

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1394

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1394

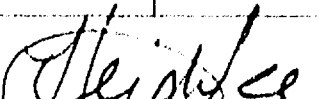
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1394

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb. 5 2001

Tape Number	Side A	Side B	Meter #
1		X	11.2
2	X		-6.84
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Frank Wald: I am sponsoring this bill to immune penalties if a voluntary disclosure arises from a self-evaluation. I would also like to change the time frame. This bill would affect pipelines, truckers, farmers, contractors, self-service stations and so on with anyone able to admit to a hazardous accident.

Rep M. Klein:(18.9) What about shortening 2 years to 6 months?

Rep Wald: That is a reasonable amount of time. The point is for a person to come forward so the problem may be fixed.

Rep Froseth: I oppose changing three years to one year.

Rep Wald: We offer the change because some operators are repeatedly in this violation.

Rep Thorpe: If persons are immune, who pays for cleanup?

Rep. Wald: They're only immune to being prosecuted. The operation still pays for the clean up according to law.

Rep. Rex Byerly: (25.3) What it boils down to is if there's something a business comes across that they may wish to hide to stay out of trouble, they will come forward without worry and the problem can be fixed without complications. We should have a "good faith" clause for mistakes on accidents. Our primary concern is for no loopholes.

Ron Ness: *ND Petroleum Counsel* We support the bill and the revisions to remove loopholes.

Francis Schwindt: *ND State Health Dept.* **Neutral** Our primary job is to clean up the problem. We basically follow this law already but we support the concept. It doesn't appear to make a lot of difference because it's rarely used in other states.

Rep. M. Klein: Are our neighboring states using this?

Schwindt: Yes but with different provisions.

Rep. Kasper: Have any states lost money from EPA?

Schwindt: No but there have been quite a few threats.

Chairman Berg: Has anyone ever been in trouble volunteering this information?

Schwindt: No

Rep. Koppang: Are there federal statutes that would mandate a fine?

Schwindt: Generally 80% of statutes are at the state's discretion.

Julie Palmer: (51.9) *C.A.R.E.* **Written testimony opposed to bill.**

Rep. Lemieux: If amended, would this be acceptable?

Palmer: It would be very difficult to do.

Ken Hanson: *Small Business Owner* **Opposed to bill.**

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1394

Hearing Date Feb. 5 2001

Rep. Severson: Is six months better than two years?

Hanson: I'm unsure, it needs to be more defined.

Mary Christianson: (4.7) Written testimony opposed to bill.

Vice-Chairman Keiser: We'll close the hearing.

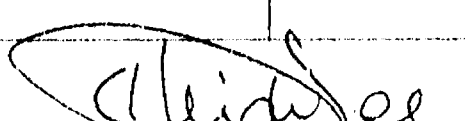
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1394(B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb 12, 2001

Tape Number	Side A	Side B	Meter #
2	X		22.73-28.1
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. L. Thorpe.

Rep Lemieux: Propsed and supplied amendments.

Rep Lemieux: I move a do not pass.

Rep M. Klein: I second.

13 yea, 1 nay, 1 absent Carrier Rep Lemieux

FISCAL NOTE
 Requested by Legislative Council
 01/23/2001

Bill/Resolution No.: HB 1394

Amendment to:

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

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill has several provisions that are likely to cause EPA to withdraw delegation of program authority from ND such as air and water quality permits, drinking water and hazardous waste regulation. EPA funds of approximately 7 million per biennium could be jeopardized if implementation of these programs is lost. Included in Health Department's 2001-03 appropriation SB 2004, is \$6,845,941 in Performance Partnership Grants to implement EPA delegated programs in the State. If EPA withdraws program delegation they would also withdraw the grants we receive to implement the programs. This would equate to approximately 70 FTEs in the Health Department and approximately \$220,000 in funds granted to District Health Units.

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

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

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

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathy J. Albin	Agency:	Health Department
Phone Number:	328-2392	Date Prepared:	01/30/2001

Date: 2-12-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. ~~CRS 100-010001 Bill/Resolution~~

#B 1394

House Industry, Business and Labor

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Lemieux Seconded By M. Klein

[illegible]

Total (Yes) 13 No 1

Absent _____

Floor Assignment Rep Lemieux

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

REPORT OF STANDING COMMITTEE (410)
February 12, 2001 4:20 p.m.

Module No: HR-25-3128
Carrier: Lemieux
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1394: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends
DO NOT PASS (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1394 was
placed on the Eleventh order on the calendar.

2001 TESTIMONY

HB 1394

**Julie Palmer
1224 East Hillcourt
Williston, ND 58801**

February 4, 2001

Legislative Assembly

Dear Legislature Members:

I am here today to oppose House Bill No. 1394. I am a member of CARE (Clean Air & Responsible Enforcement), a local citizens group in Williston, and a member of Dakota Resource Council.

Problems with HB1394:

1. The bill would allow a company/individual to operate without adequate permits. The permit process involves adequately assessing the proposal to make sure safeguards are put into place to protect the workers and the surrounding community. Subsection 1c would allow anyone to operate provided they have "submitted" an application. The act of submitting an application does not mean the company has met all of the safety/environmental requirements. They should not be allowed to operate unless the State Health Department has issued the actual permit to operate.
2. Section 2 allows noncompliance to continue for up to two years. Sabin Metals has purchased the former Dakota Catalyst property and plans to open a precious metal recycling plant within our city limits. They propose to burn carcinogenic material containing arsenic, nickel, benzene, lead, molybdenum and many others. The previous operator (DCP) had major problems with their pollution equipment. Downdrafting was occurring three to five times a week in which the pollution was hovering near our homes. This was unacceptable especially since they were processing carcinogenic material, and we do not want to see it repeated. Over 600 people signed a petition stating they want more controls in place to assure us the new operators run the plant safely. If this bill is passed, Sabin Metals could operate out of compliance for an extended period of time and potentially jeopardize the health of the citizens of our community.

The existing rules allow Sabin to operate out of compliance for a period of up to 24 hours without notifying the health department. We believe this is even too long, let alone extending it to two years.
3. Sections 4 & 5 allow immunity from any administrative or civil penalty associated with the issues disclosed provided they have not been found by a court or administrative law judge to have committed serious violations that constitute a pattern of continuous or repeated violations. If Sabin Metals has problems with their pollution equipment (and it is their first offense) they could operate out of compliance and we the citizens would have no legal recourse against them. No one should have the right to harm someone else without being held accountable for their actions.
4. The pollution rules were put into place for a reason: To protect the environment. Whether or not someone voluntarily discloses they are out of compliance is irrelevant. They are still polluting and causing harm to the environment/public. The same standards should apply whether or not they admit they are out of compliance or not.
5. The financial notes, which accompanied the bill, stated the State could lose \$7 million per biennium of federal funds if this bill goes into effect. This alone is reason enough to not pass this bill.

I urge you to reject this bill.

Sincerely,



Julie Palmer

Dakota Resource Council

418 Rosser Ave. Suite 301b

Bismarck, North Dakota 58501

ph. (701) 224-8587 fax (701) 224-0198

e-mail: <drc@btigate.com>

February 5, 2001

Testimony re: HB 1394 Environmental Self Audit

House Industry Business and Labor Committee

Chairman Berg and Members of the Committee:

People in North Dakota, just like people all over the country, want clean air and clean water. We want these things because we know that our health is at stake. For this reason both the state and federal government have enacted laws to protect the air we breathe and the water we drink. We have just as much right to expect that our laws governing air and water pollution are enforced as we do to expect that our laws against such crimes as murder and robbery are enforced. We also have a right to expect that even our most powerful industries are not above the law.

With regard to HB 1394, Dakota Resource Council (DRC) affirms some of the ideas that apparently stand behind this bill. For example, we think it is an excellent idea for companies with emissions permits to conduct environmental self-audits. These self-audits should help responsible companies make sure they are maintaining compliance with the law, and help them act quickly to resolve problems with compliance. Also, when companies who have broken environmental laws come forward willingly admit it, and seek to resolve the problem in cooperation with state and local enforcement agencies, DRC thinks these public-spirited actions should be taken into account when penalties are considered. Companies that voluntarily disclose violations should not be treated the same as companies that try to hide their violations from public scrutiny.

However, there are some features of HB 1394 as now written which DRC believes are likely to produce less rather than greater public

accountability and compliance on the part of polluters.

First, it would be a grave mistake to give blanket immunity to all violators who voluntarily disclose their crimes, as this bill would do (subsection 4). While the removal of all penalties may be appropriate in the case of some violations, serious breeches of public trust, even when disclosed voluntarily, should incur serious penalties. It is foolish to remove from the public's hand the right to impose criminal penalties when a violator has endangered the public health. The threat of such penalties acts as a deterrent to such crimes, and it must be retained.

Second, it would also be a serious mistake to give a blanket two-year grace period to all violators who disclose their non-compliance (subsection 2). First, many problems of non-compliance can be cleared up in far less than two years. A blanket two-year grace period would only give a green light to companies to delay spending the money necessary to come into compliance. Second, should a violation pose an immediate risk to public health, the blanket two-year grace period would prevent the state from taking actions necessary to protect the public health, which is the very reason for our environmental laws in the first place. Since HB 1394 includes a provision to extend the grace period if necessary, why not start with a period of time, such as 60 days, in which many problems of non-compliance can be resolved? After that, if a violator is making a good faith effort to remedy the situation, but has been unable to do so, the state may extend the grace period. In any case, it is important to remember that many of the laws our state enforces are actually federal laws, which we have adopted as part of the North Dakota Century Code so that they can be enforced by North Dakotans and not federal agents. We do not want to tie the hands of our state's public servants in such a manner that federal agencies must step in and do their work for them.

If the two features of HB 1394, were corrected, DRC would find the bill much less objectionable. However, DRC has been a vehicle for North Dakota citizens both to help make and to help enforce air and water quality laws since 1978, and during that time we have found that the state has been extremely willing to work with environmental violators who are honestly working toward compliance. Frankly, it is hard for us to understand what problem this bill seeks to correct, and we urge the committee to recommend a DO NOT PASS, especially if the serious problems noted in our testimony are not addressed.

Julie Palmer #B1394

CARE

Clean Air and
Responsible
Enforcement

We, the undersigned, request the following concerns be addressed in the Special Permitted Use (SPU or city permit) for the former DCP plant which is proposed to be reopened by Sabin Metals (Sabin):

1) Sabin must submit to the city a detailed description of the materials to be processed, a complete list of any chemicals/toxins which will be present at any time during the process, and a complete description of the proposed process and any modeling which has been done. Processing will be limited to the materials and the manner specified unless the existing SPU is formally expanded or a new SPU is issued for the new material requested to be processed.

The city will hire a competent third party who is familiar with a precious metal catalyst recycling plant to review the information submitted by Sabin and recommend any additional fire, building, safety and pollution controls which should be put into place to protect the health and welfare of our community. The recommendations made by the third party will be reviewed and considered as conditions of the SPU.

2) A complete environmental impact study must be done by a competent third party before the SPU is issued to assure the community the plant will be safe.

3) The SPU will be issued with a probation period which will last for a period of one year. During the probationary period, there will be periodic unannounced stack tests occurring at least once per quarter by a competent third party. If there are any violations during the probation period, the SPU will be reviewed and could be canceled for any single serious violation or as a consequence of a series of lesser violations.

4) If Sabin has violations after the probation period, and any fines are assessed, Sabin will have 30 days to pay the fines. If the fines are not paid within 30 days, the SPU will be suspended until the fines are paid and the violation corrected. The city also retains the right to require an unannounced stack test if probable cause exists that the plant is violating air quality standards. The cost of the stack test will be paid by Sabin if they are found to be in violation.

5) A bond will be required to sufficiently cover any cleanup costs.

We, the undersigned, request the concerns mentioned above be addressed in the SPU for the facility.

Month, Day, Year	Name of Qualified Elector	Residential Address, PO Box or Rural Address	City, State, Zip	Phone #
1/24/00	Omna Kellman	1801 6th Ave E	Williston, ND	2-9420
1/29/00	Jim Kellman	1801 6th Ave E	Williston, ND	2-9420
1/29/2000	Randy Miller	523 E. 7th St	Williston, ND	774-1129
1/29/2000	Kim Miller	323 7th St E	Williston, ND	774-1129
1-29-00	Phil Gaby	1212 W Broadway #1	Williston, ND	572-4944
1-29-00	Jeanne Gaby	1212 W Broadway #1	Williston, ND	572-4944
1-30-00	Elaine Gaby	646 Oak Parkway	Williston, ND	572-8922
1-30-00	Shelly Gaby	646 Oak Parkway	Williston, ND	572-8922
1-30-00	Gene Gaby	1801 6th Ave E	Williston, ND	572-9420
1-30-00	Rita M. Huchler	522 6th Ave W	Williston, ND	774-0580
1-30-00	Frank Huchler	522 6th Ave W	Williston, ND	774-0580
1-30-00	Janie M. Huchler	1828 2nd St W	Williston, ND	774-8263
1-31-00	Shelly Lutz	107 34th St E	Williston, ND	774-1129
1-31-00	Billy Lutz	208 35th St E	Williston, ND	572-3455
1-31-00	Amber Vart	2607 18th St W	Williston, ND	572-6335
1-31-00	Andy L. Long	4142 14th Ave W	Williston, ND	774-0955
1-31-00	Harold B. Long	413 20th St E	Williston, ND	572-2324
1-31-00	Barbara Long	Box 150 "Rental"	Williston, ND	572-2059
1-31-00	John Long	2014 10th Ave E #207	Williston, ND	572-4197
1-31-00	Steve J. Roy	1926 71st NW #16	Williston, ND	572-4378

SAMPLE of Many Sheets with Signatures.

Introduced by

Representatives Wald, Byerly, Kempenich, Skarphol

Senators Bowman, Tollefson

1 A Bill for an Act to provide a self-critical environmental analysis immunity.

2 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

3 SECTION 1. Voluntary disclosure arising from self-evaluation -

4 Presumption against imposition of administrative or civil penalties.

5 1. For purposes of this section, the disclosure of information by a person to
6 the state department of health regarding any information relating to an
7 environmental law is voluntary if the department of health determines that
8 all of the following are true:

- 9 a. The disclosure is made promptly, but not later than 20 days, after
10 knowledge of the information disclosed is obtained by the person.
11 b. The disclosure arises out of a voluntary self-evaluation. - *define*
12 c. The person making the disclosure initiates the appropriate effort to
13 achieve compliance, pursues compliance with due diligence, and
14 corrects the noncompliance within 60 days after the completion of a
15 voluntary self-evaluation.

1 d. The person making the disclosure cooperates with the state
2 department of health concerning investigation of the issues
3 identified in the disclosure.

4 e. There is no threat of imminent or substantial endangerment to the
5 environment or public health.

6 2. For purposes of subdivision c of subsection 1, upon application to and at
7 the discretion of the state department of health, the time period within
8 which the noncompliance is required to be corrected may be extended if it
9 is not practicable to correct the noncompliance within the 60-day period.

10 3. If a person is required to make a disclosure to the state department of
11 health under a specific permit condition, under an ^{order} ~~oath~~ issued by the
12 department, or that is otherwise required by state or federal law, or court
13 then the disclosure is not voluntary with respect to the department.

14 4. If a person makes a voluntary disclosure of an environmental violation to
15 the state department of health, the department shall assist that person to
16 return to compliance as quickly as possible. The department may waive
17 all or a portion of an administrative or civil penalty associated with the
18 issues disclosed. The person making a voluntary disclosure is not
19 immune from any criminal penalty for negligent, willful or knowing acts
20 associated with the issues disclosed. The person must provide
21 information supporting the claim that the disclosure is voluntary at the time

Fifty-seventh
Legislative Assembly

1 the disclosure is made to the department.

2 5. The elimination of administrative or civil penalties under this section does
3 not apply if the department determines a person has committed
4 continuous or repeated violations of any environmental laws, rules, permit
5 conditions, settlement agreements, or administrative or court orders within
6 the three-year period before the date of the disclosure.

7 6. Except as specifically provided in this section, this section does not affect
8 the authority of the state department of health to require any action
9 including injunctive relief associated with the information disclosed in any
10 voluntary disclosure of an environmental violation.

11 7. This section applies to voluntary disclosures that are made in voluntary
12 self-evaluations that are performed after July 31, 2001.

13 8. The department may require immediate corrective action if it determines
14 ~~that~~ there is a threat of imminent or substantial endangerment to the
15 environment or public health.