

March 12, 2024

Testimony Presented by: Nathan Anderson, Director
Department of Mineral Resources

Presented to: House Judiciary Committee
Representative Lawrence Klemin, Chair

SENATE BILL 2285

Introduced by:
Senators Cory, Sickler and Paulson
Representatives Koppelman, Vetter and Schauer

SECTION 1. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Judicial deference.

Notwithstanding any other provision of law, in interpreting or applying a statute, a regulation, or rule, a judge may not defer to an administrative agency's interpretation of the statute, regulation, or rule.

Proposed Amendment: Notwithstanding any other provision of law, in interpreting or applying a an ambiguous statute, regulation, or rule, a judge may not defer to an administrative agency's interpretation of the ambiguous statute, regulation, or rule.

- The "Chevron Deference" was focused on unelected federal bureaucrats
- Federal agencies ignored the will of Congress, resulting in federal overreach
- Federal rules are one-size-fits-all, involve red tape that hampers the intent of the rule
- A judge cannot defer to an agency subject matter expert. This is problematic
- Our field of work is specialized and technical. Not allowing a judge to defer to agency expertise would significantly impact an informed decision. Our personnel are engineers and geoscientists, many trained by industry, with years and decades of practical experience and training
- State agencies such as the Industrial Commission are made up of statewide elected officials
- Federal agencies are led by unelected officials

- Director of Mineral Resources is appointed by the statewide elected Industrial Commission. The Oil and Gas Division focuses on and has decades of experience in safe and reliable regulation for North Dakotans
- Regulations are specific to North Dakota, specific to the conditions, geology, geography, and weather that makes North Dakota unique to many other top energy producing states
- It is not a one-size-fits-all approach to regulation. Interpretating regulations specific to North Dakota. Oil and gas regulation is complex and highly technical. Agency staff wrote regulations and inherently understand the reasons those rules were written and are best informed to understand their interpretation and apply them in a scientifically sound and common sense way
- Rulemaking is very local, and it is easy for interested parties to engage in the process
- This agency has decades of experience enforcing the regulations
- Federal laws are different, can be over 1,000 pages and are enforced by personnel that may have had no input on their writing and are open to wide interpretation
- It is critical that judges be able to defer to the DMR when appropriate. This does not mean judges should indiscriminately accept DMR's interpretation but if DMR is able to show a judge it is reasonably applying the law with a sound scientific basis, the judge should be able to defer and rely on DMR's technical expertise
- Prohibiting judges from deferring to DMR experts would harm the state's environment and economy. Judges would not be able to take advantage of DMR's expertise, that acts in the best interests of the state. Instead, judges would be guided by special interests that may not have the best interests of the state in mind. This bill would hamstring DMR's ability to enforce its regulations. Judges would not be able to defer to DMR's expertise and interpretation and may look to the special interests' interpretation for compliance requirements
- It is critical that a judge be able to defer to DMR when DMR can justify its interpretation and application of the law. In some cases, opponents have retained their own experts, often from outside the state with no knowledge of the unique circumstances that exist in North Dakota. Under this bill, these hired, out-of-state experts could be relied on by a judge but DMR's experts could not. This would result in poor decision-making and uncertainty, making North Dakota less attractive for investment
- The Legislature should want judges to defer to DMR where DMR has provided justification for doing so. The alternative is that judges, who generally do not have technical backgrounds, will have to rely on parties seeking to advance their own agendas, and not North Dakota's
- Judges have the authority to interpret statutes, regulations, and rules. However, it is also appropriate for judges to defer to an administrative agency's interpretation of its own regulations or rules, as these agencies are the subject matter experts and the original drafters. Regulations and rules promulgated under a statute are reviewed by legislative sponsors, and the legislature's Administrative Rules Committee has the power to object if a regulation or rule is deemed unreasonable, arbitrary, capricious, or beyond

the agency's delegated authority. Additionally, the committee can void all or part of a regulation or rule if it lacks statutory authority, fails to comply with legislative intent or procedural requirements of the Administrative Practices Act, conflicts with state law, or is arbitrary and capricious.

- If this bill is passed into law, it could result in an ironic situation where a judge is not allowed to defer to the administrative agency's interpretation of a statute, regulation, or rule and arrive at a different interpretation, even though the administrative agency wrote it