal and Federal lands?

Helms. Yes they are. And we are in the process of discussions about jurisdictional issues on Ft. Berthold Reservation, but the only agreement that we've been able to come to with tribal regulatory and Dept. of Interior regulatory, is that on fee lands, the Industrial

Commission does have jurisdiction. The rest is still in argument and discussion. And those things move terribly slowly, as you know.

Closed 21:40

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Pioneer Room, State Capitol

1068

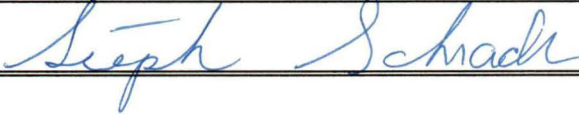
2/5/2015

Job # 23312

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to decisions of the Industrial Commission.

Minutes:

Attachments 1

Chairman Porter opens hearing.

Chairman Porter: We had the hearing on this a while back, Mr. Helms didn't like the language that legislative counsel used. He came back with language that they like and submitted that to us and this is what the proposed amendment is; written testimony #1.

Rep. George Keiser: I move that we adopt the amendment.

Rep. Mike Nathe: Second.

Discussion:

Rep. George Keiser: I think the amendment really accomplishes the intent of the bill sponsor. If you've ever taken a flight over the oil basin, even though we may have a rule that tries to limit the amount of flaring, it becomes obvious that there are certain areas where there is significantly more flaring going on than in other areas. It's important rather than to have our overall average come down, that we recognize that in some instances we are meeting the standards, but that in other instances we don't have the authority, the Tribes have authority over their land, they are a sovereign nation and they can do what they want with their regulations. What this amendment does is to require them, as they are developing their reports on a rule like limiting flaring, is to have two or three columns; one for areas we have control over, one for the areas we don't have control over, and the average area. It will explain why it appears that we are not meeting the very rules that we pass. It's important when it appears to the public we're not meeting our own guide lines that we have some mechanism to explain it and that's what this does.

Rep. Glen Froseth: I think separating like that would draw attention to where most flaring is occurring, and put pressure on that area to do something about it.

Chairman Porter: All those in favor of proposed amendment say aye.
Opposed: none

Motion passes unanimously.

Rep. George Keiser: I move a Do Pass as amended on HB 1068.

Rep. Dick Anderson: Second.

Discussion:
None.

Vote: Yes 12, No 0, Absent 1.

Rep. George Keiser: Carrier.

February 5, 2015

AP
2-5-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1068

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 38-08-04 of the North Dakota Century Code, relating to decisions of the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and the commission's responsibilities under chapter 57-51.1. When adopting a rule, issuing an order, or creating a policy, the commission shall give due consideration to the effect of including locations within this state which may also be under the jurisdiction of the federal government or a tribal government. When reporting information resulting from adopting a rule, issuing an order, or creating a policy that affects locations within this state which may also be under the jurisdiction of the federal government or a tribal government, the commission shall provide sufficient information to indicate the effect of including locations that may also be under the regulatory jurisdiction of the federal government or a tribal government."

Renumber accordingly

Date: 2/5/15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1068

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 15.0359.01002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Keiser Seconded By Rep. Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunsakor		
Vice Chairman Damschen			Rep Mock	<u>A</u>	
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Relating to adopting a rule, issuing an order,
or creating a policy.

Date: 2/5/15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1068

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 15.0359.01002

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Keiser Seconded By Rep. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hunsakor	✓	
Vice Chairman Damschen	✓		Rep Mock	✓	
Rep D Anderson	✓		Rep Muscha	✓	
Rep Brabandt	✓				
Rep Devlin	✓				
Rep Froseth	✓				
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Lefor	✓				
Rep Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Keiser

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

Relating to adopting a rule, issuing an order, or creating a policy.

REPORT OF STANDING COMMITTEE

HB 1068: Energy and 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). HB 1068 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 38-08-04 of the North Dakota Century Code, relating to decisions of the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and the commission's responsibilities under chapter 57-51.1. When adopting a rule, issuing an order, or creating a policy, the commission shall give due consideration to the effect of including locations within this state which may also be under the jurisdiction of the federal government or a tribal government. When reporting information resulting from adopting a rule, issuing an order, or creating a policy that affects locations within this state which may also be under the jurisdiction of the federal government or a tribal government, the commission shall provide sufficient information to indicate the effect of including locations that may also be under the regulatory jurisdiction of the federal government or a tribal government."

Renumber accordingly

2015 SENATE ENERGY AND NATURAL RESOURCES

HB 1068

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Fort Lincoln Room, State Capitol

HB 1068
3/26/2015
25464

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	
---------------------------	--

Explanation or reason for introduction of bill/resolution:

Relating to decisions of the industrial commission.

Minutes:

--

Chairman Schaible opened the public hearing on HB 1068. Representative Porter was on hand to introduce the bill.

Representative Porter: This bill in front of you was worked on the House side; we adopted the Industrial Commissions' amendments to make it clear what we are looking for. The bill talks about the difficulties as it relates to flaring. We felt it was important for the Industrial Commission to have a breakdown of percentages.

Senator Murphy: We needed a bill to do that?

Representative Porter: Yes you do.

Senator Hogue: Can you tell me what the original bill did?

Representative Porter: Intent was the same the way it was drafted out of legislative council was different than it was in the hearing. We worked with Mr. Helms to get it taken care of.

Senator Triplett: Why do we need a bill to do this?

Representative Porter: I think that a lot of it has to do with how things are reported and the public perception from that. Numbers without explanation are dangerous.

Senator Murphy: What you are saying is that the Industrial Commission is insensitive to that. They need prodding.

Representative Porter: I think that they were in a mode of blanket reporting and the emphasis on total numbers was being seen by the public.

Senate Energy and Natural Resources Committee

HB 1068

03/26/2015

Page 2

There was no further testimony and Chairman Schaible closed the public hearing on HB 1068

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Fort Lincoln Room, State Capitol

HB 1068
4/2/2015
25756

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to decisions of the industrial commission

Minutes:

1 Attachment

Chairman Schaible opened committee work on HB 1068. Senator Triplett handed out copies of the amendment. See attachment #1.

Senator Triplett: This would be a new section of code 38.08.06 which relates to who can have access to the location of gas gathering lines, right now that information is considered confidential unless otherwise specified. This amendment was brought forth by the lobbyist for the 3 affiliated tribe and it directs the industrial commission to allow access to the tribal government for the information on pipelines that are located on the reservation. The reason for doing it this way is that without giving them generic access they would have to ask parcel by parcel and prove ownership of each file to be able to access this information. As tribal government is a governmental entity they should have as much right of access as the industrial commission or the division of mineral resource to know where things are being dug in to their landscape.

Senator Armstrong: Is the industrial commission ok with the language?

Senator Triplett: I have not discussed with any of the commission members but I did talk to Ms. Ritter after the meeting. We discussed why the problem was and she has reported back to her boss and I have not heard anything back. I think that the idea is when the reports go out that North Dakota is flaring a lot that Representative Porter wanted it made clear that the state doesn't have total control over the issue and part of the flaring is a result of easement problems and slower permitting process on the reservation.

Senator Triplett then made a motion to adopt amendment 15.0359.02002 to HB 1068 with a second by Senator Laffen, there was no further discussion, roll was taken and the motion passed on a 7-0-0 count.

Senator Triplett then made a motion for a do pass as amended on HB 1068 with a second by Senator Armstrong, there was no further discussion, roll was taken and the motion passed on a 7-0-0 count with Senator Laffen carrying the bill to the floor.

There was no further discussion on HB 1068 and Chairman Schaible closed the committee work.

March 31, 2015

SR
4/2/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1068

Page 1, line 1, after "to" insert "create and enact a new subsection to section 38-08-26 of the North Dakota Century Code, relating to access to pipeline information by the Three Affiliated Tribes; and to"

Page 1, after line 15, insert:

"SECTION 2. A new subsection to section 38-08-26 of the North Dakota Century Code is created and enacted as follows:

Upon the request of the tribal government of the Three Affiliated Tribes, the commission shall allow access by the tribal government to the information contained in the geographic information system database for pipelines located within the exterior boundary of the Fort Berthold Reservation."

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1068**

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 15.0359.02002

Action Taken Adopt Amendment

Motion Made By Senator Triplett Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy	X	
Vice Chair Unruh	X		Senator Triplett	X	
Senator Armstrong	X				
Senator Hogue	X				
Senator Laffen	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1068**

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Senator Triplett Seconded By Senator Armstrong

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy	X	
Vice Chair Unruh	X		Senator Triplett	X	
Senator Armstrong	X				
Senator Hogue	X				
Senator Laffen	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Laffen

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

REPORT OF STANDING COMMITTEE

HB 1068, as engrossed: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1068 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 38-08-26 of the North Dakota Century Code, relating to access to pipeline information by the Three Affiliated Tribes; and to"

Page 1, after line 15, insert:

"SECTION 2. A new subsection to section 38-08-26 of the North Dakota Century Code is created and enacted as follows:

Upon the request of the tribal government of the Three Affiliated Tribes, the commission shall allow access by the tribal government to the information contained in the geographic information system database for pipelines located within the exterior boundary of the Fort Berthold Reservation."

Renumber accordingly

2015 CONFERENCE COMMITTEE

HB 1068

2015 HOUSE STANDING COMMITTEE MINUTES

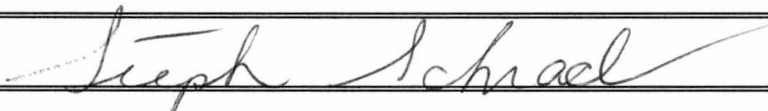
Energy and Natural Resources Committee

Pioneer Room, State Capitol

HB 1068
4/10/2015
Job # 26024

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to decisions of the Industrial Commission.

Minutes:

Attachments 1

Rep. Mike Nathe opens meeting.

Senator Connie Triplett: Explains amendment; attachment #1. I offered the amendment, which was accepted by the committee on the House side. The request came from a lobbyist for the Three Affiliated Tribes who indicated that the tribal government had made some requests for some GIS information related to the location of pipelines inside of the reservation and were told, correctly by the staff of the Industrial Commission that they could not release those because the legislature had made it confidential except for a few specific exceptions that are already listed in statute and the tribal government was not one of those exceptions. It seemed to me to be a reasonable request because they are a government that has jurisdiction over the particular land within the exterior boundaries that they ought to have a right to know where the pipelines are located within the reservation both for, just because they are a government and because they are responsible for safety response and such within their jurisdiction. I added it to the section of exceptions and exemptions. I forgot to bring my section of the code along to remind you of what the other exemptions that are already in place is, but I see we have staff here from the Industrial Commission and we have other members with their lap tops handy so we can find out in short order what the other, I think there's three or four other exceptions to the confidentiality law.

Rep. Mike Nathe: Is the reason to do this is that currently they are not sure where all the pipelines are going right now? So they are burying pipeline on the reservation and they're not sure where they're at and the reason for this is so they have a catalogue of the location?

Senator Connie Triplett: Right, so they know where they are. Currently it would have to be requested on a parcel by parcel listing and I guess our requirement that we put into statute is that they identify and shape files by parcel and this would be a more generic and overarching exemption.

Chairman Porter: The tribes obviously know where the pipelines are on their land that they own or control. So this amendment then gives the location of pipelines and gathering lines on lands that they have no control over other than the fact that they are on the inside of the reservation boundaries. They don't own the land, they don't own the minerals on the land; it's nontribal members that own the land and we're giving that information to the tribes.

Senator Connie Triplett: I think they do still have some responsibility or at least joint responsibility for emergency services and such within the exterior boundaries of the reservation. Despite the fact that every reservation out there in the country has its own unique history but there are a lot of reservations that were opened to homesteading to such a degree that federal courts later shrunk them down or altered the boundaries of them. On this reservation that has not happened, so you're right there is a section that is primarily fee land, owned by nontribal members. But it still is identified by the federal government as being within the exterior boundaries of the reservation. It seems to me that it's a matter of simple respect to another governing body to say that you have a right to know what utilities are going in on your reservation and the land that you control.

Chairman Porter: I think they have a right to know what's going in on their land, I don't know that they have right to know what's going in on my land based on a boundary that was set in 1879. One of the other issues that is running around the halls of the capital is an entire taxing issue that once the information is gathered it's going to be used just to tax the gathering lines and pipeline systems in the name of public safety and be a fund raiser.

Senator Kelly M. Armstrong: When this was brought to the Senate the language seemed reasonable to me, but we did not have testimony on this amendment. We thought it was a good enough idea to move forward when it came in and the connotation to it, but since then there have been some issues raised that have caused me some pause for concern. One of them is the taxing issue. The second one would be getting some private information from nontribal members. Those two issues have made me a little less enthusiastic about the amendment.

Rep. Bob Hunsakor: I'm wondering if the oil division, Mr. Helms, have any concerns over this?

Rep. Mike Nathe: Mr. Helms would you come to the podium, Rep. Bob Hunsakor has a question.

Rep. Bob Hunsakor: With the request that's contained in this amendment, the GIS information, is there any concerns with your department regarding that?

Lynn Helms: I don't think it creates any difficulties for our department to be able to snap the pipelines out for everything within the reservation boundaries verses individual land owners. We are always very protective of private property rights, we have a general philosophy of that. If you'll recall HB1385 sic (1358) contains a change to this section of law that allows the surface owner to share their pipeline information with anyone they want to. Previous to that they were the only people that could get it and they were bound by the confidentiality limits on that information, everybody else. In testimony that you heard in your committee it came out clearly to everyone that a surface owner may want to share that

information with contractors, neighbors, etc. So HB 1385 sic (1358) allows surface owners to make that choice and share it with the tribal authorities to the extent that they want to.

Rep. Mike Nathe: You are referring to 1358?

Helms: Yes, not 1385.

Rep. Bob Hunsakor: So you are saying that 1358 takes care of this particular issue?

Helms: We believe that it does. It will not be as convenient for the tribes because they will have to get it from individual land owners as opposed to coming to us and getting a single snap. It does make the information available to them anywhere within the boundaries and removes the confidentiality seal on that information.

Senator Connie Triplett: Senator Kelly M. Armstrong is correct in that we didn't have specific testimony about this in committee, but as happens in many of our committees on many occasions people stop us afterwards and have ideas that seem credible and those become the source of proposed amendments. In this situation the person from the Three Affiliated Tribes who was present for the hearing started up a conversation with me and Miss Ritter was in the room with me at the same time and she indicated that without something like this the tribe could not go to the Industrial Commission and say give us the snap, I don't know exactly what you mean by snap, that they would not be able to do that. The tribe would have to ask on a parcel by parcel for locations of the lines. Even if some parcels are held in trust for the tribe, there are some that are owned by individual tribal members, but there are parcel definitions on the reservation just as there are outside of the reservation boundaries. It would be a burden for the tribe to have to ask for on a parcel by parcel basis. That was what I was trying to get past. Whether talking about nonIndians, nontribal members, or even within the part that is tribal, so could you clarify that for us?

Helms: The information that you shared is accurate, Mr. Nygard, who represents the Three Affiliated Tribes at their Bismarck office was the individual making this request. He had been in our office a week or so before that, making the request. We showed him the statute, as it is and let him know that under the current confidentiality requirements he simply can't have it.

The definition of a snap is, the information exists in a GIS layer, what a GIS technician does is they snap a polygon onto that and the computer will pull whatever information is inside that polygon out, print it and hand it to you, and you walk away with it. There is no question under the existing statute and the amendments to the statute that are in 1358, they would have to speak to property owners parcel by parcel to assemble their data base of what pipelines are within the reservation boundaries. We talked about a lot of options here in House ENR committee when we looked at that section of code and settle on the idea that it ought to be up to the surface owner what they release to whom and when.

Senator Connie Triplett: Do you talk about the confidentiality of this relating to spills and emergency response off reservation, how do you handle that?

Helms: We handle it the same way off the reservation, only the surface owner or their tenant have access to this information. There is an exception within 3808 at the very

beginning within our administrative code, that if there is a public health or safety issue then we can release it to medical authorities or to emergency managers. So there is another opening in the case of a major spill or significant environmental threat or public health and safety threat that would allow this information to go out, even though it's confidential.

Senator Connie Triplett: My understanding is that off the reservation we have a top down incident command level through our division of emergency services which is pretty well clarified. I'm not clear, whether that works as crisply within the boundaries of the reservation or whether it doesn't, do you know the answer to that?

Helms: Our experience with the spill last summer would indicate that it doesn't. It isn't anywhere near the same.

Chairman Porter: Remind me how the current taxing agreement works so if I'm inside of that original agreement we talked about no additional taxes, no additional fees, no additional taro, etc., that whether they happened or not are irrelevant, but we all know they did. If I'm on my own property inside the exterior boundaries of the reservation and my tank battery is there, I have my own injection well that's a mile away, it's on my property, I run pipelines across all my property and all the wells are on my property; am I under the jurisdiction of the Three Affiliated Tribes or am I under the jurisdiction of the state of North Dakota?

Helms: Our discussion with the tribal authorities with regards to fee lands, which is what you are describing, is that they are absolutely under the jurisdiction of the state of North Dakota. There are cases where if the tribe is able to demonstrate an interest in regulating whatever is happening on those fee lands within the reservation boundaries that they may also have some jurisdiction. There are some court cases like that, the best example I can give you is that we have some treating plants on fee land within reservation boundaries and they are absolutely under the jurisdiction of the state of North Dakota, but since they are treating oil field waste the tribe has made a determination that there is some health and safety issues or risks associated with that and they have additional jurisdiction and are also permitted under those court cases to require a permit for that operation. In this case they might need to demonstrate to a court or someone that they had a health and safety reason for having any jurisdiction over those pipes.

Chairman Porter: In my scenario, If the Three Affiliated Tribes decides that tomorrow they're going to tax gathering lines in the name of health and safety so that they can develop a response system or better a response system, or do something different then that tax would potentially apply to me being on fee land and the information on my own private property that allowed them to tax me has been given to them by their own state government?

Helms: Yes, I believe it would.

Chairman Porter: I think it's pretty well known that this information is necessary to establish a new tax on gathering lines across the reservation. Inside of our current compact there are specific languages that there are no new fees, no new taxes, no new anything and this may be presenting itself as a loop hole. I'm concerned about giving away

information that relates back to somebodies private property just because it's located within the exterior boundaries of that reservation. It's not owned by the reservation, controlled by the reservation, or jurisdictional to the reservation I certainly don't have a problem with the information going to them with a caveat that if there is ever a tax put on gathering line that the over compact is null and void. That's where I would be with section 2 of the bill or we just need to remove it.

Rep. Mike Nathe: I agree with a lot of what you said and what Mr. Helms said about the surface owners being allowed to share the information through 1358; it takes care of it in my mind.

Senator Connie Triplett: I heard something different from Mr. Helms and maybe we'll have to get him up here again to clarify. I think we're talking about two different issues. Rep. Porter is talking about land that is owned by nontribal members entirely and being concerned about their rights and the taxation issue, which I don't have any personal information regarding if that is what their intention is or not. It's not part of the conversation that is necessary for this bill as far as I'm concerned. The other part of it is that the land that is owned either by the BIA in trust for the tribes or purchased for the tribes and held, or owned by tribal members as fee land by members of the tribe. I think that the parcel by parcel issues would also apply on all of that land. Maybe if there is that much of a concern about the nontribal fee land the way to do this is to rewrite the amendment to spit those two parts out. I think that notion of providing the information within a polygon, if there is a large area that is a combination of tribal member land and that sort of thing that could be accomplished. I don't know why we would make them go through the hassle of going through parcel by parcel if we could. Maybe we need more clarity and I could talk to Mr. Helms afterwards off the record if you want and try to draft an amendment that splits the difference. I just don't think there is any reason we should make it hard for them on the land that they do have some control over.

Senator Kelly M. Armstrong: Just as a point of clarification; we wouldn't be making it harder it would be the same as it was yesterday. The reason I bring that up is because if we're starting to get into tax policy and issues of that nature then as somebody who voted for it before I'm not comfortable with it.

Rep. Mike Nathe: This amendment probably should have had a full committee hearing on it because from the conversations we're having it's much more involved than just a simple fix for the tribe. I think this would warrant more work than what we are doing here.

Chairman Porter: I agree, this is way above and beyond what we can do and understand the ramifications of what is going on with this type of amendment. We've already made provisions in 1358 that the information is accessible if they own the land. I think that is a big move from last session, now on the land they own they have the information of the gathering lines. Quite frankly, we all know that they know where the gathering lines are on their own land, that's not what they're seeking. I would make a motion that the Senate recedes from their amendment.

Senator Jessica Unruh: Second.

Senator Connie Triplett: What is the source of your information that the impetus behind this is to put an additional tax on?

Chairman Porter: I don't have a source beside myself, I just know that we are giving up a citizen of the state of North Dakota's personal property right to someone who may or may not need to have it. We've already fixed the issue that you're saying needed to be fixed with 1358, allowing them access to information that is theirs. I'm not willing to give somebody else's property rights away with this amendment.

Senator Connie Triplett: I think that we cannot resolve your particular situation here today but I would say that anyone anywhere in this country who chose to homestead on land that was located within the exterior boundary of an Indian reservation has always had a lesser property right than someone who homesteaded outside the exterior boundary of an Indian reservation. I think it's a complicated area of law and I'm not likely to be able to convince you of that today, but I'll tell you that it is my opinion and it's widely shared by everybody who has studied Indian law. I would resist the motion and I would respectfully request that the motion be withdrawn until I could have a little bit of time to try to work up another amendment.

Rep. Mike Nathe: Senator Connie Triplett we are going to go ahead with the motion for the Senate to recede from the amendments.

Vote: yes 5, no 1, absent 0

Rep. Mike Nathe: Adjourns meeting.

2015 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. HB1068 as (re) engrossed

House "Enter committee name" Committee

- Action Taken ☐ HOUSE accede to Senate Amendments
☐ HOUSE accede to Senate Amendments and further amend
☒ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows
- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Porter Seconded by: Rep. Unruh

Representatives	4/10		Yes	No		Senators	4/10		Yes	No
Rep. Mike Nathe	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Senator Kelly M. Armstrong	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Rep. Todd Porter	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Senator Jessica Unruh	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Rep. Bob Hunsakor	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Senator Connie Triplett	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Total Rep. Vote						Total Senate Vote				

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

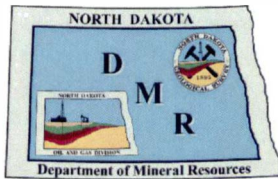
REPORT OF CONFERENCE COMMITTEE

HB 1068, as engrossed: Your conference committee (Sens. Armstrong, Unruh, Triplett and Reps. Nathe, Porter, Hunsakor) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1362 and place HB 1068 on the Seventh order.

Engrossed HB 1068 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

HB 1068



#1

House Bill 1068
House Energy and Natural Resources
January 15, 2015

Testimony of Lynn D. Helms, Director

Since 1981 The North Dakota Industrial Commission – Department of Mineral Resources – Oil and Gas Division has had jurisdiction over the drilling, producing, and plugging of wells, the restoration of drilling and production sites, and all other operations for the production of oil or gas.

This bill imposes very broad limitations on the ability of the Commission to regulate oil and gas in the state of North Dakota. Excluding information on many locations from decisions, rules, orders, and policies will have many unintended consequences. The following three scenarios illustrate how this bill would impact the ability of the Commission to protect correlative rights and promote responsible development.

Correlative Rights Scenario One; Setback Violations:

If a well were drilled on lands outside Commission jurisdiction that violated the Commission setback requirements no information could be utilized and no order could be issued to require well modifications on said well, or allow an offset well to be drilled at a reduced setback to protect mineral and working interest owner correlative rights.

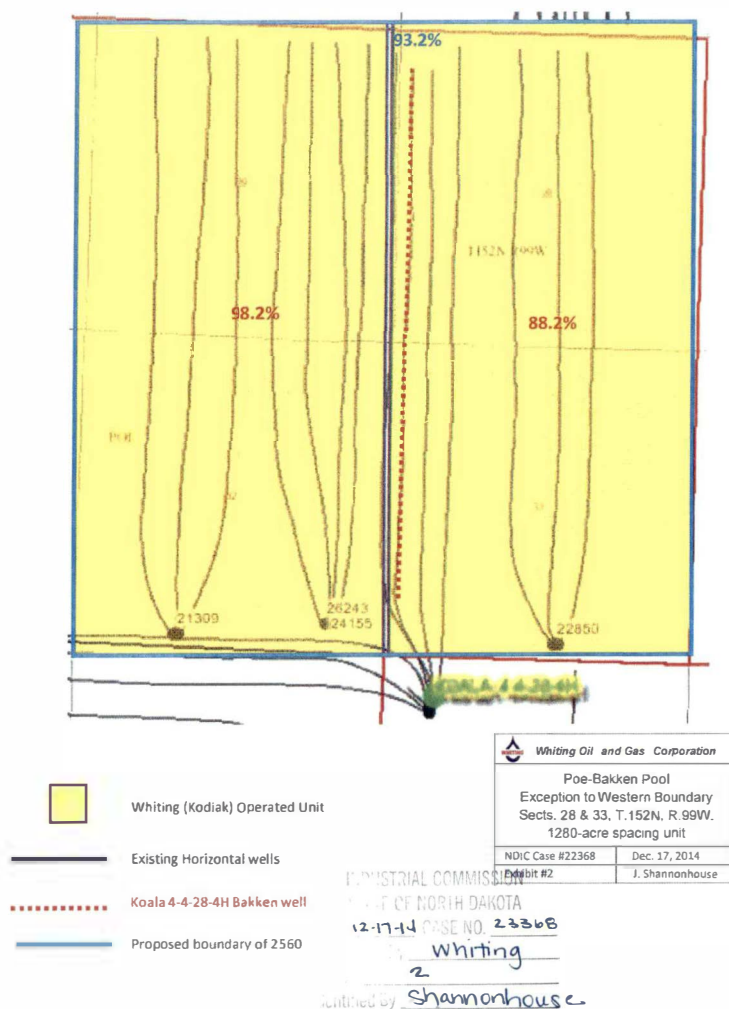
Correlative Rights Scenario Two; Off-setting Well Notification:

Commission rules require notice to owners of a well within 1,320 feet of a well that is to be hydraulically fractured so they can prepare their well to avoid damage or blowouts. Under this statute no information could be utilized from a well to be fractured on lands outside Commission jurisdiction to enforce notification to owners of an offset well.

Responsible Development Scenario; Spill response:

Commission rules require a significant amount of information to be submitted in the event of a fire, leak, spill or blowout. Under this statute no information could be utilized from a well on lands outside Commission jurisdiction to enforce spill response, spill clean-up, civil penalties for spill violations, or even determine what well or operator was responsible for the spill.

Mr. Chairman and members of House Energy and Natural Resources the North Dakota Industrial Commission urges a do not pass for House Bill 1068.



2/5/15
1068

#1

Proposed by Mr. Helms
January 30, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1068

Page 1, line 1, after "Code" insert, "and amend and reenact subsection 5 or section 38-08-04 of the North Dakota Century Code"

Page 1, after line 10, insert:

"SECTION 2. AMENDMENT. Subsection 5 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and the commission's responsibilities under chapter 57-51.1. When adopting a rule, issuing an order, or creating a policy, the commission shall give due consideration to the effect of including locations within this state that may also be under the jurisdiction of the federal government or a tribal government. When reporting information resulting from adopting a rule, issuing an order, or creating a policy that effects locations within this state that may also be under the jurisdiction of the federal government or a tribal government the commission shall provide sufficient information to indicate the effect of including locations that may also be under the regulatory jurisdiction of the federal government or a tribal government."

Renumber accordingly.

1

March 31, 2015

Attachment 1
4-2-15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1068

Page 1, line 1, after "to" insert "create and enact a new subsection to section 38-08-26 of the North Dakota Century Code, relating to access to pipeline information by the Three Affiliated Tribes; and to"

Page 1, after line 15, insert:

"SECTION 2. A new subsection to section 38-08-26 of the North Dakota Century Code is created and enacted as follows:

Upon the request of the tribal government of the Three Affiliated Tribes, the commission shall allow access by the tribal government to the information contained in the geographic information system database for pipelines located within the exterior boundary of the Fort Berthold Reservation."

Renumber accordingly

March 31, 2015

1
Apr. 10, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1068

Page 1, line 1, after "to" insert "create and enact a new subsection to section 38-08-26 of the North Dakota Century Code, relating to access to pipeline information by the Three Affiliated Tribes; and to"

Page 1, after line 15, insert:

"**SECTION 2.** A new subsection to section 38-08-26 of the North Dakota Century Code is created and enacted as follows:

Upon the request of the tribal government of the Three Affiliated Tribes, the commission shall allow access by the tribal government to the information contained in the geographic information system database for pipelines located within the exterior boundary of the Fort Berthold Reservation."

Renumber accordingly