

2017 SENATE POLITICAL SUBDIVISIONS

SB 2156

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2156
1/20/2017
Job # 27179

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to disposal of radioactive waste material

Minutes:

Written testimony #1 Charles Volk
Written testimony #2 Brenda Heilman
Written testimony #3 Rebecca Leier
Written Testimony # 4 Dallas Hager

Chairman Burckhard opened the hearing for SB 2156. All senators were present.

.21-1.44 Senator Jerry Klein, District 14, Kidder, Wells, Sheridan, Pierce, and Benson County, introduced SB 2156. It came as a result of some issues that cropped up in our district in Pierce County specifically, over some testing and some concerns about how we treat; how radioactive waste would or could come to our state. Current law suggests that it has had legislative approval, but it kind of falls off from there and certainly as counties deal with these things and the areas they should come too, there was some concern that folks would like to know what's going on too. So, there is a lot of great folks with a lot of information that has been gathered on this issue and we have folks from Pierce County here that are going to follow me and explain to you the concerns and why this bill is come to us.

2.30-7.16 Rep. Jon Nelson, District 14, part of the area that was included in the project proposed a year ago, that commonly known in our area as the Bore Hole Project where there was some escalation with the bore hole to see if the formation in southern Pierce County was suitable for the potential storing of radioactive waste. Unfortunately, the process didn't work for local communities. I think the local citizenship found out about this through the media, which this bill is trying to fix. SB 2156 is a pretty simple bill, all it says there in that section of code, that deals with radioactive storage that, before any expiration or storage could be considered they would have to come to the county and the local water district for a permit to go forward. It is a communication that this is going forward and I think it's what we would expect from anybody who comes into our backyard to ask before they enter. That's the jest of the bill, it's very clean, Section 23 in ND Century Code; it doesn't impede on any oil discovery or exploration and surface water pollution as well. That is excluded in that section of code so this would only deal, exempts from getting any other exploration from this. This only deals with radioactive waste potential storage. It's what we expect from the state leaders in ND to work with our local political subdivisions to allow local decision making to go forward

if they choose to make that process happen. The communication certainly in this case would have helped to make them understand what was potentially going to happen. I support the bill and I will hope that you will consider a Do Pass on this piece of legislation. It should be also noted that there are a number of areas of the state would the group that was interested Battelle, they did look for other sites, so this is not limited to just Pierce Co. in North Dakota. Good to have state policy that speaks as to how the process would go forward into the future.

7.25-16.00 Charles Volk, Pierce County. Written Testimony #1 read verbatim.

Senator Dotzenrod: Does Pierce County have a zoning authority, a county zoning ordinance?

Mr. Charles Volk: They do have a Planning and Zoning Committee.

Senator Dotzenrod: Could this have been accomplished with a zoning ordinance that just said it is not allowed under our zoning ordinance or do you need state law?

Mr. Charles Volk: I believe that we already have a state law that extends to the border of Pierce county. People in Pierce county are the ones most affected by it, were the ones who educated themselves about this. Living outside the county really understood it, we didn't understand it until after we learning the complexity of the situation. Do I believe we need to improve our amendment, yes, do I believe that our current Planning and Zoning laws are enough, I don't have that answer; I believe that if it is in our Century Code then at least we have built a means of preventing this from just being pushed into the state. I really do believe that.

Chairman Burckhard: I guess in following along in your testimony, where the dig is, was the state school there, is that correct? **Mr. Charles Volk:** Correct. It was a rented pasture actually, and in August of 2015 they actually went to the site with Battelle and all their agents. I am not completely sure everyone that participated in it, but after that, that is when they started talking about terms and conditions and the rent per acre was going to be \$6500 an acre. This was before the grant was even completed by the Department of Energy.

Chairman Burckhard: You made reference to Battelle. How do you spell Battelle? **Mr. Charles Volk:** Battelle is the exact spelling. **Chairman Burckhard:** An Ohio based company? **Mr. Charles Volk:** Yes.

18.42-21.48 Brenda Heilman from Rugby, closer to Balta. In favor of SB2156. Written testimony #2 read verbatim.

22.09-31.04 Rebecca Leier, Written testimony #3 read verbatim.

Chairman Burckhard, just a couple of points from me. Well done by the way. I think the Federal Government had promised to have a nuclear waste facility ready in 1992. They are still unfilled. **Rebecca Leier :** In that amount of time, how many new power plants have come on line. **Chairman Burckhard:** Not many nuclear ones I don't believe. **Rebecca Leier:** Not just in the United States but in our world who continues to be a viable of power even though there is no viable source of storage as a product.

Senator Diane Larson: Are you thinking then that with this legislation that will stop any nuclear deposits in North Dakota were that able to happen?

32.12-33.23 Rebecca Leier: I am thinking with this legislation we would be contracting within our communities earlier in the process. It was a mad scramble to get our group of concerned citizens and find ways to address this situation. We came within a couple of months right to them getting ready to take action. This is a great roadblock. I think we need to have actually education in our schools about nuclear power and the waste that is produced. I think there has to be a generation of people, this is 20 years this has been on my radar, so I now have grandchildren who are born when this began for my family. We were taken by surprise because we had no education happening about this. There needs to be an educational component in every community about nuclear waste repository. But I believe the bill is a clean, clear step that can be done to get us there, that needed time in our communities.

Senator Judy Lee: My understanding is that France has used a lot of nuclear power generating for a long time, and it is a clean source of power, but I totally agree that the problem is with the disposal. So do you know how France disposes of its nuclear waste?

33.41-34.34 Rebecca Leier: I don't. I know that France and Switzerland are watching what we are doing in North Dakota. I also know that New York State is now decommissioning a nuclear power plant this month because the amount of nuclear storage of waste product cannot be contained. I know in Minnesota their nuclear waste depositories above ground stood on sites that are well viewed from the interstate. That is one of the things that terrorism is a danger for that above ground storage. All of that is true and it was proposed to us in Pierce County that for the greater good, our state should take this. But if we're not producing this hazardous material should we be responsible for putting this hazardous material in our own back yard.

Senator Judy Lee: This sounds like a sorry analogy, but it is sort of how the Feds really pay attention to how many people went someplace. California is a golden state because of the grizzlies but they didn't settle the grizzlies in Montana they sent them to Montana where they chase the ranchers, cattle and kids around and when they said all we are supposed to keep our children safe and put bells on them and they said we then we'll know where the kid went when we see the bells in the bear poop. So it's a same kind of a deal. Lightly populated areas for federal projects so I can appreciate your frustration.

35.15 Senator Anderson: You mentioned that you thought the Yucca Mountain Facility science had been discredited and that was inadequate storage facility. Could you explain that a little more or was it really a political closure of Yucca Mt rather than a science proving it wasn't going to work as far a nuclear storage?

35.41-36.51 Rebecca Leier: We actually had very close friends that worked on that project and we're saying as early as 1996, they at that time felt the storage metal units that were used to store that product were not safe. It did take about 15 years for the water underground to actually erode enough into those metal containers that ground water as far away as in the Death Valley area, was showing up with nuclear by-products and that waste. So the 90- mile

radius that they were getting us there, was far exceeded with how far that product travelled. They promised it would last longer than it did, and the science would prove that.

37.03-39.45 Mr. Dallas Hager, in favor of SB 2156. Summarized his written testimony #4, especially page 2.

41.06-42.35 Mr. Aaron Birst, Association of Counties, we do support this bill. Basically we support the county being part of this process. As you can imagine these are very controversial projects and early last summer, when I was contacted by Senator Klein, and Rep. Nelson, we actually worked through this bill together. They were very helpful, and we suggested that if the county could be involved it would help the process to get people on board. I do have to say when wearing my legal hat here, if folks think that this is a denial, the ability to deny these projects, there are some constitutional issues with that. But because this law simply says they are involved in the process and not an outright prohibition, it would survive constitutional muster. It will be a part at least the counties side, legal counsel will have to speak to the Legislature, but it will be up to the counties to figure out how you can be involved in the process without outright prohibition. If you do an outright prohibition, that would probably violate the Nuclear Waste Policy Act of 1981, and the Interstate Commerce Stop Trend. This is a very complicated issue and it deserves a lot of attention.

42.37- 43.14 Pete Hanebutt, North Dakota Farm Bureau. While we do not have specific policy on this we do have plenty of policy about local control. Our members were involved when we had the public hearing up that way, on this specific issue. Our Vice-President would be in favor of this if I poll him and so I feel very comfortable in saying that we support the concept of this bill.

Chairman Burckhard closed the hearing on SB 2156.

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2156
1/26/2017
Job # 27484

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to disposal of radioactive waste material

Minutes:

"Click to enter attachment information."

Chairman Burckhard asked the committee what they wanted to do. We had a lively discussion that day with no opposition as I recall. We had several civilians testify and Aaron Birst from the Association of Counties testified. Senator Klein introduced it.

Senator Anderson: I move a Do Pass on SB 2156 to move it into discussion
2nd Senator Judy Lee

Committee Discussion:

Senator Anderson: The focus of this bill was fairly narrow as these people came in looking for a spot to dig a hole in and bury some stuff in it. I think it's reasonable to assume that the local people should have some input and so forth, there was no reason why they can't find out before-hand instead of when the process is going on. Even though my personal opinion is we are going to have to store this stuff someplace. We might as well find the safest place to store it, that we can, so I am not necessarily in agreement with the local people who were scared unnecessarily about the storage of the stuff there. But, I do think the state, the county and the local people ought to have a say or at least input into what is happening.

Senator Diane Larson: I would agree with Senator Anderson on that. this doesn't prevent the storage it just requires that more people are approving of it before it happens and so, it really would take some work and PR maybe by the people that want to put those things there to convince the people that it is safe, which I don't think is a bad thing to do. So I think that it is good step to pass this bill.

Senator Judy Lee: The other thing that I think would work in the favor of the people who are looking for storage place, is if you bring people into the table, including folks that oppose it, then everybody gets the same education, everybody understands what the issues are and what the challenges might be, and so they feel like their being heard and they have a part to play into the discussion. It takes a little longer, but you may end up with an outcome that

doesn't create that kind of resistance in the end. Do we have time for just a little example?
Chairman Burckhard replied, I do. (2.45-3.56)

Senator Kannianen: So when it says prior approval, needing to be granted by a county or water resource district, what is that going to entail? Does it have to be written, has to be a resolution passed in a commission, or just verbal, does it need to be more specific at all?

Chairman Burckhard: Interesting. **Senator Kannianen:** Because someone might verbally say, yes, maybe the chairman of the county commission said yes, go ahead and then the rest would say we never granted approval, what are you talking about.

Senator Diane Larson: When they are saying that it's granted by the county, and water resource districts, I think that they are talking about an action at the meeting because they have their meetings and minutes and everything, so I think there would need to be something in writing about that.

Senator Kannianen: Yes, is that assumed or do we need to be more specific in the writing?
Chairman Burckhard: I am not sure we have to be specific because there would be giving the county and the water resource districts together on the same topic, so I am sure they would have something formalized, something in writing.

Senator Diane Larson: My husband sits on the local water resource district and he doesn't have any authority to approve anything outside of the board meeting.

Senator Anderson: You know when we approve legislation like this, we keep in mind that if the Big Stone plan hadn't been improved in this manner, we wouldn't have any of it now.

Chairman Burckhard had the clerk take the roll and keep the vote open for Sr. Dotzenrod:
Roll call vote: 5 yea, 0 no, 0 absent


2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2156
1/26/2017
Job # 27454

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to disposal of radioactive waste material

Minutes:

"Click to enter attachment information."

Chairman Burckhard called the committee for discussion on SB2156. All senators were present.

Senator Dotzenrod: If we get the stuff buried unless we get the approval. Does it require local approval or does it just require notice?

Chairman Burckhard: Notice and approval. Both

Senator Dotzenrod: The Farm Bureau supported this, they came in and testified in favor of it. But the Farm Bureau has supported for years the bill that we have in the state that says if a local community is opposed to the locating of a hog farm and the other people don't like it, then they can't put it in. The local people don't matter. But if the state issues a permit for the concentrating feeding operation and that we have a state policy now that with the locals think doesn't matter. But we do think that it matters here. Of course I am going to vote for the bill anyway. I just wanted to embarrass the farmers bill, but I wrote it down but it got away from me.

Chairman Burckhard: they didn't testify on 2156 did they?

Senator Dotzenrod: Pete Hanubutt came in support of the bill. I like the idea that the local people have some say about things that are located next to them.

Committee Clerk: Senator Dotzenrod how do you vote on SB2156. Yes.

Chairman Burckhard: that is a 6-0-0.

Carrier: Senator Judy Lee

Date: 1-26-17
Roll Call Vote #: /

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2156

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: _____

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 Sen. Anderson Seconded By Sen. Judy Lee

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard	✓		Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson	✓				
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Judy Lee

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

REPORT OF STANDING COMMITTEE

SB 2156: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends
DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2156 was placed
on the Eleventh order on the calendar.

2017 HOUSE ENERGY AND NATURAL RESOURCES

SB 2156

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau –A Room, State Capitol

SB 2156


3/16/2017

29295

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to disposal of radioactive waste material

Minutes:

Attachments 1-2

Chairman Porter: Called the committee to order on SB 2156. The clerk called roll call and read the short title.

Sen. Jerry Klein, Dist. 14: this bill reaffirms our position on disposal of nuclear waste in ND. Currently the legislature has to give approval. In 2015 unbeknown to the locals, counties and district, there was a proposal to do some testing in Pierce County, to what we believe could have been ultimately a radioactive waste disposal. Nobody knew about this until we read it in the paper. It was the beginning of a long tedious process to make sure this didn't happen. This bill only asked if one of these proposals would like the county to have knowledge and weigh in, and we've added water resource district because some of these districts butt up against other counties and this gives both side of the county line an opportunity to weigh in.

Rep. Keiser: Prior approval I assume means official position in the minutes of their meeting? Public prior approval?

Sen. Klein: yes.

Rep. Nelson, Dist. 14: This makes sense that local jurisdictions are the first to know of when a project like this is being pursued. This notification is not the unusual circumstance that took place last year. It's important to note this deals with out of state radioactive material that comes into ND. In no way does this hamper the energy development in ND. Whether or not you agree with even out of state radioactive storage of radioactive material, you don't start the conversation off very well if the local jurisdictions are the last to know about this.

Rep. Mitskog: Besides your area, do you know how many other potential areas this

Rep. Nelson: There were several sites being looked at in ND. In fact, there was a site in SD as well. I believe several sites in Pierce County, Stutsman County, and maybe another site

or two. It was a project that Patel was the lead project engineering company, and I guess EERC looked at the formations that would be for this potential storage. These were the sites that came from the EERC geological studies. There were more possibilities in ND as I found out later. Your home area may have that possibility as well, I'm not sure.

Rep. Mitskog: It's very concerning that any place in ND is being considered most of our state either agriculture has a presence or cattle ranching. Is this bill restrictive enough? Do we even want any out of state materials?

Rep. Nelson: The potential areas, it starts with the people that live there ultimately, the concerns they have and there are many. Before acceptance to disposal would take place they have to have assurance that deep bore storage works and will work for the formation that exists. I would have to guess that it's a tough sell anywhere in ND. Someone somewhere is going to have to store this. It's not going away. If this process works, where will it work best. That's what makes this type of storage possible in ND, we are a low density populated state. We should be looking at the safeguards from Day 1.

Rep. Keiser: Given your expertise on another energy issue, I support this. I can't imagine we will ever give approval. Hypothetically, what if it does. If it's on my land, I win. What about the neighbors? Should they have any opportunity to stop a project or receive a payment or anything else if it should ever happen?

Rep. Nelson: I think that's the issue. Someone is going to live next to this. This project was on state land. None of the individuals that will speak after me would have been potential benefactors of this project. To EERC credit, they did this from a transparent situation. Potel and EERC could have gone to a private landowner and gotten an easement and you might have seen this project go forward. Let's give EERC and Potel some credit for how they went about this. It's a local decision that would grant that approval.

Rep. Keiser: That's what we thought with wind.

Rep. Nelson: This won't be the last statement; this is a first step. This conversation isn't over. The conversation needs to continue.

Chairman Porter: we're talking a lot about thorium, the way this reads it would be up to each county and water resource district before any further study and any kind of work be done on those also. Is that the intent of this legislation?

Rep. Nelson: Everything I know about thorium I learned on the floor of the ND House. I'm not going to attempt to answer that.

Chairman Porter: we're giving up some of the state's power to the county. We're giving them veto power over things the legislature and state has held as their power. So we're giving power up. My question comes back to, why are we giving it to 2 entities. They're the elected board, they represent the entire county, why do we need the water district as one more place to get approval. They're aren't the elected body that does the laws.

Rep. Nelson: There was a suggestion that even neighboring counties should have a voice in this. It was unworkable to have multiple counties in this approval process. We thought the home county would be involved in the ultimate decision. The water district would have, well one of the questions was how does this affect well water and the aquifer that would lie beneath the bore hole. Water districts are not an elected position but they serve in an advisory role. That's under the purview of this committee to look at. The mindset was that advisory role the water districts would have outside of the boundaries and take in more area of concern.

Chairman Porter: It is limited to those within the county though the way Line 13 reads. It doesn't accomplish what you were saying about getting outside of the county borders. It's only within the county.

Rep. Nelson: I don't think that changes the intent of the bill. The primary issue is the county commission. That's who we elect to determine cost benefit ratios and public acceptance. Others may have a different opinion, if they do, I think it's important they point that out. That starts this process.

18:26

Charles Volk, Pierce County farmer: presented Attachment 1.

Chairman Porter: I don't have any problem with the county asking any experts for their opinion, but when it comes down to having someone have veto power over legislative branch of government, I think we want it to be elected people. Questions?

Rep. Lefor: In current statute it says no one can bring nuclear waste unless it has been granted by concurrent resolution passed by the legislative assembly. Did they get that authority?

Volk: No, not for this proposed project.

Rep. Lefor: So I'm trying to figure out here, the federal government is going to do what the federal government is going to do. I'm concerned even having a county approve or not approve this, will that stop the federal government? What tools do we need to put in place so this sticks?

Volk: I'm not entirely sure of all the tools that would be necessary. We look at some of the history. I'm not a nuclear expert. I have spent a lot of time learning about it now. They create eminent domain. They're saying and admitting that doesn't work. If you go to Department of Energy sites, they know that's now how they're going to successfully get a disposal site. When they say they want consent, I truly believe that what we're doing here is just an extension of what they're already saying they want to do. If they don't follow the same rules as what they're dictating, that's on them. We do everything everyday on the farm to make a calf live, and sometimes it's beyond your control.

Chairman Porter: Inside of this chapter it says, any radioactive waste material which has been brought into the state for that purpose. What about the radioactive material that already resides in the state?

Volk: I think Rep. Nelson clearly stated it. It was our concern about what was being brought in. ND currently does not have any reactors that are developing it. If we find a solution for safely storing it, then we should have the choice of doing that, as a state. It also should be the counties that have the authority if it's been proven. This was a science experiment to them with the worst material kicked down a hole. I can't say it any more clearly than that. They want to take these cans and throw them 3 miles down in the earth and forget about them. That's the way it was perceived to us. If that's the way we did things in ND, we would be failing as a state. I don't think that's the way we do things. Logically we would address those. If we generate it, we'll deal with it. They generate it somewhere else, I believe they should deal with it. Don't pawn it off on us.

Chairman Porter: I'm looking at the nuclear war heads in this state. Those could be disposed inside the state without talking to anybody.

Volk: That was a discussion. I don't have that answer either. I don't know what we would do in the decommissioning. I don't know what the protocol is. The concern was you got the Secretary of Energy saying this is what we're going to do with this hole.

Chairman Porter: it's your thought they could have drilled the hole, done the testing, everything up to the point of actually putting nuclear waste in that hole without coming to the legislative assembly. Then they would have had to come to the legislative assembly and we would have had to have a big public hearing just like this, and then make the decision in two different chambers, that that process isn't good enough, but that the county commission should have veto over this process.

Volk: I think it was in unison we should work together. Just on any issue that affects a local county. As the law is written it's for the states resolution. If the state passes a law and never talks to us, that's how we felt. There were three letters of endorsement from three different state departments. Those letters were for the scientific experiment as proposed. What do you think we felt like? We felt left out in the cold, we had no power of authority to say no we don't want this project here, or maybe we did if it was proven somewhere else. This was a first of it's unique kind, it's never been done in the US. We would have been the first one. Do you think if they proved it in Pierce County they wouldn't be willing to go 6 miles over into Benson County and try it there? That was our concern.

Rep. Lefor: Which 3 state agencies sent letters of endorsement for this?

32:18

Volk: I have them here. The ND Trust Lands, the ND Geology Survey, Dept. of Mineral Resources. I don't believe they were given adequate information about this. The project would still be approached as a science experiment. I don't believe they'd been given adequate information about the implications about the project.

33:26

Rebecca Leier: mother and grandmother, living 3 miles from a proposed scientific nuclear bore hole sight in Pierce County, presented Attachment #2.

42:02

Rep. Lefor: Do you or any of your people speaking of the bill here have copies of the letters from the agencies.

Leier: yes.

42:35

Aaron Birst: the ND Association of Counties supports this. If there's any type of local zoning that demands to have a lot of eyes on, it's high radioactive waste disposal. So we support having the counties involved. The water districts, that's not our concern. To answer, does this bill go far enough? There are some legal problems doing outright prohibitions that would affect interstate commerce. Most of the Supreme Court cases we've had to not allow outright bans. That's why the current law says it's not a ban but you have to come to the legislature first. That's why we wrote this to say it's not a ban but you have to come to the legislature first. It will be our job as counties to put together the criteria to actually implement this if the legislature would approve it.

Rep. Heinert: Do you foresee the Assn of Counties putting together some criteria for local county commissioners to follow and be advised on the parameters because I'm sure several do not have much of a background in this.

Birst: Correct. We anticipate if the legislature ever would allow out of state radioactive waste disposals, that we would play a role in helping the counties identify how to impose that. My understanding, I would assume the Legislature would want to be involved if they allow for out of state radioactive waste disposals to get into the weeds and say we're going to identify individual places where it would go. I would assume the legislature will leave that for the locals. Chairman Porter you are right the legislature would be giving up some authority because the county would have some ability, not necessarily to deny, but modify what the legislature wants to do.

Chairman Porter: Wouldn't it be more in line with what we do to have the counties in an advisory role and not a veto bill? That seems to be odd inside of our constitution and government.

Birst: I was very clear with the supporters of this bill. I was brought in early last summer to help work on this. I've been very clear if the legislature does make the determination to allow out of state radioactive material come in, if a county is thinking this is giving them absolute veto power, that's incorrect. What this would do is essentially say the county is involved and has to give the approval, but because of case law, you would have to say the county couldn't do an outright prohibition. Maybe there's a way to balance it and say one county could but the other county couldn't. In other words if the legislature is approving this, I would guess

local subdivisions would have to take a hard look at how they're going to write their rules because basically the legislature has spoken. Let me clarify too this is high grade weapons and enriched uranium through nuclear energy process. This is not anything to do with the oil industry. Regarding your question on nuclear weapons we have in Minot, that would be out of state nuclear material that was brought in here, so if the US government decided to put them in, I would make the argument that it was brought here, that would require legislative approval.

Chairman Porter: Have you given any thought to the advisory role rather the wording that makes this appear to a veto?

Birst: I have thought about that but it's almost impossible to draft the bill without knowing what the legislature would do when they approve it. So I think as of right now inserting in the county portion is the easiest way to go. Because the legislature clearly would have to be the first one to say we're going to allow this waste to come in. Then depending on what you decide in your resolutions, that's when the county would take over and figure out how to implement that if they could.

Chairman Porter: I'm not completely sold on it but I do. We employ through the up and coming department of environmental quality, the radiation scientist. So our information is going to come from scientists. I think this process is in reverse. That if the legislature has the hearing, it passes both chambers, the governor signs the bill, then to have a political subdivision have veto power over that is not in line with how the work is done here.

Birst: That's true but what I'm suggesting, both sides say yes we're going to allow this but we're going to put these restrictions on, then the county would work within those restrictions. If you simply say we'll allow it and stay silent, then it would be up to the county to implement, how are we going to work with the health department, how are we going to work with all the other players. I think there's still a partnership there, I don't think counties are going to just veto what the legislature just did.

Chairman Porter: I don't read it that way, I would appreciate it if you would work on this and brought language that showed us your pathway not this one.

Birst: yes, I'd be happy to work with you.

Rep. Keiser: We have to get the language right. The issue is should the counties have the authority to approve it or not. If they approve it, then it could come to the state and be approved. I don't know how to word it but

Birst: I think nuclear waste and disposal of out of state nuclear waste would clearly have to be a legislature decision first. I would not think a county should be the first one in line to determine. The legislature would have to say we will allow this in our state. Then we would come back and say, what counties should take this, maybe no counties should, it would be up to the legislature to narrow that. But we're suggesting the counties should be involved in that process. There might be some places where the legislature will say okay we're still going to put in restrictions but you can't be within 300 miles from a population center like Fargo. So that's what we need before we can fully implement the legislative strategy. Even though I

understand you could read the bill like that, I think as of right now the bill is okay because we're going to be back talking about this sooner or later. I think that would be the time we look for your guidance and you help us.

Rep. Keiser: I disagree. We have to get the language right. The attorney general uses a couple of standards. The first is what does it say. If it's in English and understandable with what it says, and what it says is what the chairman is saying I believe, therefore that's there ruling. So it has to be corrected even though we will come back and revisit this.

Rep. Lefor: When I look at this and the part in current statute, it says that no radioactive waste material can be brought into the state unless it has been granted by concurrent resolution passed by the legislative assembly. That's in current code. So as far as interpretation does that mean for each project that comes forth, that current law would not work?

Birst: The legislature in one swoop would say we are going to allow out of state nuclear waste coming into our state. If the legislature at that point also wants to put on other restrictions, that they say we're going to authorize one particular project they could certainly do that. My understanding is usually how this works, is most of the legislatures would just make the determination, we will allow it. There'd be no way you could come back every 2 years and look at every individual project that's coming up.

Rep. Lefor: I'd be okay with that. If I understand you correctly this language is far too broad. You're saying the legislature has already granted authority for waste material to come into ND by previous concurrent resolution?

Birst: No. Current law says no outside nuclear waste will be brought into ND. Unless the legislature reconvenes and figures out what would be the standards or whether they want it or not.

Rep. Lefor: Then I'm at a loss at how this could even happen.

Birst: It can't. Right now you cannot bring out of state radioactive material into ND for deposit. Here's where this comes in. The deep bore hole drilling was an experiment. You can say it was ultimately to take in radioactive waste, however, that cannot happen unless the legislature approves it. But the folks were concerned enough that the legislature should give the county and local government some ability to also be in that process before the out of state nuclear waste comes in.

Chairman Porter: we look forward to your new language. Further testimony? Opposition?
Hearing closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau –A Room, State Capitol

SB 2156
3/23/2017
29608

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to disposal of radioactive waste material

Minutes:

Attachment 1-2

Chairman Porter: Called the committee to order.

Aaron Birst, ND Association of Counties: We stood in support of the bill before, but we are also an amendment to try to ease some of the concerns about the county having the ability to veto. Counties do not have that ability because of a number of federal statutory issues and court cases, but I can see where you read the bill that way. Even the state probably has been over ruled on this and the federal government could overrule your decision too. Presented Attachment 1. We changed the statute into 3 subparts and made it clear the state is the only one that will approve the out of state radioactive waste material coming in to the state or the county will not have veto authority. However, the county does still maintain some zoning in terms of the size, scope and location. That language is specifically take from what we've done on concentrated feeding lot operations. That was a battle 4-5 sessions resulting in a number of ND Supreme Court cases. Ultimately was counties do have the ability to do some zoning but they can't prohibit concentrated feeding lot operations. This would be the same concept. If the state allows concentrated feed lots or out of state waste, the county will have to take it but can dictate certain terms of it. Regarding #2 is the only real substantive change, bringing in the deep bore hole drilling. It says the state has to approve the deep well drilling before they can commence those activities. As you remember what really got this started was when the Grand Forks EERC approved a project to do a very large hole in Pierce County with the intended purpose of looking at the geological formations. That was all the project was designed to do, you put 2 and 2 together based on some of the Dept. of Energy's resolutions, it was clear they were looking for a place to store radioactive material. There has been some movement on radio active area since the Trump administration took over. Yuka Mountain was the place they were supposed to store radioactive material since 1982 under the Regan administration. That essentially was killed under the Obama Administration in Nevada. However now the Trump administration as appropriated \$120 million to reopen that facility. This is not going away. Ultimately nuclear energy is probably a good source of energy for the US economy but you have to figure out where to put the waste. We're still going to

deal with this but I trust the legislature will deal with this and make sure it's done right. There is concern that our statute on the books, may have been preempted by federal law, but I'm willing to take a chance on that until we actually get a project. In addition to this project we'd have no problem if you put on a study resolution in the interim to look at this because this is a big deal and we'd love to partner with you. You will get more people showing up to your hearings on radioactive disposal than any other hearing you will ever do. We need to do this right.

Rep. Lefor: We have 3 agencies that signed off on this. I understand it's a test. My assumption is these agencies would have said, "wait now, because of code you're going to have to get a resolution from the legislature? What would be wrong not allowing them to do testing? Can you address having that verbiage in?

Birst: If you want to remove section 2, that would essentially allow testing without the legislature's approval. We'll leave that up to you. From the counties prospective, we're more concerned that #1 is addressed. I think there's good reasons the legislature should look at the deep well boring without just allowing it to occur. The legislature should be at the table for that.

Rep. Lefor: With your amendment, a person may not conduct any testing, do you believe that takes care of my concern about these agencies doing this?

Birst: No, I think you clearly have specific statutory language before you want to do those kind of exploration holes, you'd have to talk to the legislature first.

Vice Chairman Damschen: I live about 10 miles from a hog farm that brought up a real controversy. It pretty well reaffirms that the township zoning authority is pretty prevalent compared to counties. Where are they in this?

Birst: I don't know. Townships and I have not talked on this particular bill.

Vice Chairman Damschen: What would be the ramifications of them claiming authority if the situation came up where we exercise some of the authority of this law?

Birst: In terms of townships, I would say this law has vested some zoning authority within the county. For nuclear waste disposal, that has a much larger impact than just the township, so I think it should be at the county level. I'm not saying the townships wouldn't be consulted but really the buck should stop at the county for the main zoning and the legislative level for even allowing it to begin with.

Rep. Anderson: It says, "the county may regulate the size and scope and location." You could basically eliminate anything by that?

Birst: No, because of case law that pretty clear when Ramsey tried to use the size and scope regulations to prohibit the concentrating feeding lot operation next to Devils Lake. The Supreme Court said it acts as prohibition, and that's prohibited. To get at your questions could a county make a size scope location so difficult to comply with it would essentially stop the project. They could try but will lose that in court. This is a reasonable standard.

Rep. Anderson: Public safety would be the determining factor if they go along with size and location?

Birst: Yes because the legislature is involved in this, they would also create administrative guidelines. The intent was never to give the county veto authority but to say we should be at the table too.

Rep. Keiser: Subsection 2, why not add the language in 1, "a county zoning approval may not preclude the disposal" rather than disposal testing or exploration. Otherwise you could have a firm go out and start drilling.

Birst: We'd have no problem with that. I'm only here to testify that counties should have some say, not a veto authority. I think there's a distinction between drilling for test materials versus disposal.

Rep. Keiser: I'll make the analogy of sending out wedding announcement. Once you send them out you're a little more committed! Suddenly if the state gives approval to go do a bore hole, that suggests that the wedding invitation has already gone out, that this is a proper site, proper thing and we don't know about it. It wasn't the actual placement; the problem was they were testing without notifying them.

Birst: The counties will not try to prohibit it. This might be the worst public regulations rollout I've ever seen where you show up one day and say we're going to start drilling a huge hole in your county. The county commission was caught off guard.

13:27

Ed Murphy, State Geologist with the Geological Survey Department, Mineral Resources: We came to this a little late. We missed this bill on the Senate side. I don't have permission from the Industrial Commission to support or not support this bill. But I'd like to give some facts. Presented Attachment 2.

21:30

Rep. Lefor: The letters that were written from Mr. Helms, yourself and the land commission all state it would be good to find out about the minerals in the ground. How did this go from that type of testing, which is what's stated in the letters, to people in Pierce County getting rightfully upset and learning about radioactive waste in their newspaper?

Murphy: That's what happens when information gets out that way. People jump, they connect the dots right away. I myself connected some dots but they were further down the road. I had some concerns, but further down the road, and not for the exploration tests. The minute you raise nuclear waste in whatever format, people will get excited.

Rep. Lefor: At the time you drafted this letter were you aware this could lead to radioactive waste discussion?

Murphy: I wrote that letter and accompanied it with an email to John Harju at EERC saying that basically giving the heads up I had some concerns, but 10 years down the road. It had nothing to do with EERC, proposals from Dept. of Energy, there wasn't enough time. I think the request came out July 9 and proposals due in September. All kinds of things to be taken into consideration. All these things EERC had nothing to do with the DOE should have given more time.

Rep. Lefor: This radioactive waste process becomes far more restrictive. At the end of the day we have to find a way, do you believe if we put in no testing in this amendment, does that alleviate the concerns of individuals who learned about this project through the newspaper?

Murphy: I haven't had that much contact with the local people. Mr. Birst may be able to answer that.

Rep. Lefor: Do you believe the wording, "no testing" will eliminate that from happening again?

Murphy: That's how I read it. I question whether it's in the right section. Although our attorney didn't have the heartburn on it that I do.

Rep. Lefor: Where should it be?

Murphy: We need to go back and pull out nuclear waste and make it its own chapter in century code, or promulgate rules, that would help.

Rep. Lefor: I would strongly request to put that in administrative rules. I don't think it should happen in ND ever again.

Rep. Mitskog: The gist of this conversation has been subsurface storage. How about surface storage with dry casts? Do we have rules regarding that?

Murphy: No. This was set up for subsurface. I don't know of any programs pushing for surface storage.

Rep. Anderson: Part of the problem was the DOE was looking for nuclear storage. I don't think people would have gotten nearly upset.

Murphy: Our letter was for the exploration. Had the DOE agreed, we would have issued the permit and there would be a public hearing.

Rep. Anderson: I went to the meetings too. I think people in Rugby and Pierce County absolutely didn't trust the federal government than anything in the state. They said they'd overrule anything the state would try to stop and the nuclear material would be lowered down the bore hole. That's where a lot of their distrust came from.

Murphy: That couldn't have happened. Those dummy canisters would have been cemented into that hole. The 2nd hole there wouldn't even have been the opportunity to go back into that.

Rep. Keiser: You've provided important input. I understand you missed it on the Senate side. I'm not sure when you found out about it on the House side. This is a bill that's important to you. I don't understand your board operation obviously if there wasn't a way to get to the board and say we just found a hot bill we need to take a position on it. They needed to be at the table and say we need to help write this. You know the intent and we have to get this right. We need to get this right and fast. We're not getting any help from your agency in helping us do this right. It would have been better to have an amendment.

Murphy: Anything else we can do; I'd be happy to work with Mr. Birst. I realize the time is short. We're going to need to spend 2 years working on this. Big part is the concurrent language in this. It's not going to survive.

Rep. Keiser: It works for the people and that's who we all work for.

Rep. Heinert: Talking with the attorney for your office. I thought you said they didn't have the heartburn that you had over which section it was in. Could you expound on that?

Murphy: He says as long as it's in state law, it's state law. My concern was someone may find it had to be in the right spot. My concern is someone may not find it if they're going to a different part. The reason our person missed it that's tracking bills, it was in Chapter 23, which is waste, which is health department, and she didn't realize we had a role to play in that.

Chairman Porter: here's the marching orders. Get together with Mr. Birst, your attorney and get language so that we consider creating a new chapter specific to radioactive waste so we move everything in the interim to interim energy and transmission committee to look at those chapter, then specifically address subsections 1 and 2 process so they're in the right place that includes public hearings and input. Closed hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau –A Room, State Capitol

SB 2156
3/30/2017
29851

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to disposal of radioactive waste material

Minutes:

Attachment 1-2

Chairman Porter: Called the committee to order on SB 2156.

Ed Murphy, State Geologist: presented Attachment 1.

Chairman Porter: If we do the quick fix and study language, does that study language encompass everything that's necessary to have the interim look at the long-term fix?

Murphy: That was our intention. I think because of your desire the study would probably get picked up, we'll do this anyway because we need. We need to split these. Which means we'd be revisiting it in two years.

Rep. Keiser: In terms of the permitting process you say we could exclude that because it's basically a federal issue and challenge it at the federal level if action was taken. Does that limit us then in other rules and regulations which may be county specific or state specific, relative to specific siting, local ordinances, will that preclude all of those things?

Murphy: As an example, in 2008 we wrote rules for uranium extraction. I contacted the Nuclear Regulatory Commission which is the agency until you get to high level radioactive waste disposal then it's DOE. I contacted them and asked them to review our rules and they said no because they're worthless, this is federal. I said, "we're going to do it anyway; we feel the state should have some jurisdiction on this." We finally got them to go through and review those and had good comments which we incorporated in our rules. I should clarify, we have every right to permit exploration. If we make these changes we would permit the 1st hole, 2nd hole, and when it goes to the 3rd hole permitted as DOE. We probably need more discussions between attorneys, the health department and DOE. We could take the route we're going to permit this but I don't know how far we'd get.

Rep. Keiser: Let's say the feds grant the permit to do that. The local authority cannot have an ordinance related to zoning relative to location or to other considerations, is that what you're saying?

Murphy: That's the one part we discussed this week. Page 2 where it reads the county zoning approval may not preclude the disposal development getting approved by legislative assembly but may regulate the size, scope and location. I don't think that's possible but we left it in there. There's already enough problems with this chapter. You can make these amendments and it would be a band aid for two years and through the study try to fix all these problems.

Rep. Keiser: I'm assume you're proposing a definition of radioactive material?

Murphy: All I did was delete that from one part of the chapter. We need to change that definition?

Rep. Keiser: Why aren't we added or other commercial applications? The way it's written, it's saying I have approval for any other use then electrical power or weapons. It would open the door and they would have every right to dispose of it I assume. The only people who can't are electrical and military? We might want to say and other commercial applications or something.

Murphy: We'll look at that.

Chairman Porter: questions? Mr. Glatt if you can help us out.

Glatt: I think the intent of the definition is to deal with very high level. We cannot regulate that. We oversee low level.

Rep. Keiser: By this definition, you can't write rules outside of the law. You can expand anything you want but it's not legal. We need to say in our definition those items are included for consideration and you can regulate them in my opinion.

Glatt: That's why I think this needs more study. There's limitations we have as a state, but there are some opportunities we have to be clear that we don't miss those opportunities to provide our opinion or objections. It needs in depth study, some real thought. Nationally, there's a lot of spent nuclear fuel siting in temporary storage.

Chairman Porter: You think we should be working on a study?

Glatt: I believe that's so.

Rep. Keiser: I support the study but when it's apparent we can change something right now. The study can still happen and we can reverse it. Right now is an opening in law that says, if I can legally purchase some of that high grade stuff, bring it here for commercial use, and then have to dispose of it, you can't do much here based on your definition. I don't know of any commercial application. You have opened a window and one you wouldn't be able to close for 2 years without a special session.

Glatt: I think the risk of someone buying spent nuclear waste right now is slim to none. As far as recycling I think that's in the future. Making sure it doesn't get in anyone's hands. I'd have to look at the language and make sure it doesn't come conflict.

Chairman Porter: Inside that area is there a different definition of radioactive waste material is? Are we looking at 2 different categories?

Glatt: Be careful on that definition. Where we have opportunities to have it brought it into the state.

Chairman Porter: Do you think by 2:30 you and Murphy can come up with the right language?

Glatt: I think we can work on that.

Chairman Porter: Make sure we have the right definition language, the study is completed enough that we're opening up, moving those chapters, and cleaning everything up so the intent isn't brought out of the management study. In the end we want these chapters created and cleaned up too. Questions? At this time, we'll break until after the House floor.

20:37

Chairman Porter: called the hearing back to order at 3:00 PM.

Ed Murphy: presented Attachment 2

Chairman Porter: Questions? We have option 1, kind of kicking the can down the road and waiting for the study; option 2 puts us in line with current federal regulations and still addresses the county zoning. Each carry the proposed study language with them.

Rep. Anderson: Is there an advantage being in sync with the federal regulations?

Chairman Porter: I think since they completely have primacy and compass on everything, there isn't any reason to have a fight when we know good and well they have it. To me it makes sense.

Rep. Anderson: I would move Option 2 for the amendment on SB2156 to include study language also.

Rep. Marschall: second

Chairman Porter: we have a motion from Rep. Anderson, second from Rep. Marschall to move the Option 2 language with the study included. Discussion? Voice vote. Motion carried.

Vice Chairman Damschen: I'll move a Do Pass as Amended

Rep. Seibel: second

Chairman Porter: We have a motion from Vice Chairman Damschen for a Do Pass as Amended, second from Rep. Seibel. Discussion?

Roll call vote 12 yes 0 no 2 absent. Rep. Anderson is carrier. Meeting adjourned.

March 31, 2017

3/31/17 DIO
1083

PROPOSED AMENDMENTS TO SENATE BILL NO. 2156

Page 1, line 1, replace "section" with "sections 23-20.2-02, 23-20.2-04, and"

Page 1, line 2, after "to" insert "definitions, permitting required for underground storage and retrieval or waste disposal facilities, and the"

Page 1, line 2, after "material" insert "; and to provide for a legislative management study"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "High-level radioactive waste material" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, and other highly radioactive material, which contains fission products in sufficient concentrations to require permanent isolation under federal law, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste.
3. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
- ~~3.4.~~ "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-29.
- ~~4.5.~~ "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.
- ~~5.6.~~ "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in section 23-29-03 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.

SECTION 2. AMENDMENT. Section 23-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-04. Permit required - Denial of permit - Review.

3/31/17 DF

20f3

It is unlawful to commence any operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.
5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.
6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with the provisions of this chapter.
7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.
8. Any other information required by the commission.

The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections 28-32-42 through 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law."

Page 1, line 6, after "of" insert "high-level"

Page 1, line 6, after "**Legislative**" insert "and local zoning"

Page 1, line 6, remove "- "

Page 1, line 7, remove "County and water resource district approval required"

Page 1, line 9, after "any" insert "high-level"

Page 1, line 11, remove "and prior"

Page 1, remove line 12

Page 1, line 13, remove "within the county in which the radioactive waste is proposed to be deposited"

Page 1, remove lines 14 through 17

Page 1, line 18, remove "3."

Page 1, line 18, remove "For purposes of this section, "radioactive""

Page 1, line 18, overstrike "waste material"

Page 1, line 18, remove the underscored quotation

Page 1, line 18, overstrike "means waste"

Page 1, overstrike lines 19 through 21 and insert immediately thereafter "A county's zoning approval may not preclude the disposal development if approved by the legislative assembly, but may regulate the size, scope, and location."

2. A person may not conduct any testing or exploration for the development of a storage or disposal facility for high-level radioactive waste material to be brought into the state unless prior approval has been granted by concurrent resolution passed by the legislative assembly.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying, in consultation with the geological division of the department of mineral resources and the environmental health section of the state department of health, whether state and local level regulation of high-level radioactive waste disposal is consistent with applicable federal regulations; how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits; the mechanisms for calling a special session to approve the depositing of high-level radioactive waste material in the state and the notice of disapproval requirements under federal law; special laws, local laws, and existing code regarding the potential existence of a legislative veto over executive branch authority to determine the size, scope, and location of high-level radioactive waste material deposits in the state and any existing conflicts with the commerce clause; and the feasibility and desirability of developing new statutes and regulations for subsurface disposal of waste and the storage and retrieval of material. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

Date: 3-30-17Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2156

House Energy & Natural Resources Committee☐ SubcommitteeAmendment LC# or
Description:(see below)

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 Anderson

Seconded By

Rep Marshall

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marshall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

Total (Yes) _____ No _____

Absent _____

Floor
Assignment _____

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

Option 2 includes study language
Motion carries

Date: 3-30-17Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2156**

House Energy & Natural Resources Committee☐ SubcommitteeAmendment LC# or
Description:17.0107, 02001

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. Damschen Seconded By Rep Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	AB	
Rep. Bosch	✓		Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Seibel	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Mock	AB	

Total (Yes) 12 No 0Absent 2Floor
Assignment Rep. Anderson

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

REPORT OF STANDING COMMITTEE

SB 2156: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2156 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections 23-20.2-02, 23-20.2-04, and"

Page 1, line 2, after "to" insert "definitions, permitting required for underground storage and retrieval or waste disposal facilities, and the"

Page 1, line 2, after "material" insert "; and to provide for a legislative management study"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "High-level radioactive waste material" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, and other highly radioactive material, which contains fission products in sufficient concentrations to require permanent isolation under federal law, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste.
3. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
- ~~3-4.~~ "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-29.
- ~~4-5.~~ "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.
- ~~5-6.~~ "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in section 23-29-03 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.

SECTION 2. AMENDMENT. Section 23-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-04. Permit required - Denial of permit - Review.

It is unlawful to commence any operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and

payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.
5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.
6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with the provisions of this chapter.
7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.
8. Any other information required by the commission.

The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections 28-32-42 through 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law."

Page 1, line 6, after "of" insert "high-level"

Page 1, line 6, after "**Legislative**" insert "and local zoning"

Page 1, line 6, remove "- "

Page 1, line 7, remove "**County and water resource district approval required**"

Page 1, line 9, after "any" insert "high-level"

Page 1, line 11, remove "and prior"

Page 1, remove line 12

Page 1, line 13, remove "within the county in which the radioactive waste is proposed to be deposited"

Page 1, remove lines 14 through 17

Page 1, line 18, remove "3."

Page 1, line 18, remove "For purposes of this section, "radioactive""

Page 1, line 18, overstrike "waste material"

Page 1, line 18, remove the underscored quotation

Page 1, line 18, overstrike "means waste"

Page 1, overstrike lines 19 through 21 and insert immediately thereafter "A county's zoning approval may not preclude the disposal development if approved by the legislative assembly, but may regulate the size, scope, and location.

2. A person may not conduct any testing or exploration for the development of a storage or disposal facility for high-level radioactive waste material to be brought into the state unless prior approval has been granted by concurrent resolution passed by the legislative assembly.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying, in consultation with the geological division of the department of mineral resources and the environmental health section of the state department of health, whether state and local level regulation of high-level radioactive waste disposal is consistent with applicable federal regulations; how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits; the mechanisms for calling a special session to approve the depositing of high-level radioactive waste material in the state and the notice of disapproval requirements under federal law; special laws, local laws, and existing code regarding the potential existence of a legislative veto over executive branch authority to determine the size, scope, and location of high-level radioactive waste material deposits in the state and any existing conflicts with the commerce clause; and the feasibility and desirability of developing new statutes and regulations for subsurface disposal of waste and the storage and retrieval of material. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

2017 CONFERENCE COMMITTEE

SB 2156

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2156
4/10/2017
Job # 30021

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to disposal of radioactive waste material

Minutes:

No attachments

Sen. Judy Lee opened the Conference committee on SB 2156. Sen. Judy Lee, Chairman, Sen. Burckhard, Sen. H. Anderson, Rep. D. Anderson, Rep. Damschen, Rep. Bosch were present.

Chairman Judy Lee asked Rep. Anderson to explain the House's amendments.

Rep. Anderson: On page 1, section 1, especially in paragraph 2, we had the State Department of Mineral Resources and the Department of Environmental Resources to work to meet the language in Section 2 the same as what it is on the federal level.

Sen. J. Lee: It looks like pg. 2 line 10?

Rep. Anderson: we added the testing and exploration in that section. That is where what happened in Rugby or Pierce County. That is what scared them off. They saw that testing and exploration and they were concerned that would eventually end up being a storage facility in the bottom of a hole for nuclear material. So we added that language in there that people would be notified if there was any such attempt to do that. We thought that was good language to put in there. Page 3, Section 3, the county zonings approval may not preclude that disposal development if approved by the Legislative Assembly but may regulate the size, scope and location. The reason that was put in there is because the state still oversees the counties and the townships. We didn't want the county having control over what the states can do.

Sen. Judy Lee: So you've modified the radioactive waste up in the title of that section 3 to include high level and to add "and local zoning" right?

Rep. Anderson: Yes. Most of that high level nuclear waste is from the creation of electrical energy or nuclear weapon development so that's where that came from. Then on pg. 3, under section 3, paragraph 2, that in order for that to happen in our state where we have a storage

facility for high level nuclear waste, it would have to be a resolution passed by the Legislative Assembly. Then the next part on pg. 4, we introduced a study and why we did that, is there is a lot of nuclear waste in the country, and our subsurface here with that crystalline rock has probably got potential to store nuclear waste material. So what we did with this amendment we want a study to make sure that we have all of our ducks in a row and know what we're doing if that ever comes around again. So that was the reason for that study. I think some of our wording in our Century Code needs to be updated to and it will probably take some time to consider doing that.

Mr. Ed Murphy: State Geologist, with the Department of Mineral Resources and the Industrial Commission. I apologize to the senators here because as the House members know, I missed this when it was on the Senate side. I could give you a long list of why the amendments are important. One of them being that the existing chapter as we found out. In 1979 the state geologist Lee Gerhardt at that time, introduced a bill in the session and it became Century Code Chapter 23:20.2. Then in 1986 there was changes in the state constitution and Legislative Council looked at all of the statutes and decided there was problems with this and that it conflicted with what they call local law, or special law. So their solution was to add this concurrent resolution into language, and the House members might remember going back through the minutes, in 1987 session, we found that shortly after the bill was printed, the attorney's decided they made a mistake. They had possibly gotten around a local law or special law, but now created a legislative veto between the executive branch and the legislative branch. So they in testimony before a House committee they said they said they could pull that language out, or maybe nobody would ever notice. Well we did notice for 30 years but that is just one of these things that needs to get fixed. That is why if you look at the language for the proposed Legislative Management study we put everything in there. There is a lot of issues that need to be resolved and what came up with the language that when the bill came over from the Senate is that Chairman Porter brought up that he felt that it created a Legislative veto between the Legislature and the local sub-divisions. So those are things we thought we got to make changes now that we've been alerted to it, and I think what you will see next session is something totally different. One of the things that we're going to do with the Century Code chapter as it stands right now covers three different and totally different things. Subsurface nuclear waste disposal, subsurface disposal of other types of waste, and then the storage and retrieval of items such a compressed air. In fact, in 1979, one of the big pushes for this, was for subsurface storage and retrieval of natural gas which is now covered under 38-08 the oil and gas divisions. So what I've already done as I presented in the House, I've already done all that. I pulled these things out and created new chapters in the Century Code. So we are a long way down the road, working with Dave Glatt, and our attorney Hope Hogan for our Department of Environmental Resources and she's been working with Dave's attorney and so. So if this does not get picked up, and I realize it is a small portion of these studies actually do, were still going to go ahead and do this. We will come back either us as an agency, or through an agency bill or through Legislative Council. I think nuclear waste of all things really deserves its own chapter. How the process works on the federal side, the Department of Energy chooses a site, the Secretary of Energy notifies the President, the President then if he agrees then notifies Congress, and the minute he does that the state whichever state is chosen has 60 days to respond. That's why we've got language in here about making sure that we can since in all likelihood this would occur, when the North Dakota Legislature is not in session. We need to be able to have the system in place for a special session to be called as we discussed on the House side, if Legislative

Management calls it and you've already used your 80 days. There is no way to do that. So it would need to be the Governor. So if the state does not want the site, then you've got 60 days to respond to Congress with reasons then Congress has 90 days to act on it. They've got all kinds of safeguards in this nuclear waste policy act that came out in 1982 that was amended in 2004 to assure that this would get through Congress. They can only be in conference for 60 days, then it goes out on the floor; in the Senate they can only debate for 10 hours and in the House side only 2 hours, so the way it is set up it would. So if Congress both the House and the Senate vote to approve this site, they in effect then override the state's denial and it becomes a nuclear waste disposal site. So, it is important that if the state wants the opportunity to say no to something, they want to make sure that number one that it fits within the state's constitution because I think the US attorney that would be the first thing they would point to, and say we don't recognize this because you're not even following your own constitution. In this document in one place it talks about that the Governor and the Legislature has to agree to say no. But in three other places it says the Governor or the Legislative body.

Sen. Burckhard: Do you see the next session to be totally different? What did you mean by that?

Mr. Murphy: What I meant is that I think that Century Code Chapter 23:20.2 is going to look very different than it does.

Sen. J. Lee: After the study is what you're saying, after all that work.

Mr. Murphy: We need to get it down just to nuclear waste disposal. We need to have the process that would be followed by the state. Again, the attorney's need to look and go back to the state Constitution and see what fits. But it has to be a process where the Legislature is called into session.

Sen. Anderson: It seems to me like this bill in its current form now is probably the best were going to be able to do for the time being. So **I'll move that the Senate accede to the House amendments.**

2nd: Sen. Burckhard

**Role call vote: Sen. Lee Y, Sen. Burckhard Y, Sen. Anderson Y
Rep. Anderson Y, Rep. Damschen Y, Rep. Bosch Y**

Sen. J. Lee: The motion passes 6-0-0.

Carrier Senate: Sen. Judy Lee

House: Rep. D. Anderson

Date: 4/10/2017

Roll Call Vote: 1

Vote #: 1

**2017 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. "Enter Bill/Resolution No." as (re) engrossed

Senate "Enter committee name" Committee

- Action Taken** ☒ **SENATE accede to House Amendments**
☐ **SENATE accede to House Amendments and further amend**
☐ **HOUSE recede from House amendments**
☐ **HOUSE recede from House amendments and amend as follows**

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. H. Anderson Seconded by: Sen. Burckhard

Senators	4/10			Yes	No		Representatives	4/10			Yes	No
Sen. Judy Lee, Chairman	x			x			Rep. D. Anderson	x			x	
Sen. Burckhard	x			x			Rep. Damschen	x			x	
Sen. Anderson	x			x			Rep. Bosch	x			x	
Total Senate Vote				3	0		Total Rep. Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. Judy Lee House Carrier Rep. D. Anderson

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2156: Your conference committee (Sens. J. Lee, Burckhard, Anderson and Reps. D. Anderson, Damschen, Bosch) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ pages 1112-1114 and place SB 2156 on the Seventh order.

SB 2156 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

SB 2156

Good Morning everyone. My name is Charles Volk. I am a farmer from Pierce County and I appreciate the opportunity to visit with you today about amending our existing century code pertaining to accepting out of State Nuclear Waste.

When I first learned about a proposed project of drilling a proto-type bore hole 3 miles into the earth to determine the viability of storing nuclear waste, I was shocked. It's one of those moments in time that is seared into my memory. We were visiting after a round table discussion that a farm lending organization had sponsored. A farm wife from north of Rugby asked me what I thought about the recent news. When she pulled the article up on her phone I couldn't believe it. The idea of such a project proposed here in Pierce County was so far from imagination that it was really hard to believe. Not until I learned that the sight was within two miles of my family's farm did it really hit me.

Weeks prior to the article announcing the proposed project in the Pierce County Tribune, a press release from the Department of Energy announced to the world that they had selected a sight by Rugby ND for a deep borehole project. On January 7th, The Secretary of Energy was sighted in the Tri-City Harold in Hanford Washington as saying that the (high level nuclear waste capsules currently being stored in Hanford) "could be very-well suited perhaps for much earlier disposal through a borehole approach". These capsules were originally planned to be stored in the mined multi-Billion dollar repository now stalled at Yucca Mountain Nevada. When the Secretary of Energy announces that the worst of the worst nuclear waste could be deposited in a deep bore hole, how are you to believe that this is just a minor science experiment like we were being told? If it was just a science experiment, wouldn't the lowest level waste be the first to be considered before jumping to the worst?

Months prior to the notification of the community, supporters of the project visited the site and determined the suitability of the location. Terms and conditions for the use of the State School Land that was being considered were established. A short memorandum to the State School Land Board in late September of 2015 outlined the purpose of the Deep Borehole Field Test, —**"to conduct a deep borehole field test to identify alternatives and conduct scientific and technological development to enable storage, transportation, and disposal of used nuclear fuel and wastes generated by existing and future nuclear fuel cycles"**. The location, terms and conditions, and the purpose of the test had been outlined, and yet the local community had still not been informed. Why? When the words disposal of used nuclear fuel and wastes were clearly spelled out, wouldn't it have been prudent to have at least brought this to the attention of local government? If this project was considered to be so safe and provide important scientific discoveries then why wasn't more done to educate the public? Why did the people of Rugby hear about this second hand? Was it because the problem of nuclear waste disposal has grown so enormous that the urgency to find a suitable alternative to Yucca Mountain has twisted the DOE to think that they could by pass local authority? If nuclear waste disposal was that important to national security, then Nevada would have been open for business a long time ago.

In a rural community such as ours, the farm economy is on the tip of your tongue every day. That is what we should have been worried about. But when the people of Pierce County learned of the underling potential of the bore hole project, they became alarmed. My concern was that only those in the immediate area were questioning the implications of the project. But when the county commissioners unanimously set forth a moratorium on deep bore hole drilling, a shock wave rolled all the way back to Washington. And when over 2000 signatures were gathered in less than two weeks to support the commissioner's decision, it was finally being realized that this project did not have the

support of the community at all. When the county commissioners hosted a public input meeting, it became painfully obvious that the DOE could not promise the sight wouldn't be considered as a potential sight for future nuclear waste disposition. Those in attendance were overwhelmingly opposed to the consideration of the project. When the commissioners met again and decided to send a letter of "thanks but no thanks", the people of our community felt a little more at ease. But the question still remained, have we done everything we could to prevent this type of top down proposal from happening again. In the early 90's an intermediate above ground nuclear waste disposal storage facility was proposed by the DOE in Grant County. That is why the existing century code was written regarding out of state waste. What the law didn't do is give the county, the people most directly affected by such a proposed project, a seat at the table to determine if they wanted be a part of such an endeavor. The current century code does not address the concerns that experimentation to determine the viability of a nuclear waste disposal facility should require consent as well.

The DOE has tried to promote a consent based sighting plan, a plan that would require community approval. However, they neglected to design nor implement that plan for the proposed proto-type hole that was designated for Pierce County. In fact, the DOE hosted consent based siting meetings to establish what that plan would look like after the project was rejected by Pierce County. These planning meetings were held throughout the country but the closet one to Rugby was being held in Minneapolis. Should a test that had the potential of establishing the suitability of a site in ND be allowed to occur without the consent of the State or the community being effected? I say no.

There were 5 sights in ND that had been considered for this project including one each in Stutsman and Kidder County. The crystalline rock that the DOE was looking to experiment with can be found at a desirable depth throughout the entire eastern half of the state of North Dakota. After having gone through this ordeal, I wouldn't want to see any other community faced with such a challenge without the ability to say if they do or do not support it. That is why I think it is so important that we enhance our existing laws by not only granting the state the authority but also the county affected, the authority to determine their own participation. The way the project was proposed in Pierce County was backwards from what it should have been. Those not immediately affected by the projects underlying potential should really not be the only ones to determine the outcome.

The problem of nuclear waste and what to do with it is not going away anytime soon. After the Deep Bore Hole Field Test was rejected for the second time by a small community in Redfield SD, the DOE went back to the drawing board and has now enlisted 4 companies to promote the project again. They plan to award one of the entities the contract provided they have community support. They have finally realized it is a tough sell and until they get local support, the test will not be completed. This amendment is only an extension of the lessons learned.

I have been asked numerous times if I really thought that letting them drill a hole would eventually lead to depositing of Nuclear waste. The hole was not just a geology experiment. The second hole to be drilled was a prototype hole. It started out 42" in diameter at the top and staged down to a final diameter of 18" at the bottom. That was the diameter needed to accommodate the canisters that the Secretary of Energy had already announced would be considered for disposition. So who was I supposed to listen to? An 80 million project was proposed and the DOE was writing the check. They are going to want something for their money. The 2010 Blue Ribbon commission established 8 directives for the strategy of the management and disposal of used nuclear waste. The DOE's objective was to follow

SB2156

1-20-17

Attachment

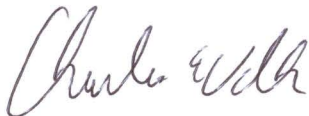
1.2

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these directives. Many of the directives are already being pursued. Directive 4 and 5 are about geological disposal facilities and one or more consolidated storage facilities. So yes, I do believe that once they slid into a state and convinced them to accept such an endeavor, that it would only be a matter of time before they came back. And the next time they weren't going to bother knocking.

As a farmer, we continually embrace technology and advancement to provide this country with the safest, most affordable and most abundant food supply this world knows. As an engineer, I worked in industry here in ND and was part of that continual cycle of improvement. The experiment that was proposed in Pierce County without the consideration of the impact to the community was ill-conceived. It was an experiment to see if the DOE could sell a state on support of a project that clearly had other potential outcomes. No, the deep bore hole project that was proposed in Pierce County last January was not just a science experiment, it was also a political science experiment. Once you ring that bell and designate a site as the first of its kind, than it is only a matter of time before they come back to ND with the real stuff. That is why we need to improve our existing century code. I appreciate your consideration and strongly encourage you to recommend a do pass for this amendment.

Sincerely,



Charles E. Volk

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Attachment #2

Mr. Chairman and members of the committee, my name is Brenda Heilman from Rugby.

I'm in favor of this bill. Let me tell you why.

Imagine this. You're flipping through Facebook one day, enjoying the pictures and posts from your friends. Then you come across this headline: Scientists aim to probe oldest rock near Rugby. Wait, what? That does sounds interesting. But while reading the article, you learn this is happening less than 10 miles from your house. And that, according to John Harju, associate research director of UND's EERC: "This might have suitability for (nuclear waste) disposal, ... I don't think that's a foregone conclusion by any means,".

Suddenly, it's not so interesting and you start to wonder how on earth this can happen without the knowledge of our county government. So, you start digging. And you find friends who dig very well. And it turns out State Government has been involved in this for several months already, not bothering to even mention it to local government.

The ND Geological Survey's letter of support is dated August 12, 2015. The ND Dept of Mineral Resources' letter of support is dated August 14, 2016. An onsite tour occurred on August 24, 2015. The ND Dept of Trust Lands' letter of support is dated September 4, 2015. The list goes on. An article in the Pierce County Tribune dated January 15, 2016 brought the news home to Pierce County residents.

I'm sure you've seen the news coverage of the roller coaster ride we took last spring. A lot of sleep was lost and a lot of worries were voiced.

What if? What if it had happened in your backyard in Minot? Or Turtle Lake? Or Wyndmere or Stanley or Bismarck or West Fargo? Is this really how we model trust and transparency in North Dakota? I say it's not. We're better than this. You have the power to change the story. You have the power to encourage honesty and transparency. Let's do the right thing here and not let this happen to your county or any other county in the great state of North Dakota.

Brenda Heilman
1/20/17

SB 2156

My name is Rebecca Leier, I am a mother, and grandmother living on a 3 generation ranch, in Southern Peirce county. In 2015, a sight that was less than three miles from our home, was proposed for a "Scientific" bore hole. The purpose of which was to determine the suitability of the ensuing hole as a long term storage site for nuclear waste.

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Before returning to North Dakota to raise our family, my husband and I lived in Las Vegas, Nevada through the mid 1990's. This was a time of intense public debate over the proposed Yucca Mt nuclear repository. I have seen first hand the turmoil that can last for decades, when a community is forced to accept nuclear scientific development for the purpose of storage of waste from other communities. There were many similarities to those debates in Nevada and the debates that I witnessed in 2016 over the proposed nuclear bore hole project for Peirce County, ND. In the '90s, in Nevada, we were told the Yuca Mt site would be a great economic asset to the lagging Clark County economy. We were assured that scientific studies would be concise, expertly implemented and would have to prove the safety of the proposed Yucca Mt site before any nuclear waste would be stored at the location. We were told that communities, through which nuclear waste would travel, in route to Yucca Mt, would be safe with no concerns for residents safety. We were also assured that outlining communities, in a 90 mile radius, would have no health or safety concerns from the material that would be stored at the site. Informational meetings I attended during that time continuously reassured the public that the scientific research on Yuca Mt, once completed, had confirmed the security of that location as safe for nuclear waste disposal. There was immense public push back and division in Nevada over the environmental concerns, vs the economic benefits to down right fear for safety, even distrust of science. In town meetings and news reports we were told a repository at Yucca Mt, would be safe for 10,000 years, the science, they told us, had been completed and proven.

That science has now been proven to be flawed and the Yucca Mt site has been closed. It took 20 + years for the people of Nevada to get that project stopped. Because, once the scientific studies were completed, that nuclear waste train was almost impossible to derail. There existed then, and still exists a dire need to store weapons grade and power plant nuclear waste in our country. The need for storage has not gone away in the 20 years since we left Nevada. How ironic that in 2015 it came to our door step here in North Dakota. The Department of Energy is frantic in its pursuit of storage because the need to store nuclear waste has only grown more urgent since the 2010-11 decision to close the Yucca Mt Nuclear waste repository. Permanent Choices for storage are nonexistent at this time. Temporary storage is contained in 77 sites around the US- and the nuclear waste temporary stock piles are growing.

The \$80 million EERC/Battelle bore hole project that was presented to us in Peirce county, in 2015, was presented as a Scientific study that would put idle drilling crews to work, boost our economy during the 5 years of its active construction and beyond. It was presented as our chance to increase the knowledge of what was in the bed rock below our county, all for the greater good. Given the data on the ever increasing stock piles of US nuclear waste, it was common-sense on the part of Peirce county residents to expect that if the science on any proposed bore hole were to prove that the hole was advantageous for the disposal of nuclear waste, then nuclear waste would be disposed of in that hole.... Especially if it had already been "proven" after an expensive and lengthy 5 year of study, to be safe.

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The companies and men who had been awarded the EERC/Battelle contract to complete this 5 year study in Peirce County, could honestly say that "there wouldn't be any nuclear waste involved in the site during their contracted 5 years". Peirce county residents knew that these contractors had no responsibility to our community, or any other community in North Dakota, after that period of time. Our communities of farmers and ranchers in rural North Dakota would continue to work and live on the prairie. The scientists and drilling crews could prove the viability of the boar hole and just move on, then the Department of Energy would move in.

A scientific boar hole is very likely a case of "If you build it, it will come." The "it" being nuclear waste deposited without consent of the community that first consented to the "Scientific" boar hole.

ND has been looked at by the Federal government for decades as a possible Nuclear Waste repository. This is a fact that is easy to verify with a simple internet search. My firm belief in this comes first hand.

My Dad was a Nuclear engineer and spent his career as a Nuclear Health Physics Specialist working at the Nevada Test Site in the Las Vegas, Nevada area and subsequently subcontracting for various nuclear power and atomic waste plants including 3-mile Island, PA and Rocky Flats, Co ; finishing his career as a manager for UMTRA (United Mill Tailings Remedial Action) in Albuquerque, NM and Grand Junction, CO. He passed away in 2014, still telling me that North Dakota continued to be on the short list for nuclear waste disposal. This was something he had been telling me since my husband and I decided to leave the turmoil over Yucca Mt in Nevada and move back to North Dakota in 1996.

I don't believe this issue was concluded in Southern Peirce county even though we were able to stop the momentum of EERC/Battelle in our community . It is probable that time will pass and the research companies and contractors that peruse these lucrative government contracts will begin again to move around our state and propose other Nuclear bore hole disposal sites. The only way to avoid this is to put strong legislative road blocks in front of them. I have been and continue to be an advocate for a community's right to reject any enterprise, that the majority of that community finds hazardous to their well being. In the case of nuclear waste, that hazard extends to generations still to come. Our response right now is important for those future generations. So today, I respectfully ask for your support of Senate bill 2156.

Hello, my name is Dallas Hager, a pierce county farmer and degreed Ag & Biosystems Engineer. My family migrated to McHenry county ND in 1903. We have lived in Pierce and McHenry county ever since. My family like many of yours has been deeply rooted in the great state of North Dakota all of our lives, dating back to our ancestors. We pride ourselves on hard work, dedication, and family living. These virtues we intend to pass along for generations to come. We also pride ourselves as being a state that provides not only for ourselves but much of the United States as well as foreign nations.

A few well known facts about our state include:

- North Dakota leads the nation in flax (96%), canola (90%), durum (68%), pintos (65%), and edible beans (64%).
- North Dakota production agriculture generates over \$5 billion of cash sales each year.
- Production agriculture is the largest sector of North Dakota's economy, making up to 25% of the economic base.
- 39.4 million acres—nearly 90% of North Dakota's land area—is in farms and ranches
- ND generates over 724 trillion BTU's of energy, consuming just over 400 trillion BTU's

In January of 2016 we found out that Pierce county was fortunate enough to be selected as the "Science Project" for deep borehole disposal. Fortunate we were not, the DOE and Batelle selectively picked North Dakota and Pierce county for this so called science experiment. As neighbors, friends, and adversaries, we began to question....what is going on and how is it that agreements have been put in place, tracts of land rented, and drilling scheduled to begin in September of the same year; surely this had been in the news and we missed it, however it was not in the news and we as a community had a fight on our hands.

Meanwhile, the Department of Energy (DOE) in recent years has directed money to so-called "deep boreholes" as a less-objectionable and cheaper way to deal with some of the waste. (Click here to read "Deep Sleep," a Science feature story on the initiative.) Advocates said the approach could entomb waste in stable rock deep in Earth, far from underwater aquifers (see graphic, below). Fuel rods—the vast majority of high-level waste—have been ruled out as too big to easily fit in these boreholes. But Moniz has said it could be ideal for some kinds of waste, particularly 1936 slender, half-meter-long tubes of highly radioactive cesium-137 and strontium-90. Those are currently stored in a pool of water at a federal nuclear facility in eastern Washington state. (By Warren Cornwall Sciencemag.org 2016)

But there are many unanswered questions about the borehole strategy. Scientists need to figure out how practical and how expensive it will be to drill a 43-centimeter-wide hole that deep. They also want to test ways to ensure the surrounding rock at the bottom of the hole is solid enough, and that any water there can't travel up toward the surface. DOE hired Battelle, which manages a number of the department's research labs, to lead the pilot project to answer such questions. (By Warren Cornwall Sciencemag.org 2016)

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Battelle officials say they picked the North Dakota site—8 hectares of state-owned land approximately 25 kilometers south of the county seat of Rugby—because it was far from any active earthquake zones, had the kind of solid crystalline “basement” rock the government wanted, and wasn’t near oil and gas drilling. They teamed up with the University of North Dakota’s (UND’s) Energy and Environmental Research Center (EERC) in Grand Forks. (By Warren Cornwall Sciencemag.org 2016)

I can’t tell you how many times we were told by the EERC, Batelle, and DOE that this was simply a science project to determine if a straight hole could be drilled 16,000+ feet deep. The EERC was excited to about the possibility of what they may learn about our states geological substrata. The only group more interested than the EERC was the DOE, but not because they wanted to know about drilling straight holes. The DOE has one task at hand and that is to quickly deal with our nation’s nuclear waste.

A few not so well known facts about Hanford Washington, the site currently housing a great deal of our nations nuclear waste, most of which is the most toxic in America.

- 20 million pieces of uranium metal fuel for nine nuclear reactors
- Processed 110,000 tons of fuel from the reactors
- 450 billion gallons of liquids to soil disposal sites
- 53 million gallons of radioactive waste to 177 large underground tanks
- 400 % Spike in Rare Birth Defects Near Leaking Hanford Nuclear Site (nsnbc international April 24, 2014)
- Anencephaly birth defects near Hanford nuclear site skyrocket 3,000% (2500% above the nations average) (Natural News February 04, 2016 by: Daniel Barker)

In one of the worst incidents, which occurred in 1949, 8,000 curies of iodine-131 were released into the Columbia River. To put that into perspective, the Three Mile Island meltdown only released 15-24 curies of iodine-131 were released into the environment. Over the years, the leaky tanks at Hanford have released more than a million gallons of waste, contaminating 200 square miles of groundwater which is slowly migrating into the Columbia River.

Ladies and gentlemen, North Dakota is doing its part for our nation and I see no reason we should become the dump ground for nuclear waste. I fully support advanced technologies such as nuclear power generation, however our responsibility must also include the after effects of such advancements. I believe it is our responsibility in North Dakota to deal with nuclear generated waste within our borders and I support a “No Net Gain” approach. I offer you this testimony not as a scare tactic but rather as a means to an end. It is evident that our country has a nuclear waste problem, but let’s not give away the farm by trading one mistake for another.

Dallas J. Hager

Dallas Hager

20 Jan 2017

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Volk

Good Morning everyone. My name is Charles Volk. I am a farmer from Pierce County and I appreciate the opportunity to visit with you today about amending our existing century code pertaining to storage out of State Nuclear Waste.

When I first learned about a proposed project of drilling a proto-type bore hole 3 miles into the earth to determine the viability of storing nuclear waste, I was shocked. It's one of those moments in time that is seared into my memory. We were visiting after a round table discussion that a farm lending organization had sponsored. A farm wife from north of Rugby asked me what I thought about the recent news. When she pulled the article up on her phone I couldn't believe it. The idea of such a project proposed here in Pierce County was so far from imagination that it was really hard to believe. Not until I learned that the sight was within two miles of my family's farm did it really hit me.

Weeks prior to the article announcing the proposed project in the Pierce County Tribune, a press release from the Department of Energy announced to the world that they had selected a sight by Rugby ND for a deep borehole project. On January 7th, The Secretary of Energy was sighted in the Tri-City Harold in Hanford Washington as saying that the (high level nuclear waste capsules currently being stored in Hanford) "could be very-well suited perhaps for much earlier disposal through a borehole approach". These capsules were originally planned to be stored in the mined multi-Billion dollar repository now stalled at Yucca Mountain Nevada. When the Secretary of Energy announces that the worst of the worst nuclear waste could be deposited in a deep bore hole, how are you to believe that this is just a minor science experiment like we were being told? If it was just a science experiment, wouldn't the lowest level waste be the first to be considered before jumping to the worst?

Months prior to the notification of the community, supporters of the project visited the site and determined the suitability of the location. Terms and conditions for the use of the State School Land that was being considered were established. A short memorandum to the State School Land Board in late September of 2015 outlined the purpose of the Deep Borehole Field Test, —**to conduct a deep borehole field test to identify alternatives and conduct scientific and technological development to enable storage, transportation, and disposal of used nuclear fuel and wastes generated by existing and future nuclear fuel cycles**". The location, terms and conditions, and the purpose of the test had been outlined, and yet the local community had still not been informed. Why? When the words disposal of used nuclear fuel and wastes were clearly spelled out, wouldn't it have been prudent to have at least brought this to the attention of local government? If this project was considered to be so safe and provide important scientific discoveries then why wasn't more done to educate the public? Why did the people of Rugby hear about this second hand? Was it because the problem of nuclear waste disposal has grown so enormous that the urgency to find a suitable alternative to Yucca Mountain has twisted the DOE to think that they could by pass local authority? If nuclear waste disposal was that important to national security, then Nevada would have been open for business a long time ago.

In a rural community such as ours, the farm economy is on the tip of your tongue every day. That is what we should have been worried about. But when the people of Pierce County learned of the underling potential of the bore hole project, they became alarmed. My concern was that only those in the immediate area were questioning the implications of the project. But when the county commissioners unanimously set forth a moratorium on deep bore hole drilling, a shock wave rolled all the way back to Washington. And when over 2000 signatures were gathered in less than two weeks to support the commissioner's decision, it was finally being realized that this project did not have the

support of the community at all. When the county commissioners hosted a public input meeting, it became painfully obvious that the DOE could not promise the sight wouldn't be considered as a potential sight for future nuclear waste disposition. Those in attendance were overwhelmingly opposed to the consideration of the project. When the commissioners met again and decided to send a letter of "thanks but no thanks", the people of our community felt a little more at ease. But the question still remained, have we done everything we could to prevent this type of top down proposal from happening again. In the early 90's an intermediate above ground nuclear waste disposal storage facility was proposed by the DOE in Grant County. That is why the existing century code was written regarding out of state waste. What the law didn't do is give the county, the people most directly affected by such a proposed project, a seat at the table to determine if they wanted be a part of such an endeavor. The current century code does not address the concerns that experimentation to determine the viability of a nuclear waste disposal facility should require consent as well.

The DOE has tried to promote a consent based sighting plan, a plan that would require community approval. However, they neglected to design nor implement that plan for the proposed proto-type hole that was designated for Pierce County. In fact, the DOE hosted consent based siting meetings to establish what that plan would look like after the project was rejected by Pierce County. These planning meetings were held throughout the country but the closet one to Rugby was being held in Minneapolis. Should a test that had the potential of establishing the suitability of a site in ND be allowed to occur without the consent of the State or the community being effected? I say no.

There were 5 sights in ND that had been considered for this project including one each in Stutsman and Kidder County. The crystalline rock that the DOE was looking to experiment with can be found at a desirable depth throughout the entire eastern half of the state of North Dakota. After having gone through this ordeal, I wouldn't want to see any other community faced with such a challenge without the ability to say if they do or do not support it. That is why I think it is so important that we enhance our existing laws by not only granting the state the authority but also the county affected, the authority to determine their own participation. The way the project was proposed in Pierce County was backwards from what it should have been. Those not immediately affected by the projects underlying potential should really not be the only ones to determine the outcome.

The problem of nuclear waste and what to do with it is not going away anytime soon. After the Deep Bore Hole Field Test was rejected for the second time by a small community in Redfield SD last spring, the DOE went back to the drawing board and has now enlisted 4 companies to promote the project again. They plan to award one of the entities the contract provided they have community support. They have finally realized it is a tough sell and until they get local support, the test will not be completed. This amendment is only an extension of the lessons learned.

I have been asked numerous times if I really thought that letting them drill a hole would eventually lead to depositing of Nuclear waste. The hole was not just a geology experiment. The second hole to be drilled at the site was a prototype hole. It started out 42" in diameter at the top and staged down to a final diameter of 17" at the bottom. That was the diameter needed to accommodate the canisters that the Secretary of Energy had already announced would be considered for disposition. So who was I supposed to listen to? An 80 million project was proposed and the DOE was writing the check. They are going to want something for their money. The Nuclear Waste Policy Act has already been amended and has allowed the re-categorization of some defense waste. This could allow waste to be sited without

federal approval. A reoccurring theme that I have heard at the local to state level is that hasn't ND done enough for the energy, food and defense needs of this great nation? So yes, I do believe that once they slid into a state and convinced them to accept such an endeavor, that it would only be a matter of time before they came back. And the next time they aren't going to bother knocking.

The experiment that was proposed in Pierce County without the consideration of the impact to the community was ill-conceived. It was an experiment to see if the DOE could sell a state on support of a project that clearly had other potential outcomes. No, the deep bore hole project that was proposed in Pierce County last January was not just a science experiment, it was also a political science experiment. Once you ring that bell and designate a site as the first of its kind, than it is only a matter of time before they come back to ND with the real stuff. That is why we need to improve our existing century code. I appreciate your consideration and strongly encourage you to recommend a do pass for this amendment.

Sincerely,



Charles E. Volk

My name is Rebecca Leier, I am a mother and grandmother living on a 3 generation ranch less than 3 miles from a proposed scientific nuclear bore hole sight in Pierce County. Late in 2015, we found out through an article in our local paper, The Peirce County Tribune, that the U.S. Department of Energy had awarded a multimillion dollar contract to conduct a feasibility study, including a 3 mile deep test hole, for the purpose of a **Deep Borehole Disposal Research and Development Program** in our county. This proposed project was to determine the possibility of future nuclear waste disposal in southern Pierce County. NO community input, nor contact with our county commissioners, nor communication with other local offices, nor education for the public, took place prior to the picking of the sight and awarding of the \$35 million dollar contract to Battelle Memorial Institute for the project.

Interaction between the DOE, EERC, Battelle and our community came in early 2016 with community meetings featuring all the key players, designed to sell residents on the positive economic impact that this scientific site would bring our county. Pierce county commissioners had by this time placed a moratorium on deep bore-hole scientific drilling in Pierce county and our county residents actively began to search for third party information to educate our residents on all the multiple impacts that a possible nuclear repository site would have on our community and our quality of life. Concerned citizens were moved to contact our state legislature and state representatives with concerns.

For my husband and myself this seemed to be an unbelievable irony. Having lived in Nevada in the 1990's during the intense public debates over the proposed Yucca Mnt nuclear repository. We had witnessed the high pressure economic sell, the hard push for Scientific validation and had seen the turmoil that lasted for decades from nuclear scientific development for the sake of radioactive waste disposal. I personally witnessed DOE confirmations in public meetings during that time, continuously reassuring the public that the scientific research on Yuca Mnt was complete and it confirmed the security of that location as safe for nuclear waste disposal. There was immense public push back and division in Nevada over the environmental concerns, vs the economic benefits to down right fear for safety, even distrust of science. In town meetings and news reports we were told a repository at Yucca Mnt, would be safe for thousands of years. We were told the science had been completed and proven.

That science has now has been proven to be flawed. It took 20 + years for the people of Nevada to get that project stopped. Because, once the scientific studies were completed that nuclear waste disposal sight became a train and was almost impossible to derail. There is a huge need to store weapons grade and power plant nuclear waste in our country. The need to store nuclear waste has only grown more urgent since the 2010-11 decision to close the Yucca Mnt Nuclear waste repository in Nevada. Permanent Choices for storage are nonexistent at this time. Temporary storage is contained in some 77 sites around the US- and the nuclear waste temporary stock piles are growing.

Finding experts in nuclear waste disposal, who could educate Pierce County and surrounding residents, and who were not affiliated with the DOE, EERC or Battelle became our goal as activists for our county. It became clear to us through this process of education and with common-sense and many cases of emanate domain to reference, that we should expect, that if the science completed on any proposed bore hole, in Pierce county, were to prove, a sight was advantageous for the disposal of nuclear waste, then nuclear waste would be disposed of in the hole at that sight.... Especially if it had already been "proven" by a 5 year scientific study, at a cost of \$35 government dollars

The companies and men who had been awarded the contract to complete this 5 year study in Pierce County, could say at public meetings that "there would not be any nuclear waste involved in the site during their contracted 5 years. But they had no responsibility to our community after that period of time. We would still be living, farming, ranching and raising families in Pierce county long after they had fulfilled their contract and moved on. .

This scientific bore hole they left behind would very likely be a case of "If you build it, it will come." The "It" being radioactive nuclear waste.

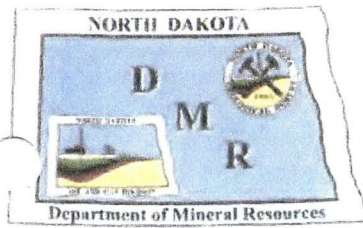
Sites in ND have been looked at by the Federal government for decades as possible Nuclear Waste repository sites. These facts are easily verified with a simple internet search, and verified again and again by experts who we had contacted in the ensuing education process in 2016.

On a personal level, My Dad was a Nuclear engineer and spent his career as a Nuclear Health Physics Specialist working at the Nevada Test Site in the Las Vegas, Nevada area and subsequently subcontracting for various nuclear power and atomic waste plants including 3-mile Island, PA and Rocky Flats, CO ; finishing his career as a manager for UMTRA (United Mill Tailings Remedial Action) in Albuquerque, NM and Grand Junction, CO. He passed away in 2014, telling me that North Dakota was still on the short list for nuclear waste disposal. The January 2016 Dept of Energy report on deep bore drilling and the ND State Geologist, Department of Mineral Resources confirm this is still the case.

Although we ultimately were successful in halting the EERC and Battelle scientific bore hole project in Pierce county, I don't believe this issue has seen its conclusion. The nuclear waste problems in our nation continue to grow in the heavily populated states that rely on cheap nuclear power, yet do not want the resulting dangerous waste disposed of in their communities. North Dakota, with our rural population and basement of crystalline bedrock continues to beckon the DOE and eastern populations who use nuclear power. Eventually we will see Privateers come looking for land to invest in for these uses.

Our response right now to ~~revise~~ SB2156 is important because we were only one of 4 sites being considered for scientific viability for Nuclear waste disposal in ND. By ~~revising~~ SB2156 with tighter parameters, we give our rural communities and water boards a first responder's position in order to educate their residents and make informed decisions based on third party neutrality rather than sales pitches from vested government agencies and contractors, and investors. This revised bill gives decision making to those rural entities who will literally have to live with these decisions for generations.

I ask the committee to support ~~this revision~~ SB2156 because it offers a line of protection for future generations of North Dakota residents who are going to have to grapple with nuclear waste technology trying to encroach into our rural state, for years to come.



Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

www.dmr.nd.gov

August 14, 2015


Mr. John A. Harju
Associate Director for Strategic Partnerships
Energy & Environmental Research Center
University of North Dakota
15 North 23rd Street, Stop 9018
Grand Forks, ND 58202-9018

Dear Mr. Harju:

We are pleased to provide you with this letter to convey our support for the deep borehole field test project being proposed in response to a funding opportunity issued by the U.S. Department of Energy (DOE). The opportunity to drill a well to a depth of approximately 16,400 feet through the entire sedimentary rock sequence and into crystalline basement rock and to collect and characterize rock samples from the entire borehole length is a tremendous opportunity to better understand the mineral resources of the state. This will also provide the state with a unique opportunity to perform additional crosscutting experiments related to scientific and engineering aspects of the subsurface, such as drilling techniques, wellbore stability, stress field measurement, and geothermal characterization. The North Dakota Department of Mineral Resources, through the Oil and Gas Division and the Geological Survey, will provide the EERC with access to any existing well logs, core samples, and other relevant data sets that may be valuable to the proposed project.

We think this is an excellent opportunity for the state and wish you the best in your efforts to secure this funding opportunity.

Sincerely,


Lynn D. Helms
Director

September 4, 2015

Mr. John A. Harju
Associate Director for Strategic Partnerships
Energy & Environmental Research Center
University of North Dakota
15 North 23rd Street, Stop 9018
Grand Forks, ND 58202-9018

Dear Mr. Harju:

Thank you for arranging for EERC representatives to meet with Department of Trust Land staff to review the EERC's proposed U.S. Department of Energy deep stratigraphic test well site on school trust land in the East ½ of Section 36, Township 154N, Range 73W, in Pierce County, North Dakota.

After an on-site review of the proposed drilling plan, we agree that this location is suitable for the proposed project. We do recommend that the EERC conduct geotechnical testing of the site to be sure the subsurface meets the requirements of such an important undertaking. Preliminary items that the EERC will need to complete in advance of the project include:

- 1) Submit an online application on the Department of Trust Lands' web site at <https://land.nd.gov/surface/Right-of-Way.aspx>, so the project can be tracked for future reference and payments.
- 2) Recognize the easement consideration to the School Trust fund for up to 20 acres.
- 3) Provide copies of any required township, county or state zoning and drilling permits necessary for the project.
- 4) Acknowledge that this is a test project and that any proposed testing or activity beyond this initial assessment will need to be considered as a separate project that would require North Dakota Land Board approval.

If the EERC is successful in securing the project we can proceed at that time to formalize an easement with the EERC and/or its partner Battelle Memorial Institute. In addition to the normal terms and conditions in the Land Board's standard easement, this agreement will also require the following:

- 1) Compensation to the School Trust for the use of the site at \$6,500 per acre, less topsoil stockpile area available to livestock grazing, (this rate valid through 12/31/2016).

- 2) Initial five year easement term with option to renew for an additional five years.
- 3) Soil reservation of suitable plant growth material equal to the volume of the top twelve (12) inches of soil over the disturbed area (topsoil).
- 4) Drill cuttings removed and disposed of at an approved landfill facility.
- 5) Surety bond or escrow fund for site reclamation.
- 6) All information gained from the test well must be shared with the Land Board.

We wish you the best in your efforts to secure this exciting opportunity.

Sincerely,



Lance D. Gaebe
Commissioner
North Dakota Department of Trust Lands



North Dakota Geological Survey

Edward C. Murphy - State Geologist

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

<https://www.dmr.nd.gov/ndgs/>

August 12, 2015

Mr. John Harju
Associate Director for Strategic Partnerships
Energy & Environmental Research Center
15 North 23rd Street, Stop 9018
Grand Forks, ND 58202-9018

Subject: Letter of Support for EERC Proposal Entitled "Deep Borehole Field Test Project"

Dear Mr. Harju:

The Superior Craton lies beneath eastern North Dakota's and its surface has been explored for mineral resources over the past several decades, but has not yet yielded commercially mineable discoveries. Various mineral resources are currently being mined from the Superior Craton outside of North Dakota including: iron ore in Minnesota, nickel in Manitoba, and gold and diamonds in Ontario.

Precambrian cores and cuttings from eastern North Dakota would assist us with the following:

- Understanding the mineralogical and lithological composition of the Superior Craton would benefit our ongoing basement mapping project.
- Elemental analysis (i.e. rare earth elements) to examine how the Superior Craton initially formed and the metamorphic and/or thermal events that have occurred since its initial creation.
- Radiometric dating techniques could be used to unravel the timing of significant thermal and/or metamorphic events, which would be compared with previously produced radiometric ages.

In addition, we are interested in obtaining accurate temperatures within the Precambrian system to assist us with our studies of the geothermal potential of North Dakota.

Sincerely,

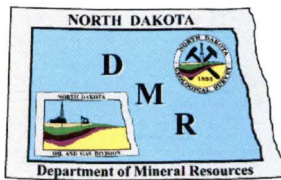
Edward C. Murphy
State Geologist

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SECTION 1. AMENDMENT. Section. 23-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-09. Deposit of radioactive waste material -- Legislative and local zoning approval required.

1. ~~No~~ A person, firm, corporation, limited liability company, or other legal entity may not deposit, or cause or permit to be deposited in this state, any radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly. A county's zoning approval may not preclude the disposal development if approved by the legislative assembly but may regulate the size, scope and location.
2. A person may not conduct any testing or exploration for the development of a storage or disposal facility for radioactive waste material to be brought into the state unless prior approval has been granted by concurrent resolution passed by the legislative assembly.
3. ~~Radioactive~~ For purposes of this section, "radioactive waste material" means waste either from the generation of electrical power through the utilization of radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides.



Senate Bill 2156

House Energy and Natural Resources Committee

March 24, 2017

Comments of Edward C. Murphy, State Geologist

NDCC 23-20.2 Disposal of Nuclear and Other Waste Material was created in 1979 and amended in 1987 to include the "concurrent resolution" language.

The stated purpose of this chapter of the ND Century Code is to encourage the proper emplacement of material into subsurface strata for:

- 1) Storage and retrieval of material.
- 2) To promote the terminal disposal of municipal, industrial, and domestic waste.

The legislative testimony of the state geologist in 1979 included discussion of the storage or disposal of nuclear and other wastes and the storage of retrievable material. He specifically mentioned storage of natural gas. Storage of oil and natural gas is currently regulated by the Oil and Gas Division of the DMR (NDCC38-08-04(2)(f)).

A person must obtain a permit from the North Dakota Industrial Commission to drill, bore, or construct:

- 1) An underground storage and retrieval facility.
- 2) An underground waste disposal facility.
- 3) Or the conversion of any existing facility for use in any activity regulated by this chapter.

The exploration for such a facility is not covered by NDCC 23-20.2. NDCC 23-20.2-03 states "...This chapter does not apply to any activity regulated under chapters 23-29, 38-08, 38-12, 61-28, and 61-28.1.

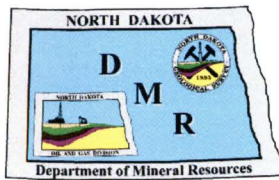
A permit may not be issued until after notice and hearing.

Radioactive waste material means waste either from

- 1) A nuclear power plant.
- 2) The manufacture of nuclear grade weapons.
- 3) Includes fission products and actinides (radioactive elements with atomic numbers 89 to 103) and materials contaminated by fission products and actinides.

The concurrent resolution language was added in 1987 to avoid the problem of the North Dakota Legislature passing what could be interpreted as a special law or a local law regarding nuclear waste disposal and being in conflict with the North Dakota Constitution. During the 1987 Legislative Session, the Legislative Council testified that the Legislative Procedure and Arrangements Committee became concerned that the concurrent resolution language they had placed in the bill created a legislative veto between the legislative branch and the executive branch. After the bill was printed, suggestions from the committee were that it could be deleted from the bill or just ignored and hope that it was never challenged.

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Senate Bill 2156

House Energy and Natural Resources Committee

March 30, 2017

Comments of Edward C. Murphy, State Geologist

Quick Fix -- Amendment

- 1) Moved the definition of "radioactive waste material" from NDCC 23-20.2-09 into 23-20.2-02.
- 2) Modified the definition of "waste" in NDCC 23-20.2-02.
- 3) Added testing, exploration into NDCC 23-20.2-04.
- 4) Added Association of Counties amendment into 23-20.2-09.

Long-Term Fix

- 1) Remove the disposal of other wastes and the storage and retrieval of material from NDCC 23-20.2, leaving only nuclear waste.
 - a) Remove all facility permitting language from NDCC 23-20.2 because the state cannot permit a Department of Energy facility. Perhaps the only item left in this chapter would be the process the State of North Dakota would follow in saying yes or no to a potential nuclear waste facility.
 - b) NDCC 23-20.2, as written, would not comply with the Notice of Disapproval requirements within the Nuclear Waste Policy Act of 1982 (2004). Make sure the process the State of North Dakota follows in order to approve or disapprove of a potential nuclear waste disposal facility is recognized by the federal government. Legislative veto, local law, special law, and interstate commerce concerns, as well as the definition of high-level radioactive waste, need to be addressed.
- 2) Move subsurface disposal of waste (not covered by the Underground Injection Control Program) into a new chapter (NDCC 23-29.2).
- 3) Move subsurface storage and retrieval of material into a new chapter (NDCC 38-23).

Proposed study language:

LEGISLATIVE MANAGEMENT STUDY – During the 2017-2019 interim, the legislative management shall consider studying state and local level regulation of high-level radioactive waste disposal, appropriate regulations for subsurface disposal of waste, and the storage and retrieval of material. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 1. AMENDMENT. Section. 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.

3. "Radioactive waste material" means waste either from the generation of electrical power through the utilization of radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides.

34. "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-29.

45. "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.

56. "Waste" includes liquid wastes, gaseous wastes, and solid wastes, ~~as defined in section 23-29-03 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.~~

SECTION 2. AMENDMENT. Section. 23-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-04. Permit required - Denial of permit - Review.

It is unlawful to commence any operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.
5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.

6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with the provisions of this chapter.

7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.

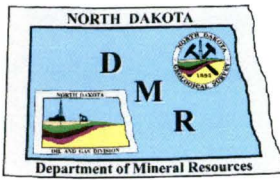
8. Any other information required by the commission. The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections 28-32-42 through 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law.

SECTION 3. AMENDMENT. Section. 23-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-09. Deposit of radioactive waste material – Legislative and local zoning approval required.

1. ~~No A person, firm, corporation, limited liability company, or other legal entity may not deposit, or cause or permit to be deposited in this state, any radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly. Radioactive waste material means waste either from the generation of electrical power through the utilization of radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides. A county's zoning approval may not preclude the disposal development if approved by the legislative assembly but may regulate the size, scope and location.~~

2. A person may not conduct any testing or exploration for the development of a storage or disposal facility for radioactive waste material to be brought into the state unless prior approval has been granted by concurrent resolution passed by the legislative assembly.



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SB 2156

Senate Bill 2156

House Energy and Natural Resources Committee

March 30, 2017

Comments of Edward C. Murphy, State Geologist

Amendments

1) Option 1 – replaced “radioactive waste material” with “high-level radioactive waste material” and added the language or other commercial applications that generate high-level radioactive waste

2) Option 2 – replaced “radioactive waste material” with “high-level radioactive waste material” and added the definition, in part, from the Nuclear Waste Policy Act of 1982 (2004) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations and other highly radioactive material that federal law requires permanent isolation.

Proposed study language:

LEGISLATIVE MANAGEMENT STUDY – During the 2017-2019 interim, the legislative management in consultation with the Geological Survey Division of the Department of Mineral Resources and the Environmental Health Section of the Health Department shall consider studying state and local level regulation of high-level radioactive waste disposal consistent with applicable federal regulations to insure proper state input into the selection process, including the mechanisms for a special session and notice of disapproval; resolve the legislative veto, special law, local law, and conflicts with interstate commerce concerns in the existing code; and appropriate regulations and the creation of new code chapters for subsurface disposal of waste and the storage and retrieval of material. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

OPTION 1

SECTION 1. AMENDMENT. Section. 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
3. "High-level radioactive waste material" means waste either from the generation of electrical power through the utilization of radioactive materials or from the manufacture of nuclear grade weapons or other commercial applications that generate high-level radioactive waste and includes fission products and actinides and materials contaminated by fission products and actinides.
34. "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-29.
45. "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.
56. "Waste" includes liquid wastes, gaseous wastes, and solid wastes, ~~as defined in section 23-29-03 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.~~

SECTION 2. AMENDMENT. Section. 23-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-04. Permit required - Denial of permit - Review.

It is unlawful to commence any operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.

5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.

6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with the provisions of this chapter.

7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.

8. Any other information required by the commission. The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections 28-32-42 through 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law.

SECTION 3. AMENDMENT. Section. 23-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-09. Deposit of high-level radioactive waste material – Legislative and local zoning approval required.

1. ~~No~~ A person, firm, corporation, limited liability company, or other legal entity may not deposit, or cause or permit to be deposited in this state, any high-level radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly. ~~Radioactive waste material means waste either from the generation of electrical power through the utilization of radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides.~~ A county's zoning approval may not preclude the disposal development if approved by the legislative assembly but may regulate the size, scope and location.

2. A person may not conduct any testing or exploration for the development of a storage or disposal facility for high-level radioactive waste material to be brought into the state unless prior approval has been granted by concurrent resolution passed by the legislative assembly.

OPTION 2

SECTION 1. AMENDMENT. Section. 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
3. "High-level radioactive waste material" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations and other highly radioactive material that federal law requires permanent isolation.
34. "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-29.
45. "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.
56. "Waste" includes liquid wastes, gaseous wastes, and solid wastes, ~~as defined in section 23-29-03 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.~~

SECTION 2. AMENDMENT. Section. 23-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-04. Permit required - Denial of permit - Review.

It is unlawful to commence any operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.

5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.

6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with the provisions of this chapter.

7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.

8. Any other information required by the commission. The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections 28-32-42 through 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law.

SECTION 3. AMENDMENT. Section. 23-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-09. Deposit of high-level radioactive waste material – Legislative and local zoning approval required.

1. No A person, firm, corporation, limited liability company, or other legal entity may not deposit, or cause or permit to be deposited in this state, any high-level radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly. Radioactive waste material means waste either from the generation of electrical power through the utilization of radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides. A county's zoning approval may not preclude the disposal development if approved by the legislative assembly but may regulate the size, scope and location.

2. A person may not conduct any testing or exploration for the development of a storage or disposal facility for high-level radioactive waste material to be brought into the state unless prior approval has been granted by concurrent resolution passed by the legislative assembly.