

2011 HOUSE ENERGY AND NATURAL RESOURCES

HCR 3031

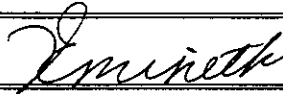
2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HCR 3031
02/11/2011
14382

☐ Conference Committee

Committee Clerk Signature



Minutes:

Rep. Porter: We will open the hearing on HCR 3031.

Rep. Heller: I represent district 33. HCR 3031 addresses the alarming problems of the Stream Projection Rule that the Office of Surface Mining and Reclamation and Enforcement is trying to enact. North Dakota maintains a strong lignite industry that employs more than 27,000 people, has an annual impact of 3 billion dollars, and generates more than ninety million dollars in state taxes each year. This resolution addresses an issue that seeks to undermine the coal industry.

Dave Streley: I am here today to represent North American Coal which operates in the state of both Falkirk Mining Company as well as the largest lignite mine in the United States, Coteau Properties Company. We are here to support HCR 3013. This is here because of 5 years of work being turned over in a matter of a short time without any justification. Our industry has put in many years worth of scientifically based data to come up with the Extreme Bumper Zone Rule, which was enacted in 2008. The Office of Surface Mining through the Department of Interior has agreed to cleanse this new rule without justification. What they are trying to get at Eastern operation's which is much different than what we do here in North Dakota. Our program through the PSC and our partnership the OSM has worked wonderfully. We all want the same thing. If this draft proposal that they are circulating becomes a effective regulation in North Dakota, we will be subject to it, and they will sterilize approximately 10 to 15 million tons of coal in the state of North Dakota that otherwise would be mineable. I have 2 amendments that I would like to offer. On page 2 line 26 direct and indirect jobs and on page 3 to add 3 offices, The Secretary of the Department of Interior, the director of the Office of Surface Mining Reclamation and Enforcement, and a copy to the North Dakota Public Service Commissioners.

Rep. Nelson: What it is about the proposed regulations that would impact you?

Joe Friedlander: I am the environmental manager of the Coteau Properties Company about 30 years. We have operated under the existing Stream Protection Rule since 2008 and even before then. The proposed rules are not out yet, they are in draft form. They are designed to go after the mines in the East, to shut them down. The Office of Service Mining said they should be applicable to all streams in the United States. The way they are written now they would require so much information about the biology of the lands that is not necessary to do now and then returning and doing a complete analysis of all the bugs on any stream that is reclaimed. It could add additional bonding requirements, it is a large amount of additional work and it appears that some of these drainages we would not be allowed to mine.

Sandy Tabor: I am from the Lignite Energy Council and we are in support of HCR 3031.

Rep. Porter: Is there any opposition?

Burl Renke: We have taken the 2 verbs in Genesis one subdue and dominate to mean that we humans are superior to the creation. That is not the way those verbs are meant. This resolution is another denial of our responsible place in creation to live with it and not against it. I ask for a do not pass.

Scott Skokos: I am testifying in behalf of the Dakota Resource Council which is in support of the current rule making process in the regulatory frame work that is associated with that.

Rep. Nelson: Can you give us any examples where the current regulations have inadequately protected the streams of Western North Dakota?

Scott Skokos: We are in favor of these new regulations because we like to see more of a look on how these streams are reclaimed and more regulation on them. We would like the EIS process to go forward.

Rep. Porter: Is there further testimony to HCR 3031? We will close the hearing on HCR 3031.

Rep. DeKrey: I move to add the amendment.

Rep. Hofstad: Second

Rep. Porter: Is there any discussion. Voice vote taken motion carries.

Rep. DeKrey: I move a do pass with a referral to the consent calendar.

Rep. Hofstad: Second

Rep. Porter: Is there any discussion? Voice vote taken motions carries.

Carrier Rep. Hofstad.

February 10, 2011

VLC
2/10/11

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3031

Page 2, line 26, after "direct" insert "and indirect"

Page 3, line 21, after the first comma insert "the United States Secretary of the Interior, the
director of Surface Mining and Reclamation and Enforcement,"

Page 3, line 21, after the second comma insert "the North Dakota Public Service Commission,"

Renumber accordingly

Date: 2-10-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3031

House House Energy and Natural Resources Committee

Legislative Council Amendment Number 11.3080.01001. 7/1/002000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep DeKrey Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunsakor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote taken motion carried

Date: 2-10 2011
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3031

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep DeKrey Seconded By Rep Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen	✓		Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper	✓				
Rep. Keiser	✓				
Rep. Kreun	✓				
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Hofstad

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

*voice vote taken motion Carried
to Consent Calendar*

REPORT OF STANDING COMMITTEE

HCR 3031: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS and **BE PLACED ON THE CONSENT CALENDAR** (15 YEAS, 0 NAYS,
0 ABSENT AND NOT VOTING). HCR 3031 was placed on the Sixth order on the
calendar.

Page 2, line 26, after "direct" insert "and indirect"

Page 3, line 21, after the first comma insert "the United States Secretary of the Interior, the
director of Surface Mining and Reclamation and Enforcement,"

Page 3, line 21, after the second comma insert "the North Dakota Public Service
Commission,"

Renumber accordingly

2011 SENATE NATURAL RESOURCES

HCR 3031

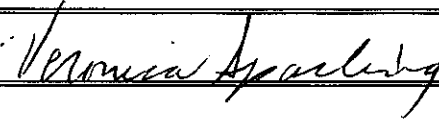
2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HCR 3031
March 11, 2011
Job # 15448

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution expressing the concern of the Legislative Assembly with the scope, justification, and substances of the Office of Surface Mining Reclamation and Enforcement's stream protection rule.

Minutes:

No Attachments

Chairman Lyson opened the hearing on HCR 3031.

Representative Brenda Heller, District 33, stood in support of HCR 3031. This resolution addresses some alarming problems that the stream protection rule that the Office of Surface Mining and Reclamation Enforcement is trying to enact. As you are aware, North Dakota maintains a strong lignite energy industry that employs 17,000 people. It has an impact of more than 3 billion dollars and generates more than 90 million dollars in taxes. This resolution addresses an issue that seeks to undermine that industry.

David Straley, representing North American Coal, Falkirk Mining Company and Kito Properties Company, the two biggest lignite mining companies in the state, stood in support of HCR 3031. This resolution was put forward to address a misconception between the surface mining operations here in North Dakota as opposed to some of the eastern operations. They have a completely different process. This proposed rule was meant for the eastern operations but with subsequent drafts, it was applied to all operations. If passed these rules will sterilize approximately 15 to 20 million tons of ND lignite and have other consequences as well. Our company is proud of our reclamation history. We are proud of the way we do things concerning water quality. We are proud of the streams we protect.

The hearing will continue next week.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HCR 3031
March 17, 2011
Job #15625

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A concurrent resolution expressing the concern of the Legislative Assembly with the scope, justification, and substances of the Office of Surface Mining Reclamation and Enforcement's stream protection rule.

Minutes:

One Attachment

Chairman Lyson continued the hearing on HCR 3031.

Joe Friedlander spoke on behalf of David Straley. He is the Director of Environmental and Regulatory Affairs for North American Coal. He previously worked at the Freedom Mine for 30 years as environmental manager responsible for permitting and environmental compliance and land reclamation. He received a bachelor's degree in environmental design from the University of California Berkeley and a master's degree in range ecology from Colorado State University. He spoke in support of HCR 3031. The resolution was introduced to question the stream protection rule for a few reasons. One of the reasons is there is currently a stream buffer zone rule in effect. It has been in effect for quite a few years and has been quite effective. It has been protective and evidence has shown it has been quite protective throughout the country. The original intent of the new stream protection rule was to address Appalachian mining and surface coal mining back east. Some of the concerns the Office of Surface Mining has with stream valley fills back east. It is going to affect the entire country. The Office of Surface Mining said they cannot make a rule just for the east. They had to make it for everyone. If the rule is enacted as proposed it would sterilize at least 15 or 20 million tons of coal in North Dakota unnecessarily. We have been mining coal here under the existing rules for years and years. We have been reclaiming land for years, getting bond release for years, reclaiming drainages and channels and we haven't had any problems. In fact the Office of Surface Mining holds North Dakota up as an example of a good program. It is an unnecessary rule, an additional layer of regulation that is not needed. Our reclamation has proved that out. We have reclaimed almost 10,000 acres, we have bond released a little over 2000 so far.

Chairman Lyson: What have the farmers gotten for production off that land?

Joe Friedlander: To get the final bond release, it has to match the production of the surrounding area.

Chairman Lyson: I have heard that reclaimed land out-produces the other areas around.

Joe Friedlander: In many places it does, the topsoil is evened out and the land can be made more level.

Opposition to HCR 3031

Scott Skokos, representing the Dakota Resource Council, presented written testimony in opposition to HCR 3031. See **Attachment #1**.

Chairman Lyson closed the hearing HCR 3031.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HCR 3031
March 25, 2011
Job #16001

☐ Conference Committee

Committee Clerk Signature

Veronica Spaulding

Explanation or reason for introduction of bill/resolution:

A concurrent resolution expressing the concern of the Legislative Assembly with the scope, justification, and substances of the Office of Surface Mining Reclamation and Enforcement's stream protection rule.

Minutes:

No Attachments

Chairman Lyson opened the discussion on HB 3031.

Senator Freborg: Do Pass motion

Senator Uglem: Second

Senator Triplett: We are asking a federal agency to withhold funding for the Office of Surface Mining Reclamation and Enforcement of a stream protection rule. Is that the message we really want to send? That we don't want the federal government to spend money protecting the waters of our state which are the most precious resource we have. I will vote against it.

Roll Call Vote: 6-1-0

Carrier: Senator Freborg

Date: 3-25-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3031

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Freborg Seconded By Uglen

Senators	Yes	No	Senators	Yes	No
Chairman Lyson	✓		Senator Schneider	✓	
Vice-Chair Hogue	✓		Senator Triplett		✓
Senator Burckhard	✓				
Senator Freborg	✓				
Senator Uglen	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Freborg

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

REPORT OF STANDING COMMITTEE

HCR 3031, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)
recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HCR 3031 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HCR 3031

#1

Dakota Resource Council Testimony on HCR 3031

1
2
3 Dakota Resource Council favors the holistic approach of the proposed Stream
4 Protection Rule, which is currently in the EIS process. If made rule the Stream
5 Protection Rule will protect the health of North Dakota Streams by requiring proof
6 that streams are ecologically sound after mining.

7 Groups in opposition to the Stream Protection Rule argue that if made rule,
8 the Stream Protection Rule will sterilize a great deal of North Dakota Coal. In reality,
9 it is not a proposed federal rule that will sterilize coal in North Dakota; rather it is
10 the current market conditions for coal, combined with the low quality of coal that is
11 found in North Dakota.

12 As past Governor Art Link once ^{Said} ~~state about lignite coal~~, "Some call Lignite
13 high quality dirt, others call it low quality coal"

14 Lignite coal is of such poor quality that any Lignite Mine must be
15 accompanied by ~~either~~ a power generation facility in order to make burning Lignite
16 economically feasible. The reason for this is the high water content that is present in
17 Lignite, which makes transporting Lignite over long distances a poor business
18 endeavor.

19 What further hurts the economic feasibility of Lignite is the fact that not a
20 single new coal power generation facility has been constructed since 2008 due to
21 market and regulatory uncertainty. For the record as of today, no permits for new
22 coal power plants are up for review by the North Dakota Public Service Commission.

23 This begs the question, is Lignite even marketable? As a result, it is apparent that
24 even without the Stream Protection Rule, Lignite Coal in North Dakota has been
25 effectively sterilized by its lack of marketability.

26 Lets not blindly block a federal agency from studying and implementing a
27 rule that will help protect North Dakota's most vital natural resource, water. For
28 these reasons Dakota Resource Council urges a do not adopt recommendation on
29 HCR 3031.

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