

2021 SENATE ENERGY AND NATURAL RESOURCES

SB 2317

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2317
2/11/2021

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| A BILL for an Act to create and enact section 6-09-52 of the North Dakota Century Code, relating to a coal mine performance bonding pilot program and the authority of the Bank of North Dakota; and to provide for an energy development and transmission committee report. |
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Chairman Kreun called the hearing to order at 10:01am
Senators Patten, Schaible, Piepkorn, Bell, Roers, and Kreun all present

Discussion Topics:

- Amendments
- SMCRA provisions
- Bonds

Senator Bell, District 33, introduced the bill and testified in favor (10:01am)

David Straley, North America Coal Corporation, Lobbyist, testified in favor #6396 (10:08am)

Jodi Smith, ND Department of Trust Lands, Commissioner, testified in favor #6393 (10:19am)

Michael Schakelford, ND Department of Trust Lands, Accountant, testified in favor (10:23am)

Chris Friez, Attorney and Land Management, North American Coal Corporation, testified in favor (10:34am)

Additional written testimony:

John Schuh, Public Service Commission, Staff Attorney, testified in favor #6222

Chairman Kreun called the hearing to a close at 10:47am

Dave Owen, Committee Clerk

David Straley – The North American Coal Corporation
Senate Energy and Natural Resources Committee
Testimony on February 11, 2021

SUPPORT SB 2317

Chairman Kreun and members of the Senate Energy and Natural Resources Committee, my name is David Straley and I represent The North American Coal Corporation (NACoal) and its subsidiaries within North Dakota. I am here today to ask for your consideration of the amendments and then to support Senate Bill 2317 for two main policy reasons: 1. the coal industry is under economic pressures that are influenced by regular market supply and demand issues, but also government and other ESG policies that unfairly discriminate against coal and we believe this bill may help relieve the economic pressures, and 2. the ND Public Service Commission (PSC) has authority under 69-05.2-12-04 to allow collateral bond. We are trying to address a potential new situation that our company has not encountered before but could be in the near future; and we believe by creating this Trust, and with the cooperation of the Bank of North Dakota, it can serve as a potential necessary tool in the future to help the North Dakota coal industry at no risk to the state.

Before I get into the substance and background of the bill and amendments, first a little bit about the company I represent. NACoal has been operating in North Dakota since 1957. Beginning with the Indianhead Mine in an open-market, retail sales of coal concept, we have since grown our operations to dedicated mine-mouth customers that benefit not only North Dakota consumers, but also customers throughout the entire Midwest. Through today's Coyote Creek, Falkirk and Freedom Mines, our company provides over 20 million tons of coal annually in North Dakota, and it has done so consistently since the 1990s. On a more national perspective, we have mining operations in five other states, and NACoal has had continuous business operations since 1913. We have maintained dozens of mining permits throughout the nation and have always been in full compliance with those permits and the requirements surrounding bonding.

Every coal mining company operating in North Dakota does so with a permit from the PSC. The PSC runs this permitting system under the State Version of the federal law passed in 1977 under the title Surface Mining Control and Reclamation Act (SMCRA). And by no means take this as a comprehensive overview of that program, but I offer this very shortened version to help understand only one component—performance bonding. I am confident that the PSC can give you a complete education on SMCRA requirements and answer more details as you need, but my main point is to explain performance bonding. It is our intent here today to ensure the PSC maintains primacy in administering the program. We hope this bill and amendments offer ideas for potential solutions to some issues that we face in the realities of the marketplace in meeting the requirements of this program in North Dakota. One of the many

regulations within this program contains performance bonding requirements. North Dakota Administrative Code section 69-05.2-12-02 currently allows for three types of performance bonding to cover the necessary final reclamation process. Those three types of bonds are Surety Bond, Collateral Bond, or Self-Bond.

Given the three options and the costs associated with these options, we are looking for useful solutions of how best to pledge assets into a fund or escrow account that would still allow the flexibility of using them to produce coal, but also be available in the worst-case scenario to be accessed to perform the duties the PSC needs to ensure the program's goals are met. Again, I will stress that this is a worst-case scenario, and hopefully, the PSC continues their perfect record of never having had to call for the forfeiture of any coal mining bonds in North Dakota. The ramifications of that action would be far beyond the state of North Dakota, and it is our goal to never have that happen.

Another reality that we are facing is the size of the actual surety market. Given all that is happening nationally and regionally, we aren't sure that the market is really able to offer all that we'd demand, given that some in the surety market are using ESG requirements to raise the costs significantly or simply not offer a product at all to fossil fuels. If adopted and passed into law, we hope this tool would be an acceptable method of offering assurances of collateral bond, and we are asking the appropriate agencies to help administer. We have been extremely pleased with the help, advice, and ideas offered by Land Commissioner Jodi Smith and her staff—they have done an excellent job and really stepped up for us to help get us this far along.

Now, I know we've talked a lot of 'downside' and 'problems' that we face, and it would be remiss if I didn't point out all the negative and worst-case scenarios—that really is the idea behind performance bonding—providing protection to the state and public in the event of the negative and worst-case scenarios. But I think it is really important to offer some good news if this bill passes and some of the opportunities of the industry and the State that come along with it. The first is that the SMCRA program regarding bonding works well, in fact, very well. I am unaware of any coal company or bonding company defaulting on any commitments they have made across the United States, even in the recent years of so many bankruptcies.

If passed into law, the state will have more opportunity to recoup royalties for the State lands and coal minerals it holds. Commissioner Smith can give you exact numbers, but we know coal mining on State Coal has contributed millions of dollars into the education trusts held by the Land Department. Later today, this committee will get to hear about another idea of how to support the increase in those opportunities, and we are hopeful to earn your support for that concept as well.

Something that should not be confused with this bill is reclaiming abandoned mine lands. Again, I would turn the full description of the AML program and their success stories to the PSC. The short version is that the ND coal mines pay a dedicated

federal tax that is specifically for abandoned mine lands (prior to the enactment of SMCRA in August of 1977). Those federal tax dollars are then redistributed back to qualifying states through a division of our own PSC for specific purposes. We firmly support the PSC in this program—their staff does a fine job of wisely and efficiently spending of these precious federal dollars. Again, that is an industry tax and not state general fund or taxpayer dollars, nor should it be equated to reclamation bonding.

Although we may not have all the details worked out exactly as of today, assuming these amendments are adopted, we are dedicated to working toward positive resolution to help the coal industry use the assets we have as pledged collateral for meeting the requirements required by the PSC. As I review these amendments with the committee, please note that these are modeled after and are very similar to NDCC Chapter 15-68 Indian Cultural Education Trust, another example of a creative solution that was enacted into law that allowed industry to set up a trust with a specific purpose, administered through the Land Department. This program was set up by this legislative body in the last 20 years and has allowed the coal industry some creative flexibility and offers a win-win. Just like that trust, we are asking for your support of the next trust to be used in a different, yet important manner.

In a few minutes, I'm going to introduce Mr. Christopher Friez, an attorney with years of experience directly dealing with bonding, and currently is the Land Manager for NACoal's Royalty Company to answer any specific questions you may have.

Again, we would ask for your adoption of the amendments and a Do Pass of SB 2317. We would also ask for a little bit of time from the committee to address issues that may get raised. It is our first attempt at offering change and a potential solution. I'd like to thank the committee and those affected with additional work in advance for their patience—we do appreciate it. With some time, hard work, and dedication, we can all continue to enjoy access to affordable, reliable, clean, domestic, and efficient electricity from ND Lignite. Not only does it provide luxury, it powers the North Dakota economy. Given the extremely low temperatures in the last week, we are blessed to be counting on these "always on resources" like fossil fuel fired baseload power plants, and with your support, we can continue to enjoy the benefits for generations to come.

Thank you for taking this testimony today and I'd be happy to answer any questions you may have.



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2317

**Senate Energy and Natural Resources Committee
February 11, 2021**

Chairman Kreun and members of the Senate Energy and Natural Resources Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify on Senate Bill 2317.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages five additional funds: the Strategic Investment and Improvements Fund (SIIF), the Coal Development Trust Fund, the Capitol Building Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

North American Coal Corporation (NA Coal) has been an invaluable partner to the Board, the Department and the trusts. In 1908, Land Commissioner Hegge wrote:

Nature has bountifully supplied North Dakota with lignite coal, and much of the state land is underlaid with this valuable fuel. The constitution provides that the coal lands of the state shall never be sold, but that such lands may be leased for coal mining purposes.

The legislative assembly has provided for the leasing of such lands at a minimum price of tens cents per ton for coal mined thereon, the manner of leasing being at public auction,

and on application the same as grazing lands are leased. The industry, however, is yet in its infancy and very little state land is leased for this purpose.

In 1914, Land Commissioner Henry, wrote to the Legislative Assembly stating:

The Legislative Assembly should provide for the leasing or mining of coal on school and institution lands in North Dakota, as the present law the Attorney General holds to be unconstitutional.

In a report of the State written in 1922 by J.M. Devine, \$7,200,000 was the value of tons of coal sold in North Dakota. This reports states:

North Dakota has 690,000,000,000 tons of high grade lignite coal. The greatest deposit of a continuous stretch of coal in any one locality in the world. Enough coal to warm every home, turn every wheel in every factory in this country for 200 years and still barely scratch the surface of this special gift of God to the people of North Dakota. The day cannot be far distant when this coal, long patiently awaiting the magic touch of organized capital, will produce the cheapest electricity the world knows and shoot it hundreds of miles away for light and heat.

Over the years, the Legislative Assembly has amended the law to allow the Board to continue to create value from our bountiful supply of coal. With the recommended amendments, the Legislative Assembly will provide regulatory relief to industries located within the state to maintain the economic base for the state and its citizens. The purpose of this amendment to SB 2317 is to create a framework through the Board to utilize private assets pledged as collateral to fulfill performance bond obligations under section 38-14.1-16 of the North Dakota Century Code and chapter 69-05.2-12 of the North Dakota Administrative Code.

I stand before you, as the twenty-fourth Land Commissioner of this incredible state, requesting approval of SB 2317. For 112 years, coal has benefited our trusts; in the past decade, \$35 Million in revenue has benefited the trusts and the Strategic Investment and Improvement Fund. While this may not appear to be significant to some, it impacts every trust that receives revenue from coal.

We look forward to working with the Committee on this bill and would be happy to answer any questions.

Senate Bill 2317

Submitted by: ND Public Service Commission

Before: Senate Energy and Natural Resources Committee
The Honorable Curt Kreun, Chairman

Date: February 11, 2021

TESTIMONY

The Public Service Commission (PSC) supports SB 2317. It has the potential to result in lower mining costs and lower retail costs for customers.

North Dakota's surface mining program requires that the mining companies provide adequate bond coverage to complete reclamation of lands disturbed by mining activities if the mining company is unable to complete the reclamation (i.e., bond forfeiture).

NDCC 38-14.1-16 establishes the general criteria for performance bonds used by mining companies. NDAC 69-05.2-12 provides further clarification on the bonding requirements for mining companies. There are three types of bonds that are accepted by the Commission: (1) surety bonds, (2) collateral bonds, (3) self-bonds. A combination of the three types of bonds is also acceptable. The regulations establish the criteria for each type of bond. A self-bond is described as: "legally binding corporate promises without separate surety or collateral, available to entities that meet certain financial tests."

Currently, the total bond amount held by the Commission for North Dakota mining companies is approximately \$351 million in the following types of bonds:

\$119 million in surety bonds; \$21 million in collateral bonds; and \$211 million in self-bonds.

North Dakota's surface mining laws and rules must be at least as stringent as the federal Surface Mining and Reclamation Act. Any changes to our surface mining laws or rules must be approved by the federal Office of Surface Mining.

Thank you for the opportunity to submit this information for the Committee's consideration. Please don't hesitate to contact the Commission if there are any questions.

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2317
2/12/2021

A BILL for an Act to amend and reenact section 23.1-06-07 of the North Dakota Century Code, relating to limitations on regulation of coal-fueled electric generating units; to provide a penalty; and to declare an emergency.

Chairman Kreun called the committee to order at 9:05am
Senators Bell, Schaible, Piepkorn, Patten, J. Roers, Kreun all present

Discussion Topics:

- Amendment explanation and recap
- Industry Perspective

Senator Bell, moved to adopt an amendment #21.1057.01001 (9:08am)

Senator Schaible seconded to adopt an amendment (9:08am)

David Straley, North America Coal Corporation, Lobbyist, testified in favor (9:15am)

| Adopt the Amendment | Vote |
|----------------------------|------|
| Senator Curt Kreun | Y |
| Senator Jim P. Roers | Y |
| Senator Dale Patten | Y |
| Senator Merrill Piepkorn | N |
| Senator Donald Schaible | Y |
| Senator Jessica Unruh Bell | Y |

Motion Passed 5-1-0

Senator Schaible, moved DO PASS AS AMENDED (9:27am)

Senator Roers, seconded DO PASS AS AMENDED (9:27am)

| DO PASS AS AMENDED | Vote |
|----------------------------|------|
| Senator Curt Kreun | Y |
| Senator Jim P. Roers | Y |
| Senator Dale Patten | Y |
| Senator Merrill Piepkorn | N |
| Senator Donald Schaible | Y |
| Senator Jessica Unruh Bell | Y |

Motion Passed 5-1-0

Senator Roers will carry

Chairman Kreun, called the hearing to a close at 9:30am

Dave Owen, Committee Clerk

February 10, 2021

SK/1/1
105

PROPOSED AMENDMENTS TO SENATE BILL NO. 2317

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 15-72 of the North Dakota Century Code, relating to the establishment of a coal mine reclamation trust utilizing private assets; and to provide for a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 15-72 of the North Dakota Century Code is created and enacted as follows:

15-72-01. Trust establishment.

The coal mine reclamation trust is established to reclaim coal mines at the direction of the public service commission by utilizing private assets pledged as collateral to fulfill the performance bond obligations under section 38-14.1-16 and North Dakota Administrative Code chapter 69-05.2-12. The coal mine reclamation trust may be used to fulfill the requirement of a qualified third party.

15-72-02. Powers and duties of the board - Transfer.

The board of university and school lands shall set up a coal mine reclamation trust. The coal mine reclamation trust may receive and accept assets as directed by the public service commission which are held in the public service commission's custody under North Dakota Administrative Code section 69-05.2-12-04 as collateral in a security agreement with any person as defined in section 38-14.1-02. The commissioner of university and school lands shall consult with the public service commission in carrying out the powers and duties of administering the coal mine reclamation trust.

15-72-03. Assets and custody.

Any person proposing to pledge assets to the public service commission's custody under North Dakota Administrative Code chapter 69-05.2-12 shall certify to the public service commission:

1. The trust will have first priority security interest in the pledged assets.
2. The person has authority to place the assets in custody under all applicable federal and state law.

15-72-04. Trust management.

The net income derived from the assets held in trust must be used for trust purposes. Any assets placed in the trust may be sold, leased, invested, managed, or otherwise disposed of by the board to fulfill the reclamation activities and obligations related to the performance bond. If any of the trust assets include real property, net income from the trust assets must be used in part to pay to the county where the real property is located the same amount that would have been assessed against the real

202

property for real property taxes if the real property was privately owned. The board may maintain separate accounts in the trust if necessary. The board shall manage all assets in the trust in the same manner that the board manages the board's other trust assets or as otherwise may be required to satisfy the purposes of this chapter."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2317: Energy and Natural Resources Committee (Sen. Kreun, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2317 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 15-72 of the North Dakota Century Code, relating to the establishment of a coal mine reclamation trust utilizing private assets; and to provide for a transfer.

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15-72-02. Powers and duties of the board - Transfer.

The board of university and school lands shall set up a coal mine reclamation trust. The coal mine reclamation trust may receive and accept assets as directed by the public service commission which are held in the public service commission's custody under North Dakota Administrative Code section 69-05.2-12-04 as collateral in a security agreement with any person as defined in section 38-14.1-02. The commissioner of university and school lands shall consult with the public service commission in carrying out the powers and duties of administering the coal mine reclamation trust.

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Renumber accordingly

2021 HOUSE ENERGY AND NATURAL RESOURCES

SB 2317

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

SB 2317
3/11/2021

Relating to the establishment of a coal mine reclamation trust utilizing private assets; and to provide for a transfer

10:45 AM

Chairman Porter opened the hearing on SB 2317. Present: Representatives Porter, Damschen, D Anderson, Roers Jones, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, M Ruby, Zubke, Guggisberg, and Ista.

Discussion Topics:

- Site reclamation
- Office of Surface Mining
- Relief to coal industry
- Coal mine reclamation trust establishment
- Performance bond obligations
- Amendment 21.1057.02001
- PSC application approval
- 3 bonding options

Testimony:

None written Sen Jessica Bell, District 33, oral introduction

#8822 Jodi Smith, Commissioner ND Board of University of School Lands Board

#8825 David Straley, North American Coal, Amendment 21.1057.02001

#7347 Dean Moos, director of reclamation, PSC

Additional written testimony:

#7443 Scott Skokos

#7450 Jonathan Fortner

11:12 AM hearing closed.

Kathleen Davis, Committee Clerk



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2317

**House Energy and Natural Resources Committee
March 11, 2021**

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of Senate Bill 2317.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages five additional funds: the Strategic Investment and Improvements Fund (SIIF), the Coal Development Trust Fund, the Capitol Building Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

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Nature has bountifully supplied North Dakota with lignite coal, and much of the state land is underlaid with this valuable fuel. The constitution provides that the coal lands of the state shall never be sold, but that such lands may be leased for coal mining purposes.

The legislative assembly has provided for the leasing of such lands at a minimum price of tens cents per ton for coal mined thereon, the manner of leasing being at public auction, and on application the same as grazing lands are leased. The industry, however, is yet in its infancy and very little state land is leased for this purpose.

In a report of the State written in 1922 by J.M. Devine, \$7,200,000 was the value of tons of coal sold in North Dakota. This reports states:

North Dakota has 690,000,000,000 tons of high grade lignite coal. The greatest deposit of a continuous stretch of coal in any one locality in the world. Enough coal to warm every home, turn every wheel in every factory in this country for 200 years and still barely scratch the surface of this special gift of God to the people of North Dakota. The day cannot be far distant when this coal, long patiently awaiting the magic touch of organized capital, will produce the cheapest electricity the world knows and shoot it hundreds of miles away for light and heat.

For 112 years, coal has benefited our trusts; in the past decade, \$35 Million in revenue has benefited the trusts and the SIIF. While this may not appear to be significant to some, it impacts every trust that receives revenue from coal. It is important that this trust revenue stream exist for as long as possible. Over the years, the Legislative Assembly has amended the law to allow the Board to continue to create value from our bountiful supply of coal. Through SB 2317, the Legislative Assembly will provide relief to the State's coal industry to maintain the economic base for the state and its citizens.

The purpose of SB 2317, as amended, is to establish a coal mine reclamation trust and create a framework through the Board to utilize private assets pledged as collateral to fulfill performance bond obligations under N.D.C.C. § 38-14.1-16 and N.D. Admin. Code ch. 69-05.2-12.

The Board would propose the following amendments to version 21.1057.02000:

Page 1, line 20, after the period insert:

"Any expenses incurred by the board or the public service commission under this section must be reimbursed by the permit applicant or qualified third party."

Page 2, line 5, before "The" insert:

"The board of university and school lands must be reimbursed from trust proceeds for all reasonable costs and expenses in managing assets and investing trust proceeds. Such reimbursements are to be placed in the trust fund account from which the expenses were incurred."

Page 2, line 13, after the period insert:

15-72-05. Continuing appropriation.

There is appropriated annually the amounts necessary to pay expenses for assets held in trust under this chapter and managed by the board of university and school lands, including survey costs, surface lease refunds, weed and insect control, cleanup costs, capital improvement rent credits, in lieu of tax payments, or expenses determined by the board as necessary to manage, preserve, and enhance the value of the trust asset. Each payment must be made from the trust fund account for which the asset is held. Upon completion of all reclamation activities and obligations, all and any remaining assets held

by the coal mine reclamation trust shall be transferred to the common schools trust fund.

Renumber accordingly

The coal mine reclamation trust is modeled after N.D.C.C. ch. 15-68, the Indian Cultural Education Trust, which was created in 2003 to generate income to benefit Indian culture. Present assets are managed for the benefit of the Mandan, Hidatsa, and Arikara Nation Cultural Education Foundation.

Under SB 2317, the Board would rely on the Public Service Commission (PSC) to ensure the bond issued to the coal company not only covers the cost of reclamation of the mine, but it is over-collateralized. If the PSC determines that the collateral offered is insufficient to cover the potential reclamation costs, then the PSC can require additional bonding through cash or a surety bond. The coal companies are required to renew bonding permits with the PSC every five years with a mid-term review every two and a half years; additionally, the PSC has the authority to review the bonding permits anytime within those five years. Ultimately, the coal company, the PSC, and the Board will all need to agree the bonding is sufficient to protect the state and the Board.

The coal mine reclamation trust assets will be used for reclamation purposes at the direction of the PSC. The coal company would propose land, buildings, and heavy equipment as collateral; the Department is well positioned to partner with the PSC as the agency manages land and reclamation projects in our day-to-day activities. Through our partnership with the PSC, the Board will ensure there is an escrow agreement and a security interest agreement to ensure the coal mine reclamation trust has a first priority interest in all bonded collateral in the event of a default.

The Board is in support of SB 2317 with the proposed amendments. We look forward to working with the Committee on this bill and would be happy to answer any questions.

21.1057.02001
Title.

Prepared by the Legislative Council staff for
Representative Porter
March 3, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2317

Page 1, line 2, after the semicolon insert "to provide a continuing appropriation;"

Page 1, line 9, after "collateral" insert "which may be used"

Page 1, line 12, after "party" insert "and the requirements of a collateral bond"

Page 1, line 20, after the underscored period insert "Any expenses incurred by the board of university and school lands or the public service commission under this section must be reimbursed by the permit applicant or qualified third party."

Page 1, after line 21 insert:

"1."

Page 2, line 1, replace "1." with "a."

Page 2, line 1, after "assets" insert "in accordance with North Dakota Administrative Code chapter 69-05.2-12"

Page 2, line 2, replace "2." with "b."

Page 2, after line 3, insert:

"c. All other requirements of North Dakota Administrative Code chapter 69-05.2-12 have been satisfied.

2. Real property posted as a collateral bond by the person must:

- a. Grant the regulatory authority a first mortgage, first deed of trust, or perfected first-lien security interest in the real property with a right to sell or dispose of the real property in the event of forfeiture; and
- b. Include a schedule, submitted by the applicant, of the real property mortgaged or pledged to secure the obligations under the indemnity agreement. The schedule of the real property must allow the regulatory authority to evaluate the adequacy of the real property offered to satisfy collateral requirements. The schedule must include:
 - (1) A description of the property;
 - (2) The fair market value of the property, as determined by an independent appraisal conducted by a certified appraiser; and
 - (3) Proof of possession and title to the real property."

Page 2, after line 4 insert:

"The board of university and school lands must be reimbursed from trust proceeds for all reasonable costs and expenses incurred in the management of trust assets and the investment of trust proceeds. Reimbursements to the board must be deposited in the trust fund account from which the expenses were incurred."

Page 2, after line 13, insert:

"15-72-05. Continuing appropriation for trust management.

There is appropriated annually the amounts necessary to pay expenses for assets held in trust under this chapter and managed by the board of university and school lands, including expenses for survey costs, surface lease refunds, weed and insect control, cleanup costs, capital improvement rent credits, in lieu of tax payments, or other expenses necessary to manage, preserve, and enhance the value of trust assets, as determined by the board. Payments under this section must be made from the trust fund account for which the asset is held. Upon completion of all reclamation activities and obligations, all remaining assets held by the coal mine reclamation trust must be transferred to the common schools trust fund."

Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2317

Introduced by

Senator Bell

Representative Porter

1 A BILL for an Act to create and enact chapter 15-72 of the North Dakota Century Code, relating
2 to the establishment of a coal mine reclamation trust utilizing private assets; to provide a
3 continuing appropriation; and to provide for a transfer.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 15-72 of the North Dakota Century Code is created and enacted as
6 follows:

7 **15-72-01. Trust establishment.**

8 The coal mine reclamation trust is established to reclaim coal mines at the direction of the
9 public service commission by utilizing private assets pledged as collateral which may be used to
10 fulfill the performance bond obligations under section 38-14.1-16 and North Dakota
11 Administrative Code chapter 69-05.2-12. The coal mine reclamation trust may be used to fulfill
12 the requirement of a qualified third party and the requirements of a collateral bond.

13 **15-72-02. Powers and duties of the board - Transfer.**

14 The board of university and school lands shall set up a coal mine reclamation trust. The
15 coal mine reclamation trust may receive and accept assets as directed by the public service
16 commission which are held in the public service commission's custody under North Dakota
17 Administrative Code section 69-05.2-12-04 as collateral in a security agreement with any
18 person as defined in section 38-14.1-02. The commissioner of university and school lands shall
19 consult with the public service commission in carrying out the powers and duties of
20 administering the coal mine reclamation trust. Any expenses incurred by the board of university
21 and school lands or the public service commission under this section must be reimbursed by
22 the permit applicant or qualified third party.

1 **15-72-03. Assets and custody.**

2 1. Any person proposing to pledge assets to the public service commission's custody
3 under North Dakota Administrative Code chapter 69-05.2-12 shall certify to the public
4 service commission:

5 ~~1.~~ a. The trust will have first priority security interest in the pledged assets in
6 accordance with North Dakota Administrative Code chapter 69-05.2-12.

7 ~~2.~~ b. The person has authority to place the assets in custody under all applicable
8 federal and state law.

9 c. All other requirements of North Dakota Administrative Code chapter 69-05.2-12
10 have been satisfied.

11 2. Real property posted as a collateral bond by the person must:

12 a. Grant the regulatory authority a first mortgage, first deed of trust, or perfected
13 first-lien security interest in the real property with a right to sell or dispose of the
14 real property in the event of forfeiture; and

15 b. Include a schedule, submitted by the applicant, of the real property mortgaged or
16 pledged to secure the obligations under the indemnity agreement. The schedule
17 of the real property must allow the regulatory authority to evaluate the adequacy
18 of the real property offered to satisfy collateral requirements. The schedule must
19 include:

20 (1) A description of the property;

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22 appraisal conducted by a certified appraiser; and

23 (3) Proof of possession and title to the real property.

24 **15-72-04. Trust management.**

25 The board of university and school lands must be reimbursed from trust proceeds for all
26 reasonable costs and expenses incurred in the management of trust assets and the investment
27 of trust proceeds. Reimbursements to the board must be deposited in the trust fund account
28 from which the expenses were incurred. The net income derived from the assets held in trust
29 must be used for trust purposes. Any assets placed in the trust may be sold, leased, invested,
30 managed, or otherwise disposed of by the board to fulfill the reclamation activities and
31 obligations related to the performance bond. If any of the trust assets include real property, net

1 income from the trust assets must be used in part to pay to the county where the real property
2 is located the same amount that would have been assessed against the real property for real
3 property taxes if the real property was privately owned. The board may maintain separate
4 accounts in the trust if necessary. The board shall manage all assets in the trust in the same
5 manner that the board manages the board's other trust assets or as otherwise may be required
6 to satisfy the purposes of this chapter.

7 **15-72-05. Continuing appropriation for trust management.**

8 There is appropriated annually the amounts necessary to pay expenses for assets held in
9 trust under this chapter and managed by the board of university and school lands, including
10 expenses for survey costs, surface lease refunds, weed and insect control, cleanup costs,
11 capital improvement rent credits, in lieu of tax payments, or other expenses necessary to
12 manage, preserve, and enhance the value of trust assets, as determined by the board.
13 Payments under this section must be made from the trust fund account for which the asset is
14 held. Upon completion of all reclamation activities and obligations, all remaining assets held by
15 the coal mine reclamation trust must be transferred to the common schools trust fund.

Senate Bill 2317

Presented by: Dean Moos, Director of Reclamation
Public Service Commission

Before: House Energy and Natural Resources Committee
The Honorable Todd Porter, Chairman

Date: March 4, 2021

TESTIMONY

Mr. Chairman and committee members, I am Dean Moos, director of reclamation.

The Public Service Commission (PSC) offers qualified support of SB 2317. It has the potential to result in lower mining costs and lower retail costs for customers.

North Dakota's surface mining program requires that the mining companies provide adequate bond coverage to complete reclamation of lands disturbed by mining activities if the mining company is unable to complete the reclamation (i.e., bond forfeiture).

NDCC 38-14.1-16 establishes the general criteria for performance bonds used by mining companies. NDAC 69-05.2-12 provides further clarification on the bonding requirements for mining companies. There are three types of bonds that are currently accepted by the Commission: surety bonds, collateral bonds, self-bonds, or a combination of the three types of acceptable bonds. The regulations establish the criteria for each type of bond. A self-bond is described as: "legally

binding corporate promises with separate surety or collateral, available to entities that meet certain financial tests.”

SB 2317 would establish a fourth type of acceptable bond – a real property collateral bond. Under this scenario, real estate owned by a mining company could be pledged as a collateral bond subject to certain criteria. Lands held in the trust would serve as the collateral.

Currently, the total bond amount held by the Commission for North Dakota mining companies is approximately \$351 million in the following types of bonds: \$119 million in surety bonds, \$21 million in collateral bonds, and \$211 million in self-bonds.

North Dakota’s surface mining laws and rules must be at least as stringent as the federal Surface Mining and Reclamation Act. Any changes to our surface mining laws or rules must be approved by the federal Office of Surface Mining. If SB 2317 were approved, the Commission’s administrative rules would need to be amended to allow for real estate collateral bonds. As an example of our law and rules being no less stringent than the federal law and rules: the federal rules state that lands that have been mined and reclaimed could not be pledged as collateral, therefore, such lands could not be used as real property collateral bonds.

Thank you for the opportunity to submit this information for the Committee’s consideration. Please don’t hesitate to contact the Commission if there are any questions.

Testimony of Dakota Resource Council
Senate Bill 2317
March 4th, 2021

1 Chairman Todd Porter & members of the committee, my name is Scott Skokos and I am
2 testifying on behalf of Dakota Resource Council and our members. Thank you for allowing me
3 to testify today in opposition of SB 2317.

4 Dakota Resource Council (DRC) is a non-partisan grassroots group of landowners, ranchers,
5 farmers, and other citizens. A key part of our mission is to promote the sustainable use of North
6 Dakota's natural resources which includes ensuring full reclamation funded by the coal industry
7 not taxpayers or the state. We believe that North Dakota should protect its citizens from high-risk
8 bonding practices and ensure fully funded reclamation of coal mines.

9 We are very concerned with the trust establishment outlined in SB 2317. The national trends
10 show that coal is in decline.¹ Therefore, coal will likely be replaced by other energy sources over
11 the next 30 years, in a conservative estimate. Nationwide, many financial institutions are making
12 the smart decision to reduce or eliminate the availability of bonds for coal because they are
13 considered high-risk. If these well-respected financial institutions, who have supported coal for
14 decades, are determining that the risk is too great, why is it ok to put that high-risk burden on the
15 state and taxpayers? It appears based on how this bill has changed in the Senate that even the
16 Bank of North Dakota didn't want to be involved in creating a performance bond program. It is
17 the responsibility for the coal industry to reclaim the land they have used, instead of running
18 themselves into the ground and declaring bankruptcy. It should not fall on taxpayers or the state
19 to fund this cleanup, which is what will likely happen if we use private assets to be pledged as
20 collateral. Collateral bonds for a transitioning industry in our rapidly changing energy economy
21 is not only unwise, but it is fiscally irresponsible. Collateral bonds are worth nothing if coal goes
22 away and over half of all coal plants have already closed or slated to close. According to a recent
23 article in the LA Times, "There are just 20 coal plants in the continental West whose owners
24 haven't committed to fully retiring them by specific dates ... That's compared to 49 coal-burning
25 generating stations with units that are slated for closure or have shut down since 2010."²

26 The equipment that is being touted to cover the costs of reclamation will be worth nothing more
27 than the value of scrap metal if coal goes away as is projected nationally. Similarly, if the land
28 used as collateral has a value based on the lignite coal reserves, it will also not be worth the
29 estimated land value or enough to pay for the reclamation. It is imprudent to use the value of
30 equipment and property to bond for an industry that is in decline, as the value of those private
31 assets will also decline. The other idea that we will use the equipment that is used as collateral to
32 reclaim the land ourselves is also unwise. How will we pay the workers needed to run that
33 equipment to do the reclamation or pay for the other costs associated with reclamation? It will
34 have to be funded by taxpayers or the state. Claims that we can simply use the equipment to
35 reclaim the land is erroneous. There will be other costs, besides just using the equipment to
36 reclaim the land. In addition, responsible fiscal policy is important for protection of coal

¹ <https://www.eia.gov/todayinenergy/detail.php?id=44115>

² <https://www.latimes.com/environment/story/2020-02-04/coal-power-plants-western-us>

37 communities because if coal goes away, and is not properly bonded with surety bonds, those
38 communities could be left with a million-dollar hole in the ground.

39 North Dakota participates in an interconnected electric grid system. As an energy exporter, ND
40 must also meet the demands of its customers and if it doesn't, those customers will take their
41 business elsewhere. Our neighboring state of Minnesota no longer wants coal produced energy,
42 and that is simply consumer demand. It is anti-free market policy to continue to prop up an
43 industry that is simply becoming uneconomical and outdated due to progress, productivity gains,
44 and consumer preference. You might hear the argument that the market is not a free market due
45 to renewable subsidies, however, even unsubsidized wind is cheaper than coal according to
46 recent report by LAZARD, a financial advisory and asset management firm.³ We are highly
47 concerned about this high-risk bonding project that places nostalgia over common sense and
48 fiscal responsibility.

49 I urge the committee to oppose SB 2317 because it is unfair to taxpayers, the citizens of ND, to
50 take on such a high-risk bonding project that even financial institutions don't want to take, and
51 so we recommend a **DO NOT PASS** on SB 2317.

52

³ <https://www.lazard.com/media/451419/lazards-levelized-cost-of-energy-version-140.pdf>



March 4, 2021

Chairman Lefor and House IBL Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in support of Senate Bill 2317 which has the potential to deliver savings for retail electric customers by lowering the cost of operating a lignite mine.

SB2317 creates a coal mine reclamation trust at the direction of the public service commission (PSC) by utilizing private assets pledged as collateral to fulfill performance bond obligations. Performance bonds are accepted by the commission in order to protect the state with adequate bond coverage to complete the reclamation of lands if a mining company is unable to complete the reclamation in a worst case scenario.

There are currently three types of performance bonds that are accepted by the PSC, under ND Administrative Code 69-05.2-12-02: surety, collateral and self-bonds. This legislation would allow for the use of private assets to provide additional assurances for collateral bonds.

Our state's lignite mines provide high paying jobs for thousands of working families and serve as the lifeblood of many counties and communities in central North Dakota. This legislation will help improve the economics for an important industry, protect thousands of jobs and safeguard the taxpayer.

For these reasons, the Lignite Energy Council supports SB2317 and we respectfully ask that the committee provide this legislation with a favorable "Do-Pass" recommendation.

Thank you for your consideration,

Jason Bohrer

President and CEO



1016 E. Owens Ave. | PO Box 2277 | Bismarck, ND 58502

☎ 701.258.7117

🌐 www.lignite.com

@ LEC@lignite.com

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2317
3/12/2021

Relating to the establishment of a coal mine reclamation trust utilizing private assets; and to provide for a transfer

10:51 AM

Chairman Porter opened the hearing on SB 2317. Present: Representatives Porter, Damschen, D Anderson, Roers Jones, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, M Ruby, Zubke, Guggisberg, and Ista.

Discussion topics: Committee work

Chairman Porter: proposed amendments and Christmas tree version. #9165 and #9166 Rep Zubke moved to adopt the amendment (21.1057.02001), seconded by Rep Bosch. Voice vote. Motion carried.

Rep Zubke moved a Do Pass as Amended, seconded by Rep Bosch.

| Representatives | Vote |
|------------------------------------|------|
| Representative Todd Porter | Y |
| Representative Chuck Damschen | Y |
| Representative Dick Anderson | Y |
| Representative Glenn Bosch | Y |
| Representative Bill Devlin | Y |
| Representative Ron Guggisberg | Y |
| Representative Pat D. Heinert | Y |
| Representative Zachary Ista | Y |
| Representative George Keiser | Y |
| Representative Mike Lefor | Y |
| Representative Andrew Marschall | Y |
| Representative Shannon Roers Jones | Y |
| Representative Matthew Ruby | Y |
| Representative Denton Zubke | Y |

Motion carried. 14 – 0 – 0 Rep. Bosch is carrier.

10:52 AM hearing closed.

Kathleen Davis, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2317

Page 1, line 2, after the semicolon insert "to provide a continuing appropriation;"

Page 1, line 9, after "collateral" insert "which may be used"

Page 1, line 12, after "party" insert "and the requirements of a collateral bond"

Page 1, line 20, after the underscored period insert "Any expenses incurred by the board of university and school lands or the public service commission under this section must be reimbursed by the permit applicant or qualified third party."

Page 1, after line 21 insert:

"1."

Page 2, line 1, replace "1." with "a."

Page 2, line 1, after "assets" insert "in accordance with North Dakota Administrative Code chapter 69-05.2-12"

Page 2, line 2, replace "2." with "b."

Page 2, after line 3, insert:

"c. All other requirements of North Dakota Administrative Code chapter 69-05.2-12 have been satisfied.

2. Real property posted as a collateral bond by the person must:

- a. Grant the regulatory authority a first mortgage, first deed of trust, or perfected first-lien security interest in the real property with a right to sell or dispose of the real property in the event of forfeiture; and
- b. Include a schedule, submitted by the applicant, of the real property mortgaged or pledged to secure the obligations under the indemnity agreement. The schedule of the real property must allow the regulatory authority to evaluate the adequacy of the real property offered to satisfy collateral requirements. The schedule must include:
 - (1) A description of the property;
 - (2) The fair market value of the property, as determined by an independent appraisal conducted by a certified appraiser; and
 - (3) Proof of possession and title to the real property."

Page 2, after line 4 insert:

"The board of university and school lands must be reimbursed from trust proceeds for all reasonable costs and expenses incurred in the management of trust assets and the investment of trust proceeds. Reimbursements to the board must be deposited in the trust fund account from which the expenses were incurred."

Page 2, after line 13, insert:

DA 3/12/2
Box 2

"15-72-05. Continuing appropriation for trust management.

There is appropriated annually the amounts necessary to pay expenses for assets held in trust under this chapter and managed by the board of university and school lands, including expenses for survey costs, surface lease refunds, weed and insect control, cleanup costs, capital improvement rent credits, in lieu of tax payments, or other expenses necessary to manage, preserve, and enhance the value of trust assets, as determined by the board. Payments under this section must be made from the trust fund account for which the asset is held. Upon completion of all reclamation activities and obligations, all remaining assets held by the coal mine reclamation trust must be transferred to the common schools trust fund."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2317, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2317 was placed on the Sixth order on the calendar.

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Renumber accordingly

21.1057.02001
Title.

Prepared by the Legislative Council staff for
Representative Porter
March 3, 2021

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Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2317

Introduced by

Senator Bell

Representative Porter

1 A BILL for an Act to create and enact chapter 15-72 of the North Dakota Century Code, relating
2 to the establishment of a coal mine reclamation trust utilizing private assets; to provide a
3 continuing appropriation; and to provide for a transfer.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 15-72 of the North Dakota Century Code is created and enacted as
6 follows:

7 **15-72-01. Trust establishment.**

8 The coal mine reclamation trust is established to reclaim coal mines at the direction of the
9 public service commission by utilizing private assets pledged as collateral which may be used to
10 fulfill the performance bond obligations under section 38-14.1-16 and North Dakota
11 Administrative Code chapter 69-05.2-12. The coal mine reclamation trust may be used to fulfill
12 the requirement of a qualified third party and the requirements of a collateral bond.

13 **15-72-02. Powers and duties of the board - Transfer.**

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15 coal mine reclamation trust may receive and accept assets as directed by the public service
16 commission which are held in the public service commission's custody under North Dakota
17 Administrative Code section 69-05.2-12-04 as collateral in a security agreement with any
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19 consult with the public service commission in carrying out the powers and duties of
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