

2009 HOUSE NATURAL RESOURCES

HB 1352

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1352

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 1-29-09

Recorder Job Number: 8173

Committee Clerk Signature

Nancy L. Gerhard

Minutes:

Vice Chairman Damschen – Last session we dealt with a lot of energy issues and energy policies. One of those policies was to create a committee that was subsequently named “EmPower”. Part of their work was to develop a state energy policy and report that back to this legislative assembly. What you have in front of you is that work and policy that has been created by that committee over the interim to be adopted as ND state energy policy. There are plenty of people behind me that were part of EmPower that will be testifying and I will be more than happy to answer any questions.

Rep Mike Brandenburg – didn’t sign in – I am here to support HB 1352. Working in energy I became involved with wind energy portion. Looking at the energy ND has it is not just wind, we have coal, natural gas, hydro, we have all sorts of energy. We have an energy rich state. I believe the right people need to work together because we need transmission. The only way we are going to get transmission out of the state is if we all work together. I think that is the whole process of what this would do. This bill would bring everybody to the table and everybody working together so that coal benefits, wind benefits, hydro benefits all sorts of energy benefits. I strongly endorse HB 1352. Questions

Shane Goettle – See **Attachment # 1**.

Rep. Drovdal – Do we put policies into the Century Code for different groups?

Mr. Goettle – Bits and pieces of policy have been placed in the code, and certainly there have been some statements of policy in the past. We have adopted some of those as our own.

There is a history of placing some pieces of our energy policy in the code. This is an attempt to bring it all together into one place.

Chairman Porter – Further support of HB 1352.

Sandi Tabor – Lignite Energy Council - See **Attachment # 2**.

Mike McEnroe – ND Chapter of the Wildlife Society – See **Attachment # 3**.

Mary Mitchell – ND Resource Council – See **Attachment # 4**.

Chairman Porter – Are you reading the areas starting on page 1 line 18 because it has the letter “a” that it has a higher priority than “b, c, d, e, f, or g”?

Ms. Mitchell – I wasn't sure but reading it, it doesn't come across as being a real strong feature of the bill.

Clarence Bina – Policy can be good, and this has the potential of being very good. However I have 1 concern. I hope the committee would think about amending and improving the language. The conspicuous absence of such words as wildlife, habitat, grassland, and so on. All the energy, whether it is wind farms, transmission lines, and the whole gamete of structures do not exist in a vacuum, they are out there along with our wildlife. You address the sonic vistas and environmental stewardship. These are abstract. I would hope you would amend it to at least consider the outdoors wildlife groups.

Harlan Fuglesten – ND Association of REC – We support in general terms HB 1352. We do have concerns with subsection E. The short statement that the policy does not support state energy mandates. There are many things that our association consider mandates that we do not support so we tend to look at each law on its own merits one at a time. There are a

number of bills this legislative session, some that have occurred by this committee that a lot of lobbyists and others would label as a mandate. Unless that term has narrowed or explained it probably should be taken out of the law. As a member association we have resolution process, and through that resolutions process from time to time our members expect us to support legislation that a lot of folks would consider to be a mandate. I understand the intent of this, but I think it could be clarified in language that contains what you have in mind rather than just a broad statement against environmental regulations or other things that some people may consider to be a mandate.

Richard Schlosser – ND Farmers Union – We would like to express our support of the bill. In particular page 2 the lines speaking in supporting balance policies for development of biofuels and renewals. Our farmers and ranchers are very much in support of this. This is very beneficial for those of us in agriculture. We too have a little bit of concern with page 2 “e” line 7. That is a rather broad sweeping comment relative to mandates. Then it is just a concern of ours it does go to the biofuels, biofuel development and that is our only concern with the bill.

Questions

Dean Hulse – I’m a landowner in Beautneau Co. – I’m still waiting for wind power to come into that county. I’m here to testify in support of any policy that will help bring balance for our energy policy in our state. In the spirit of education I’d like to share with you my calculations about energy in the state. I went to the lignite energy council website and I took the megawatt potential of each plant listed including the Lewis & Clark station in Montana and the Spirit Wood Station near Jamestown, and that is still under construction. I came up with 4218 megawatt of coal fired generation capacity in the state. Now if you take that number times 8760 which is the number of hours in a year you come up with 37 million megawatt hours of annual energy potential from lignite coal. The lignite coal industry says we have enough

reserves to last 800 years. If you take that one annual amount times 800 you come up with 29.6 Billion megawatts that's the lifetime energy potential of our lignite coal reserves. 29.6 Billion megawatts. The American wind energy association says ND has 1.2 Billion megawatt hours of annual energy capacity from wind. If we were to burn lignite coal at a rate that would meet clean energy capacity in this state we would burn through those reserves in 25 years. That is taking 29.6 billion megawatt hours, which is the total reserve we have in megawatt hours and dividing it by annual energy capacity we have. So when you consider a balanced energy policy please consider the future and what we really have here in terms of energy reserves. Questions

Katie Moore Aitchsin – BisMan Chamber – We do support this bill.

Verle Reinicke – I am in favor of a balanced approach to energy policy. Wind as a specific component is mentioned in the first part of the bill, but when it comes to the specifics there is almost not mentioned at all. A great deal by comparison is talked about coal, oil & biomass. I would ask that as you are considering this bill and perhaps doing some reworking, that specificity about wind be included among those lettered pieces.

Chairman Porter – Further support of HB 1352? Opposition of 1352?

Rep. Keiser – Is our legal counsel available to answer any questions on the legalities of putting this in the code? When we put into the code statements like balanced or stimulate is there any problems down the road in terms of lawsuits? If we are giving 4 times more incentives to one kind of energy than another.

Shane Goettle – I'm not going to render a legal opinion on what you have just suggested, but I will say this: The attempt here is was to recognize first and foremost that we have tremendous potential. Having some clear policy like this in the statute is useful in pointing to energy interest that want to develop in this state. We're looking for opportunities to grow all the

industries in tandem with each other. If there is a court case, and I'm sure that could come up, I think the court would look at the legislative intent behind it. Which is to set policy, not to mandate anything in particular. We did try to qualify mandate by saying energy mandate. Our concentration was really on the production and let the market decide.

Rep. Keiser – It is really an interesting dilemma. We now have a record of people have come up and testified it is missing things. If they are not included we have excluded them by our intent. I can see the real potential for somebody coming up down the road who wants to cause trouble.

Rep. DeKrey – Couldn't we just add a statement that this section does not constitute ?????? of action?

Rep. Keiser – We need some legal protection.

Chairman Porter – We will close the hearing on 1352.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1352

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 2-5-09

Recorder Job Number: 8841

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter –

Mr. Jeff Nelson – The committee's line of inquiry concerns the policy on legislative intent statements or legislative policy statements. HB 1352 would create or establish a state energy policy and has several items of legislative declaration and the legislative assembly would declare the policy the policy of the state regarding energy. Generally, statements of legislative intent are discouraged. I'm referring to our drafting manual, the style and grammar guidelines. I will read you an excerpt from our drafting Manuel we have developed over the years. It states: The statement of legislative policy, purpose, or intent should not be used. Such statements are necessary as the purpose of a properly drafted bill should be self evident. It is unknown how future amendments to the substantive provisions of the bill affect or are affected by a legislative policy, purpose, or intent statement that is not amended to reflect those future amendments. In addition statements contained in a declaration of finding or intent may be used for a purpose unintended by the drafter. ND supreme court has referred to declaration of intent in finding a statute unconstitutional. It is policy that if the legislative assembly wants to enact a law it should say that X should do X, or the law is. Legislative intent statements and policy statements are unclear, that they really aren't law, that they can lead to unintended

consequences. Also it might lead to embarrassment of the legislative assembly in that there in that there could be inconsistency. The policy is not law. If the legislative assembly wants to establish policy it can do so by enacting a law rather than saying it is our policy to do X.

Chairman Porter – Mr. Nelson last session we put into law the 25 x 25 that was policy statement that would fall under the same definition that it really isn't a law it is kind of a goal.

Mr. Nelson – Exactly it is an objective, a goal, its policy, it's the intent of the legislative assembly. If the future of that goal is not achieved, then perhaps – well --.

Rep. Keiser – Move Do Not Pass on HB 1352.

Chairman Porter – I have a motion from Rep. Keiser for a Do Not Pass on HB 1352. Is there a 2nd? 2nd from Rep. DeKrey . Discussion Call the roll on a Do Not Pass on HB 1352.

Yes 12 No 0 Absent 1 Carrier Rep. Kelsh

Date: 2-5-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1352

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ As Amended

Motion Made By Keiser Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton		
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Kelsh

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

REPORT OF STANDING COMMITTEE

HB 1352: Natural Resources Committee (Rep. Porter, Chairman) recommends DO NOT PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1352 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1352

Attachment #1

DEPARTMENT OF COMMERCE TESTIMONY ON HOUSE BILL 1352

JANUARY 29, 2009, 3:00 P.M.

HOUSE NATURAL RESOURCES COMMITTEE

PIONEER ROOM

REPRESENTATIVE TODD PORTER, CHAIRMAN

SHANE GOETTLE—COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good afternoon, Mr. Chairman and members of the committee, my name is Shane Goettle, Commissioner of the North Dakota Department of Commerce. I also serve as chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and its members were appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy.

On behalf of the EmPower ND Commission, I am here today to speak in favor of HB 1352. A list of bills recommended and supported by the Commission is below:

- House Bill No. 1032 - Siting Jurisdiction for Certain Gas Pipelines.
- House Bill No. 1352 – State Energy Policy.
- Senate Bill No. 2031 - Property Tax Reduction for Wind Towers.
- Senate Bill No. 2032 - Sales and Use Tax Exemption for Wind Towers.
- Senate Bill No. 2033 - Income Tax Credit for Renewable Energy Devices.
- Senate Bill No. 2034 - Oil Extraction Tax Exemption for Tertiary Recovery Using Carbon Dioxide.
- Senate Bill No. 2035 - Sales and Use Tax Exemption for Beneficiated Coal Plant and Severance Tax Exemption for Beneficiated Coal in Agricultural Commodity Processing.
- Senate Bill No. 2036 - Coal Conversion Tax Exemption for Repowering Beneficiated Coal Plant.
- Senate Bill No. 2037 - Sales and Use Tax Exemption for Gas from Oil Wells.

On January 9th, I presented you with a copy of the EmPower North Dakota energy policy. If you take a look at the EmPower ND document and read HB 1352 you will see a lot of similarities. What HB 1352 does is put into statute many of the policies that were adopted by the Commission.

Mr. Chairman and members of the Natural Resources Committee, I respectfully request your favorable consideration of House Bill 1352. That concludes my testimony and I am happy to entertain any questions.

PROPOSED AMENDMENT TO HB 1352

Page 1, line 2, after "policy" insert "and to amend and reenact section 54-17.5-01 of the North Dakota Century Code, relating to education activities relating to the lignite industry"

Page 3, after line 13, insert:

"SECTION 2. AMENDMENT. Section 54-17.5-01 of the North Dakota Century Code is amended and reenacted as follows:

54-17.5-01. Declaration of findings and public purpose.

The legislative assembly finds and declares that North Dakota's lignite industry produces approximately thirty million tons of lignite annually, contributing to our state's and nation's energy independence by generating electricity for more than two million people in the northern great plains region and by producing synthetic natural gas from coal that heats ~~three~~ four hundred thousand homes and businesses in eastern states, which is equivalent to over twenty thousand barrels of oil per day. The legislative assembly further finds and declares that North Dakota's lignite industry generates over ~~seventeen~~ twenty-eight thousand direct and indirect jobs for North Dakota, ~~over one~~ nearly three billion dollars in annual business volume, and over ~~sixty-five~~ one hundred three million dollars in annual tax revenue. The legislative assembly further finds and declares that it is an essential governmental function and public purpose to assist with the development and wise use of North Dakota's vast lignite resources by supporting a lignite research, development, and marketing program that promotes economic, efficient, and clean uses of lignite and products derived from lignite in order to maintain and enhance development of North Dakota lignite and its products; support educational activities relating to the lignite industry; preserve and create jobs involved in the production and utilization of North Dakota lignite; ensure economic stability, growth, and opportunity in the lignite industry; and maintain a stable and competitive tax base for our state's lignite industry for the general welfare of North Dakota. The legislative assembly further finds and declares that development of North Dakota's lignite resources must be conducted in an environmentally sound manner that protects our state's air, water, and soil resources as specified by applicable federal and state law."

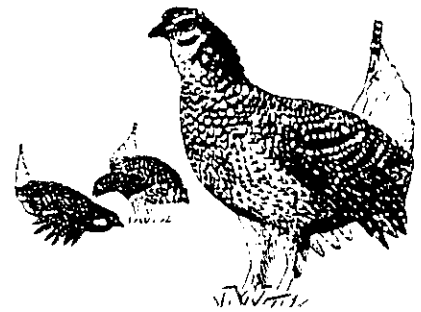
ReNUMBER accordingly.



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
on HB 1352
House Natural Resources Committee
January 29, 2009

Chairman Porter and Members of the Committee:

For the record I am ~~Mike McEnroe~~ and I am representing the North Dakota Chapter of The Wildlife Society.

The Chapter supports HB 1352. In light of language within the bill that cites North Dakota's "strong tradition of environmental stewardship", "developing a balanced approach" to energy development and to "protect the state's scenic beauty", we would recommend adding several environmental provisions to the proposed policy.

For example, on page 3, line 12, we suggest an amendment; s. Ensure adequate water, power, and infrastructure for energy development consistent with natural resource needs for other uses including, but not limited to, agriculture, municipal and industrial needs, and in-stream flows to protect fish and wildlife. To say something less means "energy gets the water".

We also recommend a policy provision to protect the State's air, water, soil, and other natural resources from the unmitigated impacts of hydrocarbon, alternative, and renewable energy development.

In the words of former Governor Art Link "When the landscape is quiet again, when the draglines, the blasting rigs, the power shovels and the huge gondolas cease to rip and roar and when the last bulldozer has pushed the last spoil pile into place and the last patch of barren earth has been seeded to grass or grain, let those who follow and repopulate the land be able to say,

our grandparents did their job well. The land is as good, and in some cases better than before."

"Only if they say this will we be worthy of the rich heritage of our land and its resources."

Governor Link's speech was the energy policy of the State at the time. We can do nothing less than to keep his philosophy as a part of this proposed State Energy Policy.

Thank you for the opportunity to comment on HB 1352.



Attachment # 4

Dakota Resource Council
"Organizing North Dakotans Since 1978"
P.O. Box 1095~~ Dickinson, ND~~ 58602-1095
701-483-2851
www.drcinfo.com

Neutral testimony HB 1352
January 30, 2009

Chairman Porter and members of the House Natural Resources Committee,

Dakota Resource Council is neutral on this bill, and yet, members have some concerns about three specific components of this bill. I appreciate the opportunity to share those concerns.

First, energy efficiency is truly the "low-hanging fruit" in terms of maximizing our energy resources. It is fast and inexpensive. It saves consumers money by reducing their monthly bills and by slowing the need for building costly new generation. We would like efficiency (page 2, line 20) to be a primary focus of a state energy policy.

Second, the language on page 2, line 7, opposing energy mandates is troubling. In fact, the language creates what amounts to a legislative mandate that will have a chilling effect on the initiative process. Furthermore, North Dakota law already contains several mandates, one of which is NDCC 49-02-23, which expressly forbids the Public Service Commission from considering the costs of future environmental externalities. Ironically, the PSC's interpretation of NDCC 49-02-23, with respect to the proposed Big Stone II power plant, may end up costing North Dakota ratepayers more money. If HB 1352 becomes law, will the Legislative Assembly repeal NDCC 49-02-23 and any other statutory mandates?

"Members of Dakota Resource Council use grassroots actions to influence public opinion and shape public policy to protect agriculture, natural resources, livelihoods and community well-being."