

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1166

2005 HOUSE NATURAL RESOURCES

HB 1166

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1166

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 14, 2005

Tape Number

x

Side A

x

Side B

Meter #

15- 25, blank after

Committee Clerk Signature

Karen Bonnet

Minutes: Chr. Nelson opened the hearing on HB 1166 in memory of Bob Schaible. Roll was read, all present. Bill was read aloud. Chairman asked for testimony in support of HB 1166.

Jim Deutsch, Director of the Public Service Commission Reclamation Division: In support of HB 1166 with proposed amendment. **(WRITTEN TESTIMONY AND ATTACHED PROPOSED AMENDMENT)**

Chr. Nelson: In light of 35% of the membership fee of \$15,000 coming from the general fund for payment of the membership, why isn't there a fiscal note included?

Deutsch: It's already in the governor's budget. (See pg. 4 of testimony)

Rep. Keiser: I would also appreciate seeing a fiscal note to assess where funds are derived from as well as in planning. There must be other costs associated with this bill.

Deutsch: There would be other costs, travel to meetings could be more, the recovery of ash coal is an issue, as is reclamation. PSC has obtained a travel grant; they actively pursue funds. There have been other topics on coal related studies.

DeKrey: Were you aware of the recommendations of the Council of State Governments..., groups made up of member states, ...interstate compacts.

Deutsch: We are aware of the Council of State Governments... The Council of State Governments was involved.

DeKrey: When interstate compacts are proposed, we need to be close to what other states do. Is the wording of your amendment consistent with what other states are currently doing?

Deutsch: We spoke with other mining states (Wyoming & Montana?)... and feel it is.

Chr. Nelson: Are there further questions? Seeing none, is there further testimony in favor of HB 1166?

Brian Bjella, Lignite Energy Council, representing energy companies, coal, electric, etc. The executive committee discussed this yesterday. They believe membership in the IMCC is important for two reasons: 1. (Not on tape) 2. Because the ND lignite industry is provided to serve coal companies and needs. Urges Do Pass.

Chr. Nelson: Further questions? Is there further testimony in favor of HB 1166? Seeing none, is there opposing testimony to HB 1166? Seeing none, I will close the hearing on HB1166.

Chr. Nelson: Committee, what are your wishes regarding this bill? I would like to hold onto it, I'm uncomfortable approving it without a fiscal note.

Rep. Porter: Appropriations will to add it in. They will need to coordinate it.

Deutsch: I asked, since funds are already here in the governor's budget, a fiscal note is not needed.

Chr. Nelson: The governor's budget is not always passed.

Hearing closed on HB 1166, no action today.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1166

House Natural Resources Committee

☐ Conference Committee

Hearing Date: January 20, 2005

Tape Number

2

Side A

Side B

x

Meter #

No tape to use:
Tape went blank

Committee Clerk Signature

Karen Bonnet

Chr. Nelson: We will take up HB 1166 related to the interstate mining compact.

Rep. Hanson: I have a copy of the proposed amendment to this bill.

Chr. Nelson: Does everyone have a copy of the proposed amendment? No fiscal note came in so this must be in the governor's budget. Is there any discussion on the amendment? Seeing none, I will call for a roll call voice vote. All in favor, signify by saying aye. Opposing, same sign. Voice vote carried.

Rep. Nottestad: I make a motion for Do Pass as Amended.

DeKrey: Second.

Chr. Nelson: There has been a motion and a second. I will call for discussion.

Rep. DeKrey: This is a smart way for the state to do business. It uses industry experience, creates uniformity among states, and protects natural resources.

Rep. Keiser: I support DeKrey's observations. But if there is a question of whether or not there is a fiscal note, maybe the bill should be re-referred. If the dollars are in the budget, we're forcing them to access the General Fund.

Chr. Nelson: I'll talk to the front desk.

Rep. DeKrey: If they don't give a clear answer, just send it to appropriations.

Chr. Nelson: I'll go to the front desk, if there is no clear directive, I'll re-refer the bill. Sonja, (Intern) would you call the Legislative council and clarify whether or not HB 1166 will have a fiscal note? Is there further discussion? Hearing none, I will ask the clerk to take a

Do Pass as Amended Roll Call Vote on HB 1166.

Vote: 13-Yeas; 0-Nays; 1-Absent; Carrier: Nottestad

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1166

Page 3, line 8, remove "within a reasonable time it will formulate and establish an" and replace with "it has or will establish effective programs to accomplish the purposes of this compact."

Page 3, remove lines 9 through 21

Renumber accordingly

Page 7, line 20, after "subsection 8" replace "or" with "of"

January 20, 2005

VR
1/21/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 11661-21-05 NAT.RES.

Page 3, line 8, replace "within a reasonable time it will formulate and establish an" with "it has or will establish effective programs to accomplish the purposes of this compact."

Page 3, remove lines 9 through 21

HOUSE AMENDMENTS TO HB 1166 NAT RES. 1-21-05

Page 7, line 20, replace "or" with "of"

Renumber accordingly

Date: 1/20/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1166

House

NATURAL RESOURCES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number : 58173.0101 Title .0200

Action Taken : Do pass as amend

Motion Made By : Nottestad Seconded By : De Krey

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	A		Rep. Bob Hunsakor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	✓	
Rep. Duane DeKrey	✓				
Rep. David Drovda	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	✓				
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 13 No 0

Absent 1 - Porter

Floor Assignment Nottestad

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

REPORT OF STANDING COMMITTEE (410)
January 21, 2005 3:29 p.m.

Module No: HR-14-0880
Carrier: Nottestad
Insert LC: 58173.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1166: Natural Resources Committee (Rep. Nelson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1166 was placed on the Sixth order on the calendar.

Page 3, line 8, replace "within a reasonable time it will formulate and establish an" with "it has or will establish effective programs to accomplish the purposes of this compact."

Page 3, remove lines 9 through 21

Page 7, line 20, replace "or" with "of"

Renumber accordingly

2005 SENATE NATURAL RESOURCES

HB 1166

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1166

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date February 25, 2005

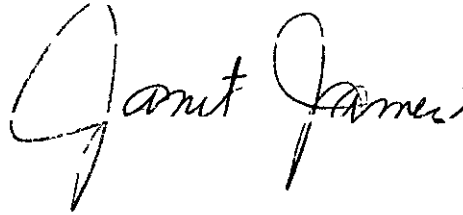
Tape Number
1

Side A
X

Side B

Meter #
5.9 - 14.0

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened the hearing on HB 1166 relating to the interstate mining compact.

All members of the committee were present.

Jim Deutsch, Director of the Reclamation Division of the Public Service Commission testified on behalf of the commission in support of HB 1166 (See attached testimony).

Brian Bjella representing the Lignite Energy Council testified in support of HB 1166 with the amendments passed by the house, stating they believe it is important for North Dakota PSC staff to belong to the IMCC to gain valuable information on national coal mining regulations. Many of the state's coal mining industries already belong to the IMCC that provides a very valuable service to the industry.

Senator Lyson asked for opposing testimony and hearing non closed the hearing on HB 1166.

Senator Rich Wardner made a motion for a Do Pass of HB 1166.

Page 2
Senate Natural Resources Committee
Bill/Resolution Number HB 1166
Hearing Date 2-25-05

Senator Ben Tollefson second the motion.

Roll call vote of HB 1166 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Layton Freborg will carry HB 1166.

Date: 2-25-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 11166

Senate Senate Natural Resources

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Wardner

Seconded By

Tollefson

Senators
Senator Stanley Lyson, Chairman
Senator Ben Tollefson, Vice Chair
Senator Layton Freborg
Senator Rich Wardner
Senator John Traynor

Yes	No
✓	
✓	
✓	
✓	
✓	

Senators
Senator Joel Heitkamp
Senator Michael Every

Yes	No
✓	
✓	

Total (Yes)

7

No

0

Absent

0

Floor Assignment

Freborg

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

REPORT OF STANDING COMMITTEE (410)
February 25, 2005 9:51 a.m.

Module No: SR-35-3661
Carrier: Freborg
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1166, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)
recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1166 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1166

House Bill 1166

Public Service Commission Testimony

Presented by: Jim Deutsch
Director, Reclamation Division
Public Service Commission

Before: House Natural Resources Committee
Representative Jon Nelson, Chairman

Date: January 14, 2005

Mr. Chairman and committee members, I am Jim Deutsch, Director of the Public Service Commission's (Commission) Reclamation Division. I appear on behalf of the Commission in support of HB 1166.

HB 1166 is legislation introduced by the Commission that will allow the State of North Dakota to join the Interstate Mining Compact Commission (IMCC) as a full member. The IMCC is a multi-state organization that represents its member states on mining and related environmental issues and provides a forum for interstate communication and action on issues of concern. The purposes of the Interstate Mining Compact are to advance the protection and restoration of land, water and other resources affected by mining and to assist its member states in achieving and maintaining an efficient, productive and economically viable mining industry. The IMCC does not possess any regulatory powers.

Four and one-half years ago North Dakota joined the Interstate Mining Compact Commission as an associate member. To become an associate member, then Governor Schafer sent a letter to the IMCC requesting North Dakota's associate membership and that was approved by a vote of the other member states. The Governor of each member state is the official commission member for that state, but each Governor is represented on the various committees by an appointed delegate. The appointed delegates from most states work for the agency that is responsible for administering mining regulatory programs in that state.

Currently, seventeen states are full members of the IMCC and three others are associate members. Another state plans to soon join the IMCC as an associate member and one other is considering full membership. IMCC by-laws allow states to remain as an associate member for up to five years. If a state does not become a full member after that five-year period, the associate membership will be discontinued unless extended by a vote of other members. Legislation to join the Interstate Mining Compact must be enacted in order for a state to become a full member in the IMCC.

IMCC serves as a liaison with the federal agencies and Congress, provides information to member states, and draws on state resources as necessary when dealing with issues. The significant value of belonging to the IMCC comes from states "compacting" together and speaking with a strong, united voice that can make a difference in addressing issues.

The IMCC was formed in 1971 to represent and serve member states on mining related issues. A major portion of IMCC's work pertains to the environmental protection issues and the state regulatory programs associated with mineral development. Since the late 1970's, the IMCC has been very involved with the federal Surface Mining Control and Reclamation Act of 1977. Congress enacted this law to set-out federal environmental and reclamation standards for coal mining in the United States. Although most coal producing states have coal regulatory programs consistent with the federal reclamation act, the Office of Surface Mining (OSM) within the U.S. Department of the Interior continues to have oversight responsibilities over the state regulatory programs.

Although IMCC activities involve both coal and non-coal mining issues, a majority of its efforts pertain to coal mining issues that involve the OSM and several other federal agencies, including the Environmental Protection Agency (EPA). This involvement in coal mining issues is the reason that North Dakota joined the IMCC as an associate member and is why the Commission is now pursuing full membership.

The IMCC is headquartered just outside of Washington, D.C. and this helps its Executive Director to keep in close contact with key OSM officials on federal

policy and rulemaking matters. This also minimizes travel costs when testifying before Congressional committees on OSM's budget and other significant issues.

Current IMCC activities of particular interest to North Dakota include:

- IMCC is working with member states on the reauthorization of the federal Abandoned Mined Lands (AML) reclamation fee that is used to pay for reclaiming and eliminating safety hazards associated with lands that were mined prior to any reclamation law. North Dakota currently receives about \$1.6 million of federal funds for AML work each year. The federal reclamation fee that is assessed on coal currently being mined will expire on June 30, 2005, unless extended by Congress. We estimate that it will take at least another fifteen years to complete the higher priority AML sites in North Dakota.
- IMCC has organized and sponsored several meetings over the past several years to work on solutions to the current high cost and limited availability of surety bonds for mining companies.
- IMCC coordinates state comments on OSM rule changes and its Executive Director frequently prepares and submits comments on behalf of the member states. IMCC has spent considerable time and effort over the past several years on OSM's ownership and control rules that are used for blocking the issuance of permits to mine operators with unabated violations and/or unpaid fines.
- IMCC is a strong advocate of adequate federal funding for both the coal regulatory and AML programs. The Commission currently receives annual federal grants from OSM to fund 65% of the cost for North Dakota's coal regulatory program for active mining and 100% of the AML program costs.
- IMCC supported a new EPA rule that provides for a more flexible effluent standard for reclaimed lands in many western states. This change will allow some sedimentation ponds to be removed sooner and may result in some reclaimed tracts receiving final bond release a few years sooner.
- IMCC represents the interests and positions of its member states in litigation challenging OSM and EPA rules that directly impact the states. IMCC has

recently filed amicus curiae (friend of the court) briefs in legal challenges to OSM's rules on subsidence, mountaintop mining, and ownership and control issues.

- IMCC is working closely with coal producing states to provide input on EPA's review of coal combustion waste (ash) disposal in mined lands. EPA is currently carrying out studies to determine if new federal regulations are needed for the disposal of coal combustion wastes and the beneficial use of these wastes. IMCC organized several workshops with state representatives and EPA to review waste disposal requirements in many of the states. A representative from the Division of Solid Waste with the State Health Department made presentations at several of these workshops on North Dakota's permitting and ash disposal requirements. The IMCC and member states currently oppose any additional federal regulation in this area.

In addition to federal rule changes, the IMCC keeps us well informed on other federal policy changes, court actions involving the coal regulatory program, and significant actions at the federal level and in other coal producing states. If major issues arise in the future that affect coal mining in North Dakota, our membership in IMCC will give us the mechanism to obtain support from other states in a coordinated manner. The IMCC is a strong advocate of states rights when dealing with federal agencies.

North Dakota's associate membership fee for the IMCC has been \$2,500 per year and the Commission has paid that fee with funds from the Reclamation Division's budget. Full IMCC membership for North Dakota will increase the fee to about \$15,000 per year, with 35% being the general fund share and the remaining 65% would be paid with federal funds that the Commission receives for administering the coal regulatory program. Part of each state's full membership fee is based on the total value of minerals being produced in that state and the other portion is split evenly among the states that are full members of the IMCC. The additional general funds that will be needed for the PSC to pay the full membership fee during the 2005-07 will be approximately \$8,750. Governor Hoeven included additional general fund monies in his recommended budget for the Commission as

well as the authority for the additional federal funds that will be needed to pay the dues.

The Interstate Mining Compact needs to be substantially the same in each state that joins it; however, some variation is allowed provided the difference is not inconsistent with the Compact. We are aware of some concerns that Article III, State Programs, as proposed on page 3 of HB 1166 does not recognize that most states, including North Dakota, now have effective regulatory programs for most types of mining. The language currently in Article III implies that each party state needs to develop these programs. To clarify this issue and simplify the provision, the Commission is recommending an amendment to delete the current language on lines 8 through 21 of page 3 and replace it with the following: "Each party state agrees that it has or will establish effective programs to accomplish the purposes of this compact." IMCC's Executive Director agreed that the proposed change is not inconsistent with the Compact. A proposed amendment is attached for making this change.

An error in the drafting of HB 1166 was also noted on page 7 on the bill. On line 20, the "or" after "subsection 8" should be changed to "of" so the phrase reads "subsection 8 of article V". The proposed amendment attached to this testimony will also make this correction.

The Commission believes that North Dakota's full membership in the Interstate Mining Compact Commission will be very worthwhile considering the importance of the coal mining industry to the State and urges a Do Pass recommendation for HB 1166 with the amendments discussed above.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1166

Page 3, line 8, remove "within a reasonable time it will formulate and establish an" and replace with "it has or will establish effective programs to accomplish the purposes of this compact."

Page 3, remove lines 9 through 21

Renumber accordingly

Page 7, line 20, after "subsection 8" replace "or" with "of"

House Bill 1166

Public Service Commission Testimony

Presented by: **Jim Deutsch**
 Director, Reclamation Division
 Public Service Commission

Before: **Senate Natural Resources Committee**
 Senator Stanley W. Lyson, Chairman

Date: **February 25, 2005**

Mr. Chairman and committee members, I am Jim Deutsch, Director of the Public Service Commission's (Commission) Reclamation Division. I appear on behalf of the Commission in support of HB 1166.

HB 1166 is legislation introduced by the Commission that will allow the State of North Dakota to join the Interstate Mining Compact Commission (IMCC) as a full member. The IMCC is a multi-state organization that represents its member states on mining and related environmental issues. The purposes of the Interstate Mining Compact are to advance the protection and restoration of land, water and other resources affected by mining and to assist its member states in maintaining an efficient, productive and economically viable mining industry. The IMCC does not possess any regulatory powers and nothing in the compact is be construed to supersede any other state law.

North Dakota joined the Interstate Mining Compact Commission about five years ago as an associate member. This membership request was made by Governor Schafer since the Governor of each member state is considered the official commission member for that state. However, each Governor is represented on the various committees by an appointed delegate who works for a state agency responsible for administering that state's mining regulatory program.

The IMCC's by-laws allow a state to remain as an associate member for up to five years. If a state does not become a full member after that five-year period, the

associate membership will be discontinued unless extended by a vote of other members. Legislation to join the Interstate Mining Compact must be enacted in order for a state to become a full member in the IMCC. Currently, seventeen states are full members of the IMCC and three others are associate members.

The IMCC was formed in the early 1970's when many states were developing environmental protection programs for mining activities. Since the late 1970's, a majority of IMCC's efforts involve the federal Surface Mining Control and Reclamation Act of 1977 that sets out national environmental and reclamation standards for coal mining. This involvement in coal mining issues is the reason that North Dakota joined the IMCC as an associate member and is why the Commission is now pursuing full membership.

Current IMCC activities of particular interest to North Dakota include:

- IMCC is working with member states on the reauthorization of the federal Abandoned Mined Lands (AML) reclamation fee that is used to pay for reclaiming and eliminating safety hazards associated with lands that were mined prior to any reclamation law. North Dakota currently receives about \$1.6 million of federal funds for AML work each year. The federal reclamation fee that is assessed on coal currently being mined will expire on June 30, 2005, unless extended by Congress.
- IMCC has organized and sponsored several meetings to work on solutions to the current high cost and limited availability of surety bonds that many mining companies need to provide to cover the costs of their reclamation obligations.
- IMCC coordinates state comments on federal rule and policy changes.
- IMCC is a strong advocate of adequate federal funding by OSM for both the coal regulatory and AML programs.
- IMCC supported a new Environmental Protection Agency (EPA) rule that provides for a more flexible effluent standard for runoff from reclaimed lands in many western states.
- IMCC represents the interests of member states in litigation on federal rules.
- IMCC is working closely with coal producing states to provide input on EPA's review of coal combustion waste (ash) disposal in mined lands. EPA is

currently carrying out studies to determine if new federal regulations are needed for the disposal of coal ash and the beneficial use of this material. IMCC member states currently oppose any additional federal regulation in this area.

The significant value of belonging to the IMCC comes from states "compacting" together and speaking with a strong, united voice that can make a difference in addressing issues. The IMCC is a strong advocate of states rights when dealing with federal agencies.

North Dakota's associate membership fee for the IMCC has been \$2,500 per year and the Commission has paid that fee with funds from the Reclamation Division's budget. Full IMCC membership for North Dakota will increase the fee to about \$15,000 per year, with 35% being the general fund share and the remaining 65% to be paid with federal funds that the Commission receives for administering the coal regulatory program. The additional general funds that will be needed to pay the full membership fee during the 2005-07 biennium will be approximately \$8,750. Governor Hoeven included the additional general fund monies in his recommended budget for the Commission as well as the spending authority for the additional federal funds that will be needed to pay the increased dues. The PSC's budget as approved by the House includes these funds.

The Interstate Mining Compact needs to be substantially the same in each state that joins it; however, some variation is allowed provided the difference is not inconsistent with the Compact. There were some concerns that Article III as originally proposed in HB 1166 did not recognize that most states now have effective regulatory programs for most types of mining. To clarify this issue and simplify the provision, the House amended Article III as recommended by the Commission. The revised language can be found on lines 8 and 9 of page 3. IMCC's Executive Director determined that this language is not inconsistent with the Compact.

The Commission believes that North Dakota's full membership in the Interstate Mining Compact Commission will be very worthwhile considering the importance of the coal mining industry to the State. The Commission urges a Do Pass recommendation for HB 1166.