

2009 HOUSE NATURAL RESOURCES

HB 1449

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. ~~1409~~ 1449

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 1-29-09

Recorder Job Number: 8167

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – Open the hearing on HB 1449.

Rep. DeKrey – I visited with people who were concerned regarding the underground wire when they remove the wind towers. This bill would get the court house to register where the underground wire is so that if anyone else like coal mining comes along there would be a record of where that wire is.

Rep. Keiser – When the wind towers are dismantled would the other features be considered abandoned?

Rep. DeKrey – I would assume so. I'm just going on what little knowledge I have about decommissioning wind towers. My understanding is that when you pour the pad that tower sits on you go many feet down. The requirement is only about 3 or 4 feet down and when you decommission it and dirt is on top of that. If you were going to mine coal or gravel or any other activity, you would come along and if you didn't know that was there you could plow into that and do some major damage to your equipment.

Rep. Keiser – If the wire was strung out – many \$100,000 worth of wire underground it is abandoned and anybody who would want to use that site again for a similar purpose would be able to take possession of that line?

Rep. DeKrey – Only after they acquired easements for that line. I would assume the easements would still technically be the property of the original owners.

Chairman Porter – Further questions for Rep. DeKrey? Further support for HB 1449?

David Straley – North American Coal Crop. – See **Attachment # 1**. Questions?

Rep. Drovdal – When they easements on land they tell how far out they go. When they do easements for the gas line that goes across my land they had to plot it, they had to file a plot that showed it. Easements for the underground microwave or wind generator, don't they have to file a plot with the easement?

Mr. Straley – I'm not sure about the wiring aspect. Our concern comes more from the foundations. I guess I'm not the right person to ask.

Chairman Porter – Any other questions? Any other support of HB 1449? Any opposition to 1449?

John Olson – Otter Tail Power Co. – The only concern is with sect. 2. This says that wind decommissioning activities, which we are concerned about, which we are concerned about. At that time we need to file a statement with the Public Service Commission explain the manner in which this wind facility will conform to the subsurface mineral owners. I don't know a lot about the Dave's business, but I assume they have in their leases pretty much a record of who the subsurface mineral owners are. We don't on wind conversion facilities. Our statement is going to be it is impossible for us to find or inform all of them. I am delivering that information to you that concern we have. The way it reads, it says we must file a statement with the public service commission stating how we are going to inform the present subsurface mineral owners. Maybe it is a little advertisement in the public newspaper, I don't know.

Chairman Porter – Questions for Mr. Olson? Any other testimony in opposition to 1449? We will close the hearing on 1449.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1449

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 1-29-09

Recorder Job Number: 8174

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – Let's pull up HB 1449.

Rep. DeKrey – I move we remove sect. 2.

Chairman Porter – We have a motion from Rep. DeKrey to remove on page 2 sect. 2. Is there a 2<sup>nd</sup>? 2<sup>nd</sup> from Rep. Drovdal. Do we have any discussion?

Question?

Chairman Porter – Is everybody clear? Remove sect. 2. All in favor? Unison voice vote no opposition, motion carries. We have an amended bill. We have a motion from Rep. DeKrey for a Do Pass As Amended on HB 1449. A 2<sup>nd</sup> from Rep. Keiser. Take the roll on a Do Pass As Amended.

Yes 11 No 1 Absent 0 Carrier Rep. Drovdal

January 29, 2009

VR  
1/29/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1449

Page 1, line 1, remove "to create and enact a new subdivision to subsection 1 of section 49-22-08 of"

Page 1, remove line 2

Page 1, line 3, remove "facility; and"

Page 2, remove lines 1 through 4

Renumber accordingly

Date: 1-29-09  
Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1449

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 DeKrey Seconded By Keiser

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) 11 No 1

Absent 1

Floor Assignment Drov dal

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

**REPORT OF STANDING COMMITTEE**

**HB 1449: Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1449 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact a new subdivision to subsection 1 of section 49-22-08 of"

Page 1, remove line 2

Page 1, line 3, remove "facility; and"

Page 2, remove lines 1 through 4

Renumber accordingly

2009 SENATE NATURAL RESOURCES

HB 1449

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1449

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: March 13, 2009

Recorder Job Number: 10920

Committee Clerk Signature



Minutes:

**Senator Lyson** opens the hearing on HB 1449, relating to the decommissioning of wind energy conversion facilities.

**Representative DeKrey** When I was research wind energy for another bill I found they have had tremendous problem in other states before they got the technology they have now. They would pull out of an area and leave the materials underground and no one else would know it was there. I feel this bill is reasonable in having them mark the materials they leave underground so other industries or developers would know where they were.

**Senator Triplett** the rest of the section you are appending this to was put into affect 2 years ago by the legislature. It was put into place as permission for the Industrial Commission to adopt rules in regarding decommissioning. Why would we not add this as a new sub part in a more general form and let the PSC do rule making with it?

**Representative DeKrey** I do not have a problem with that as long as you keep the intent.

**David Straley**, Manager of North Dakota Government/Public Affairs, we are in support of the bill (see attached testimony #1). I am fine with the amendments that will be proposed by another speaker.

**John Olson**, Ottertail Power Company, spoke in favor of the bill and handed out an amendment (see attachment #2). This amendment would only require a recording with the county if the location of any portion of the underground foundation was not removed during the decommissioning process. There was a requirement in state law that did require anyone who buried a transmission line to record that with the County Register of Deeds. They kept a card file for each recording. That section was repealed by chapter 49-23 of the Century Code which created the One Call Excavation Notice system.

**Illona Jeffcoat-Sacco**, Public Service Commission, the definitions in the One Call Statute does appear to cover it and if it is not clear this seems to be the place to cover it. There could be other concerns with buried wind facilities that have not been brought up here that One Call could handle or satisfy. Concerning the PSC rule making authority, we do have rules. I am not certain that a Commission rule could require recording with the Register of Deeds.

**Senator Lyson** It is the law now that anyone wanting to dig has to call the One Call system correct?

**Illona Jeffcoat-Sacco** yes it is.

**Senator Triplett** can you verify that the current rules established by the PSC require removing underground cables to a depth of 24 inches and removing underground foundations to a depth of 3 ft?

**Illona Jeffcoat-Sacco** I don't recall exactly.

**Senator Triplett** the reason for the depths is to provide protection for the surface owner in terms of being able to go back to farming or using it from the surface perspective correct?

**Illona Jeffcoat-Sacco** yes and they were decided on after substantial input from interested parties.

**Senator Hogue** the amendment relates to providing notice to remove underground facilities and the amendment appears to relate to a notice that the energy facility should provide to other affected subsurface mineral owners. I am not clear on how they tie together.

**Illona Jeffcoat-Sacco** I haven't seen the amendment but I believe it is the same as the statute was originally, which is a list of items that have to be included in siting applications. It is another item to put in the siting application.

**Senator Triplett** What agency manages the One Call system?

**Illona Jeffcoat-Sacco** It is under the PSC. It is managed under the One Call board and we work with their grants. We will be working substantially with them on the complaint process. The actual day to day operations I am not sure on.

**Senator Hogue** the One Call is not locating the concrete and materials they are just detecting underground wires is that true?

**Illona Jeffcoat-Sacco** One Call is not locating anything. It is located by the entity that operates the system.

**Bruce Eckre**, Hortland Wind Farm, The companies who do not use metallic lines are marking the lines after they put them in.

**Senator Lyson** closed the hearing on HB 1449.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1449

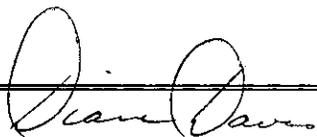
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: 4/2/09

Recorder Job Number: 11679

Committee Clerk Signature



Minutes: **Senator Lyson, Chairman**

Committee Work

**Senator Hogue** – States the Public Service Commission has wind turbine decommissioning regulations that deal with this issue and it talks about having to remove underground cables to a depth of 24 inches, having to remove foundations to a depth of 3 feet. He wonders if this bill should be referred to the Public Service Commission because if we adopt the bill it seems we will have decommissioning rules in the statute and decommissioning rules in the administrative code. He thinks there is value having them in the same place.

**Senator Lyson** – Said he agrees but the rules made there are PSC rules and as a Legislature there are responsibilities to make the laws for them to follow. He said he isn't real happy with their rules.

**Senator Triplett** – Said the law already says the rules may address under subsection 1E the anticipated manner in which the project will be decommissioned and the site restored. They already have the authority to do what is being requested in this bill. To date they have not done it. The decommissioning code is intended to make the land usable again for agriculture. She said maybe this bill should be amended.

**Senator Lyson** – Said he agrees with what she is saying. He believes it will be the land owner who gets hurt. He mentions in coal country the company is going to charge back to the landowner.

**Senator Triplett** – Says they all have copies of the code and she reads from it.

**Senator Lyson** – He said this reminds him of the oil fields of the late 1950's. His worry is that wind energy could be in the same position that the oil field is in, boom and bust. When it goes bust who is going to clean it up?

**Senator Hogue** – Said he has read through the comments of the affected parties before they adopted the decommissioning rules. Their concerns were more on removing the underground facilities and there were no comments on just the recording of the presence the facilities left behind which is what this bill deals with. He doesn't see a big burden on the industry to make a record of it in the recorder's office, but he would prefer to see it in the decommissioning regulations as an additional protection to the landowner. Said he would support the bill and the amendment offered by John Olson.

**Senator Hogue** moves the amendment by Olson

**Senator Triplett** seconds

Verbal vote – all yes

Verbal vote – Do pass

**Senator Triplett** will carry

**Senator Hogue** moves a do pass as amended

**Senator Triplett** seconds

Vote – 7-0

**Senator Triplett** will carry

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1449

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: April 3, 2009

Recorder Job Number: 11709

Committee Clerk Signature

Minutes:

Chairman Lyson opened the discussion on HB 1449. All members were present.

Senator Lyson said North American Coal said the committee forgot to adopt their amendment to HB 1449. They had the amendment included in their testimony for the bill. The amendment can be considered in the conference committee.

Senator Erbele said it could be accomplished with a floor amendment.

Senator Lyson said he would prefer doing it in the conference committee.

There was some discussion of the composition of a conference committee, there are two members from the majority and one from the minority but that does not refer to party affiliation.

Rather it refers to the majority and minority votes on the bill.

Senator Erbele said his notes show that Olson opposed the Straley amendment.

Senator Triplett said she has a note that says Illona Jeffcoat-Sacco said the amendment doesn't solve all the problems.

Senator Erbele agreed it needs more discussion and more input and would be better to do it in the conference committee.

Senator Lyson said he already told Dave Straley that it will be discussed in the conference committee.

Chairman Lyson closed discussion on HB 1449.

Date: 4/2/09

Roll Call Vote #: 1

### 2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee

Bill #: 1449

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Amendment

Motion Made By Sen. Hogue Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Olson Amendment*

*Carried -  
Voice vote*

Date: 4/2/09

Roll Call Vote #: 2

### 2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee Bill #: 1449

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Amendment

Motion Made By Sen. Hogue Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	✓		Senator Jim Pomeroy	✓	
Senator David Hogue, Vice Chairman	✓		Senator Mac Schneider	✓	
Senator Robert S. Erbele	✓		Senator Constance Triplett	✓	
Senator Layton W. Freborg	✓				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment Sen. Triplett

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

**REPORT OF STANDING COMMITTEE**

HB 1449, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1449 was placed on the Sixth order on the calendar.

Page 1, line 19, replace "the facility remaining after" with "underground foundation not removed during"

Page 1, line 20, replace "remaining portion of the facility" with "such underground foundation"

Page 1, line 21, remove "The facility includes any cables, foundations, buildings, or other ancillary"

Page 1, remove line 22

Renumber accordingly

2009 HOUSE NATURAL RESOURCES

CONFERENCE COMMITTEE

HB 1449

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1449

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 4-16-09

Recorder Job Number: 11910

Committee Clerk Signature



Minutes:

**Chairman Keiser:** We'll call the Conference Committee on HB 1449 into session. This is a simple little bill, 1 page, would someone from the senate like to help us understand the rationale behind the change. I can read and understand, but what's the rational for it?

**Senator Triplett:** We referred back to the decommissioning administrative rules the PCS put into place and decided they were talking about agricultural needs. Reclaiming the surface and down something like 24" it seemed like that would take care of a lot of utility likes and cables and things like that. From the testimony it seemed what people were concerned about was the big 20 x 20 x 20' chunk of concrete that would be left behind after a decommissioning. If that site was reclaimed it might be hard to exactly where that chunk of concrete was. Folks from the coal industry wanted, very clearly, to know where that underground foundation was. We tried to limit it to what the actual need was. Let the PSC take care of the rest of it with their decommissioning rules.

**Chairman Keiser:** Do we have a set of those decommissioning rules?

**Senator Triplett:** I have them in my Natural Resources room, but I didn't bring them along.

I'm pretty sure seemed to be written for Ag purposes, to make sure cultivators and plows and things wouldn't catch on them.

**Senator Hogue:** I think that's 36.

**Senator Triplett:** 36, OK. It doesn't include going down quite deep to catch the foundation. The concern is from the coal industry, that they might wreck a dragline on a chunk of concrete that big.

**Chairman Keiser:** Any other questions or comments from committee members?

**Rep. Pinkerton:** Is the coal industry concerned about catching the cables?

**Senator Triplett:** We were assuming the cables would virtually be removed. Using the reclamation and decommissioning rules in place would require reclaiming everything down 36". That would virtually take care of everything from a wind tower site except for the concrete foundation that would be left.

**Rep. DeKrey:** They just put fiber optic cable in my telephone system on the farm and that was deeper than 36".

**Senator Triplett:** Maybe we have the wrong information. How deep are your cables?

**Chairman Keiser:** If it is already covered in the rules, what's wrong with putting it in the statute? So the legislature sets the policy vs. the PSC? Which is, from my prospective, my job?

**Senator Hogue:** Whenever we pass 4902.27 we delegated that job to the PSC. You do it with rules. That's what 4902.27 says. What the bill does is, it catches something the PSC, for whatever reason did not address, they had the industry come in and they submitted comments to their draft rules. This issue of actually recording in the county recorders where the buried facilities remain was never addressed for that purpose, for whatever reason. I'm fine with putting that in the statute. I think it would make more sense had they addressed this in their rules. Now what we told the PSC, you adopt some rules and you make sure you address this, A, B, C, D & E and they did that. If we would have had better foresight we would have

included this one in there also. Now we have the situation where we have rules that addresses decommissioning on one hand and we have a statute that only addresses another rule that wasn't covered by the commission previously. I'm OK doing it this way, or maybe we want to tell the commission to address this issue also.

**Chairman Keiser:** Did you have any of the industry folks testify when you had the bill before you objecting to providing the original language? If so, what were those objections based on.

**Senator Triplett:** They objected to recording the location in the first place. There is an administrative hassle. They objected thinking it was unnecessary.

**Chairman Keiser:** We have the 1 call system. Where are those recorded? Just within the corporate confines? When you call and say I want to make a trench in my back yard.

Senator Triplett: We originally discussed that in a memo from the PSC pointing out that . . . . .

is in regard to live lines, once a line is decommissioned it is not part of a utility function anymore they don't consider it an appropriate topic for them.

**Rep. Pinkerton:** It would seem likely the underground cables would be buried deeper than 36". It is logical to say you wouldn't want that much electricity running close to the surface. You would think they would have potential problems. . . . In Audible . . . .

**Chairman Keiser:** Any comment from anyone in the industry. You've heard our discussion.

**John Olson:** Otter Tail and Exel – When the bill came over from the house, the section 1 included ALL facilities – above and below ground. They adopted amendments in the senate to eliminate the need for recording above ground structures. We don't object strenuously to this provision. We do believe there is 1 call solutions here that those facilities would have been subject to 1 call. We're not strenuously objecting to the way section 1 is now.

**Chairman Keiser:** To the way the senate has placed or the way the house sends it over?

**John Olson:** The way the senate has placed it. We didn't think there was any need to record the locations of buildings. We can understand the necessity for determining what's underground, whether it's concrete foundation or whatever other material there is. We do believe 1 call should be addressing those issues.

**Chairman Kaiser:** What are the wishes of the committee?

**Senator Triplett:** My purpose would be to rephrase this to the PSC to deal with. It should be covered by their rules. If that's not the consensus of the group, then I guess we need to rework the language until it gets to a place of comfort between the 2 of us.

**Rep. Pinkerton:** The industry would seem to object to the recording the location of buildings, above ground structures, but understands the need to address the underground structures, but feels like PSC should be the authority on that. The PSC only deals with live lines, so if it was a line not carrying power . . .

**Senator Triplett:** The 1 call system specifically only deals with live lines is what the PSC told us.

**Rep. Pinkerton:** 1 call is not very interested and the PSC was not very interested in addressing some of these issues with things underground that weren't live.

**Senator Hogue:** 1 call, if you call them, if it's metallic they will come out and mark it, whether it's alive or not. The industry's point was, why we should record, in a recorder's office, where a building is obvious. Whereas a big concrete block underground might not be underground. They are a big 20' deep slab of concrete. If you locate that in a recorder's office, that should reasonably put developers and landowners on notice that there are some facilities here. If they know there's a big concrete slab underground, they darn sure know there's some wires. I don't think it's as easy to implement as we might think. These slabs are sitting out in the middle of nowhere, you have to hire someone to almost survey and locate this within a quarter

section. I do think the senate version is fine in terms of locating. We're going to put this minimum burden, you're going to tell us where your concrete slabs are. This should give sufficient notice to be put on notice to locate other underground facilities that are related to the concrete slab.

**Rep. Pinkerton:** I would feel like the above ground structures would be obvious and there would be no reason to record those. However, I feel like major underground structures like these cables that are carrying a great deal of power from the structures should be located. If you are going to locate a piece of concrete, why would it be that much of a problem to go to your original drawings and locate the cables that run from one concrete structure to another. This is referring to the coal industry specifically, but those structures are going to be there a long time. Who knows what kind of industry will come in the future. It seems like if you are going to locate the concrete, why not just draw the lines in there also. I would agree with taking the above ground structures off, but leaving all underground structures there.

**Rep. DeKrey:** Senator Triplett, you said when the PSC decommissions they require the wires be pulled up so the senate felt there wouldn't a need for wire marking because it would just be just the concrete left.

**Senator Triplett:** They have to reclaim to as near as possible to original condition down 36".

**Chairman Keiser:** My recollection during our testimony was the wires frequently are not recovered. It may well be because they're very deep.

**Senator Erbele:** In a mining operation that wire, is not going hurt any equipment cutting through that. It is 30' of concrete reinforced with rebar that could create some problems. The wire is immaterial. That's why that spot needs to be identified.

**Rep. Pinkerton:** This isn't going to happen for another 25 to 30 years, that's a life expectancy of the towers. In all likely hoods it will extend past that. It's hard to predict what's going to

happen in 35, 40 or 50 years down the road. It seems like the small amount of effort made to continue to draw the location of the lines. Why would we not expect them to put them on their drawings. You're filing one piece of information already.

**Senator Erbele:** In regard to that, doing all the additional paper work of saying the lines run so deep and all that, I think it just adds to a lot of recording. They can still come out and locate even the dead wire.

**Senator Triplett:** The existing law does say the commission may adopt rules regarding decommissioning that include the anticipated manner in which the project will be decommissioned and the site restored. If we make the basic statement that the senate has made about the foundation. If there are additional concerns they could be dealt with in rule making in future years.

**Chairman Keiser:** If we do choose to go that direction, and I'm not advocating it, I would suggest we actually closely look at the language we have here. On line 8 "The commission may adopt", either they are going to adopt them or they're not going to adopt them, may gives them an opt out provision. Obviously they haven't done a very good job to date, or we wouldn't have this bill before us.

**Senator Triplett:** Do you want to make that "shall"?

**Chairman Keiser:** That would be an amendment. They "shall" adopt rules. Then the question comes up, do you want to add "shall cover cement, structures and any cable structures". I don't care what the rule is they adopt, but address what it is they need to adopt. The way this is written, they have no obligation to do anything.

**Senator Triplett:** I think they already have.

**Chairman Keiser:** They have attempted to do it, which seems reasonable, it is their job.

**Senator Triplett:** I kind of like that idea. We may need to beef up that section a little bit.

**Chairman Keiser:** Then identifying what, if anything else, should be in there.

**Senator Triplett:** The interaction between the surface activities and underground activities.  
Make rules that are specific to coal country.

**Chairman Keiser:** This does apply to commercial wind energy. I think Rep. Pinkerton is right.  
There isn't a commercial production facility developed where there aren't significant  
engineering drawings. It's not like we're asking them to go out and pay \$100,000 to develop  
blueprints. These drawings are available or they couldn't have built it.

**Senator Triplett:** We we're trying to keep it simple in the statute. The details should be in  
the rules. None of object to the notion someone might want to know where the cables are. We  
were trying to make something crisp and clean and simple as possible.

**Chairman Keiser:** How would you like to proceed?

**Rep. DeKrey:** inaudible

**Chairman Keiser:** Since you were the sponsor of this bill I thought it would be you to come  
up with an amendment. Anyone else that wants to join you can. We will schedule our next  
meeting as soon as you folks have something.

**Rep. DeKrey:** OK

**Chairman Keiser:** It can be fairly easy.

**Senator Triplett:** How if we plan a scheduled meeting?

**Chairman Keiser:** OK let's do it. Tuesday sometime.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1449

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 4-22-09

Recorder Job Number: No Recording

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Keiser: I would like a motion to adjourn for today. There are some amendments on the way and we will schedule this hearing for tomorrow.

Rep. DeKrey: I so move.

Senator Triplett: 2<sup>nd</sup>

Chairman Keiser: We have a motion to adjourn until tomorrow from Rep. DeKrey and a 2<sup>nd</sup> from Senator Triplett all in favor say Yea – unanimous voice vote – opposed – none. Motion carries. This meeting is adjourned.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1449

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 4-24-09

Recorder Job Number: 12205

Committee Clerk Signature

*Nancy S. Gerhardt*

Minutes:

Chairman Keiser: Opened the meeting for HB 1449.

Rep. DeKrey: Amendment 0202 – See **Attachment # 1** – This has the language on page 1 and changes “may” to “shall” making it a mandatory study and adds a subsection “f” “Present and future natural resource development”. I move to adopt these amendments.

Senator Triplett: 2<sup>nd</sup>.

Chairman Keiser: We have a motion to adopt amendment 0202 and a 2<sup>nd</sup> -- further discussion.

Senator Hogue: I looked at “f”, could you tell me how that language addresses the idea the bill is talking about in terms of requiring somebody to record the underground facilities that are still there, the concrete.

Rep. DeKrey: Our intent was it would make the bill more inclusive, we don't know what's going to happen in the future, what kind of development in the Natural Resources arena in the future. That sentence would be put there for that purpose. If something comes up the industry starts to do that the PSC would still regulate it and write rules for it.

Senator Triplett: We're not proposing to remove the recording piece of it. The language in sub section 2 stays.

Chairman Keiser: This is just an additional catchall. We have a motion for adoption with a 2<sup>nd</sup>. All in favor indicate by saying Yea – unanimous voice vote -- opposed Nay – none. The amendment # 1 has been adopted.

Rep. DeKrey: Amendment 0203 – See **Attachment # 2** – This amendment is written as a Hog House, but strike over the first 2 paragraphs.

Chairman Keiser: So we would strike the first 2 paragraphs.

Rep. DeKrey: I move we adopt amendment 0203.

Senator Triplett: 2<sup>nd</sup>.

Chairman Keiser: We have a motion to adopt amendment # 2 and 2<sup>nd</sup>. Any questions?

Senator Hogue: This is a mandatory study then?

Chairman Keiser: It does become a mandatory study because it's on a bill.

Rep. DeKrey: Our reasoning for a mandatory study because we know leadership isn't real hot on mandatory studies. Our reasoning was this session has really been a water shed session for natural resources and the way wind, coal and all the others are interacting, we thought if there was one thing that should be mandatorily studied this coming interim is how these industries are going to interact with each other in the future and that should be a very important study and that we should force the issue.

Chairman Keiser: Is there any more discussion? We've probably just seen the tip of the iceberg, on energy development. I think it would be wise from a policy standpoint to get in front of it instead of coming 2 years from now and discovering we should have done something prior to that. Any further discussion? Seeing none all those in favor of adopting amendment 0203 indicate by saying Yea – unanimous voice vote – opposed Nay – none. Amendment # 2

has been adopted.

Rep. DeKrey: There is one more amendment Mr. Chairman.

Chairman Keiser: You have 1 more? Does everyone have a copy of this amendment? This is a proposed amendment to the bill that is coming from the industry.

Sandi Tabor: Lignite Energy Council -- This bill is bringing back SB 2411 which was Senator Christmann's bill that reduced the siting threshold on electric generation facilities. I have now talked to the wind ministry, oil and gas industry, the Governor's office, the PSC and all of our people and everybody are fine with reducing the threshold to something exceeding 60 MW. Exceeding 60 MW is in there because there is some natural gas peaking equipment which comes in at 60 MW's. We think we need to start lowering that threshold. There are way too many things going on not to have the PSC involved.

Chairman Keiser: Questions?

Senator Triplett: Could you give us a little more detail on this natural gas peaking equipment?

If there's equipment out there now at 60 MW is there some concern that in the next couple of years it might be even bigger MW.

Ms. Tabor: No one expressed any concern to me, infact this is kind of an afterthought when I talked to the particular person. They said 50 was fine and then about 4 seconds later I was walking away and they said "Waite a minute Sandy, I just remembered something".

Apparently when Senator Christmann's bill came up they had circulated it around and that's the one thing that came up.

Senator Triplett: When we were discussing it in the senate the advice we got from some of the PSC crew was that 25 MW would be OK. This is information that was new after that.

Kenen Cramer: Public Service Commission: 25 would be fine. Just as 60 is fine, and any number between 100 and 5 would be fine. 25 because we thought that was a reasonable

threshold between an industrial project and the home grown stuff. It is ironic we're lowering the threshold and encompass more development, while at the same time raising it to avoid

including some. There is a difference between wind development, and gas development, and coal development and maybe that's something that will come up in this study.

Rep. DeKrey: The reason there's no fiscal note is because you charge for the siting fees is that correct?

Mr. Cramer: That's exactly right. When there's a siting application a fee is also attached to that. We use that fee for the costs and then we refund the balance.

Senator Triplett: Would it make as much or more sense to you to go back to the 25 MW for wind development and make it clear in the definition section that we're not talking about gas turban generation?

Mr. Cramer: Perhaps, we have had the discussion about the fact our siting laws were developed for coal and wind is very different.

Senator Triplett: They're OK if we do it this way now and maybe we should work on separating things out in the study, would that be a good idea?

Mr. Cramer: Yes

Chairman Keiser: 25 would be impossible to get to the house. 60 are at a level they would accept.

Rep. DeKrey: I move the amendment.

Senator Triplett: 2<sup>nd</sup>.

Chairman Keiser: We have a motion from Rep. DeKrey and a 2<sup>nd</sup> by Senator Triplett to adopt amendment # 3. Further discussion on the amendment? Seeing none all those in favor of adopting amendment # 3 say Yea – unanimous voice vote – opposed Nay – none. The amendment is on the bill.

Rep. DeKrey: I move the committee pass out the bill as further amended.

Chairman Keiser: Could I wait for that motion for one thing. Have we acted on sub sect. 2?

That was where we had all our heartburn initially. Before we make that motion and send it out we had lots of concern and some suggested language, but I haven't seen an amendment for that. Before we send it out I want to make sure everybody is OK with it.

Senator Triplett : I'm OK with it.

Rep. DeKrey: I'm OK with it too. I move the committee further amend and send this bill out.

Trip: 2<sup>nd</sup>.

Chairman Keiser: We have a motion to further amend HB 1449 by Rep. DeKrey and 2<sup>nd</sup> by Senator Triplett. Discussion? Seeing none I'll ask the clerk to take the roll on HB 1449.

Vote: 6 Yes      0 NO      0 Opposed    Motion Passed      Carried: Rep. DeKrey

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1449 (, as (re)engrossed):

Date: 4-16-2009

Your Conference Committee HOUSE NATURAL RESOURCES

**For the Senate:**

**For the House:**

Roll	YES / NO	Roll	YES / NO
P Senator C. Triplett		P Chairman KEISER	
P Senator R. Erbe		P Rep. DeKrey	
P Senator W. Hogue		P Rep. Pinkerton	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO. _____	of amendment
LC NO. _____	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: \_\_\_\_\_

SECONDED BY: \_\_\_\_\_

VOTE COUNT    \_\_ YES    \_\_ NO    \_\_ ABSENT

Revised 4/1/05

*Post Poned Until Tuesday 4-21-09*

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1449 (, as (re)engrossed):

Date: 4-22-2009

Your Conference Committee House Natural Resources

**For the Senate:**

**For the House:**

Roll	YES / NO	Roll	YES / NO
✓		✓	
Senator C. Triplett		Chairman Keiser	
✓		✓	
Senator P. Erbe		Rep. DeKrey	
✓		✓	
Senator W. Hogue		Rep. Pinkerton	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: \_\_\_\_\_

SECONDED BY: \_\_\_\_\_

OTE COUNT    \_\_\_ YES    \_\_\_ NO    \_\_\_ ABSENT

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1449

That the House accede to the Senate amendments as printed on page 1177 of the House Journal and pages 1012 and 1013 of the Senate Journal and that Engrossed House Bill No. 1449 be further amended as follows:

Page 1, line 8, overstrike "may" and insert immediately thereafter "shall"

Page 1, line 9, overstrike "may" and insert immediately thereafter "must"

Page 1, line 15, overstrike "and"

Page 1, line 17, after "restored" insert "; and

f. Present and future natural resource development"

Renumber accordingly

VOTE # 1

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)

Bill Number 1449 (, as (re)engrossed):

Date: 4-24-2009

Your Conference Committee House Natural Resources

For the Senate:

For the House:

Bill	YES / NO	Roll	YES / NO
Senator C. Triplett	✓		Chairman Keiser ✓
Senator R. Erbele	✓		Rep. DeKrey ✓
Senator D. Hogue	✓		Rep. Pinkerton ✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

and place \_\_\_\_\_ on the Seventh order.

✓ Amendment # 1, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_ having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: 4-24-2009

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. De Krey

SECONDED BY: Senator Triplett

VOTE COUNT 6 YES 0 NO 0 ABSENT

unanimous  
voice vote

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1449

That the Senate recede from its amendments as printed on page 1177 of the House Journal and pages 1012 and 1013 of the Senate Journal and that Engrossed House Bill No. 1449 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the development of wind resources and other natural resources in the same location.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - DEVELOPMENT OF WIND AND OTHER NATURAL RESOURCES.** During the 2009-10 interim, the legislative council shall study the development of wind resources and other natural resources in the same location. The study must include a review of laws relating to the siting and decommissioning of wind energy conversion facilities, the desirability of an environmental assessment as a condition of siting, and the desirability of regulation to address the effects of wind energy conversion facilities on water, soil, cultural resources, and future development of other natural resources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Vote #2

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)

Bill Number 1449 (as re)engrossed:

Date: 4-24-2009

Your Conference Committee House Natural Resources

For the Senate:

For the House:

Bill	YES	NO	Roll	YES	NO
Senator C. Triplett	✓		Chairman	✓	
Senator R. Erbe	✓		Rep. WeKrey	✓	
Senator W. Hogue	✓		Rep. Pinkerton	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_ and place \_\_\_\_\_ on the Seventh order.

✓, adopt (further) Amendment #2 amendments as follows, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_ having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: 4-24-2009

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. WeKrey

SECONDED BY: Senator Triplett

VOTE COUNT 6 YES 0 NO 0 ABSENT

Unanimous  
Voice Vote

**PROPOSED AMENDMENTS TO FIRST ENGROSSMENT WITH SENATE  
AMENDMENTS ENGROSSED HOUSE BILL NO. 1449**

**Page 1, line 2, after "facilities" insert "and to amend and reenact subsection 5 of section 49-22-03 of the North Dakota Century Code, relating to the siting of energy conversion facilities".**

**Page 1, after line 21, insert:**

**"SECTION 2. AMENDMENT.** Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
  - a. ~~Generation of one hundred thousand kilowatts~~ exceeding sixty megawatts ~~or more~~ of electricity;
  - b. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
  - c. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - d. Enrichment of uranium minerals."

Renumber accordingly.

VOTE #3

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)

Bill Number 1449 (as (re)engrossed):

Date: 4-24-2009

Your Conference Committee House Natural Resources

For the Senate:

For the House:

Bill	YES	NO	Roll	YES	NO
Senator C. Triplett	✓		Chairman	✓	
Senator R. Erbe	✓		Rep. DeKrey	✓	
Senator D. Hogue	✓		Rep. Pinkerton	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (S/H) page(s) \_\_\_\_\_ - \_\_\_\_\_

and place \_\_\_\_\_ on the Seventh order.

✓, adopt (further) Amendment #3 amendments as follows, and place \_\_\_\_\_ on the Seventh order.

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: 4-24-2009

CARRIER: \_\_\_\_\_

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. DeKrey

SECONDED BY: Senator Triplett

VOTE COUNT 6 YES 0 NO 0 ABSENT

unanimous  
voice vote

VR  
4/25/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1449

That the Senate recede from its amendments as printed on pages 1012 and 1013 of the Senate Journal and page 1177 of the House Journal and that Engrossed House Bill No. 1449 be further amended as follows:

Page 1, line 1, after "49-02-27" insert "and subdivision a of subsection 5 of section 49-22-03"

Page 1, line 2, after "facilities" insert "and to the definition of energy conversion facility; and to provide for a legislative council study of the development of wind and other natural resources"

Page 1, line 8, overstrike "may" and insert immediately thereafter "shall"

Page 1, line 9, overstrike "may" and insert immediately thereafter "must"

Page 1, line 15, overstrike "and"

Page 1, line 17, after "restored" insert "; and

f. Present and future natural resource development"

Page 1, line 19, replace "the facility remaining after" with "underground foundation not removed during"

Page 1, line 20, replace "remaining portion of the facility" with "such underground foundation"

Page 1, line 21, replace "The facility includes any cables, foundations, buildings, or other ancillary" with:

**"SECTION 2. AMENDMENT.** Subdivision a of subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. ~~Generation of one hundred thousand kilowatts or more~~ exceeding sixty megawatts of electricity;

**SECTION 3. LEGISLATIVE COUNCIL STUDY - DEVELOPMENT OF WIND AND OTHER NATURAL RESOURCES.** During the 2009-10 interim, the legislative council shall study the development of wind resources and other natural resources in the same location. The study must include a review of laws relating to the siting and decommissioning of wind energy conversion facilities, the desirability of an environmental assessment as a condition of siting, and the desirability of regulation to address the effects of wind energy conversion facilities on water, soil, cultural resources, and future development of other natural resources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Page 1, remove line 22

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)

Bill Number 1449 (as (re)engrossed):

Date: 4-24-2009

Your Conference Committee House Natural Resources

For the Senate:

For the House:

Roll		YES	NO	Roll		YES	NO
P	Senator C. Triplett	X		P	Chairman Keiser	X	
P	Senator R. Erbele	X		P	Rep. DeKrey	X	
P	Senator W. Hogue	X		P	Rep. Pinkerton	X	

recommends that the ~~(SENATE/HOUSE)~~ (ACCEDE to) ~~(RECEDE from)~~

the ~~(Senate/House)~~ amendments on (S/H) page(s) 1177 - \_\_\_\_\_

and place \_\_\_\_\_ on the Seventh order.

X, adopt ~~(further)~~ amendments as follows, and place 1449 on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: 4-24-2009

CARRIER: Rep. Keiser

LC NO. <u>90848-0204</u> of amendment <u>0400</u>
LC NO. _____ of engrossment
Emergency clause added or deleted
Statement of purpose of amendment

MOTION MADE BY: Rep. DeKrey

SECONDED BY: Senator Triplett

OTE COUNT 6 YES 0 NO 0 ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1449, as engrossed:** Your conference committee (Sens. Erbele, Triplett, Hogue and Reps. Keiser, DeKrey, Pinkerton) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1177, adopt amendments as follows, and place HB 1449 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1012 and 1013 of the Senate Journal and page 1177 of the House Journal and that Engrossed House Bill No. 1449 be amended as follows:

Page 1, line 1, after "49-02-27" insert "and subdivision a of subsection 5 of section 49-22-03"

Page 1, line 2, after "facilities" insert "and to the definition of energy conversion facility; and to provide for a legislative council study of the development of wind and other natural resources"

Page 1, line 8, overstrike "may" and insert immediately thereafter "shall"

Page 1, line 9, overstrike "may" and insert immediately thereafter "must"

Page 1, line 15, overstrike "and"

Page 1, line 17, after "restored" insert "; and

f. Present and future natural resource development"

Page 1, line 19, replace "the facility remaining after" with "underground foundation not removed during"

Page 1, line 20, replace "remaining portion of the facility" with "such underground foundation"

Page 1, line 21, replace "The facility includes any cables, foundations, buildings, or other ancillary" with:

**"SECTION 2. AMENDMENT.** Subdivision a of subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

a. ~~Generation of one hundred thousand kilowatts or more~~ exceeding sixty megawatts of electricity;

**SECTION 3. LEGISLATIVE COUNCIL STUDY - DEVELOPMENT OF WIND AND OTHER NATURAL RESOURCES.** During the 2009-10 interim, the legislative council shall study the development of wind resources and other natural resources in the same location. The study must include a review of laws relating to the siting and decommissioning of wind energy conversion facilities, the desirability of an environmental assessment as a condition of siting, and the desirability of regulation to address the effects of wind energy conversion facilities on water, soil, cultural resources, and future development of other natural resources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Page 1, remove line 22

Renumber accordingly

Engrossed HB 1449 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1449



## HB 1449

**Presented by:** David Straley, Manager of ND Govt/Public Affairs

**North American Coal Corporation**

**Before:** House Natural Resources Committee

**Date:** Thursday, January 29, 2009

## TESTIMONY IN SUPPORT OF HB 1449

Chairman Porter and committee members, my name is David Straley, and I am here today representing The North American Coal Corporation. North American Coal is the largest lignite coal producer in the State of North Dakota with operations in both Mercer County (The Freedom Mine) and McLean County (The Falkirk Mine). We urge your support for a "Do Pass" recommendation of House Bill 1449.

Before I go through the provisions of this bill and how it affects us, please understand that a coal mine is not a stagnant operation that does not move. Although our operations are typically slow-moving, covering only a few hundred acres each year with each pit, we are moving. In addition to our existing operations that I mentioned above, North American Coal is in the process of permitting another mine North and West of Center, North Dakota. In the approximately 5,500 acres within the proposed permit, we are only a couple of

miles from a nearby mining operation and a large wind facility. As we plan for mining operations to begin, this bill would help protect our assets in the form of equipment and machinery as well as human resources to perform their duties safely. Section 1 of the bill would ensure that any portions of the wind energy facilities that remain after decommissioning would record those items with the county recorder. This would allow us as a mining company to know exactly where these items are located so that we do not have any surprises as we are mining.

Section 2 of the bill would require an energy conversion facility to notify the Public Service Commission the manner in which the facility will inform affected subsurface mineral owners. As part of our regular practice of mining, we lease most, if not all, of the coal within the permit boundary and must do so before we mine it. In the course of normal business, we may acquire rights to coal outside of the permit boundary to allow us to expand our permit boundaries and mining operations. This would allow us, where we are a subsurface mineral owner, as well as other mineral holders to be informed of intentions of surface usage and plans.

We urge a "Do Pass" recommendation on House Bill 1449. This concludes my testimony, and I would be happy to answer any questions you may have.



## **HB 1449**

**Presented by:** David Straley, Manager of ND Govt/Public Affairs  
North American Coal Corporation

**Before:** Senate Natural Resources Committee

**Date:** Friday, March 13, 2009

### **TESTIMONY IN SUPPORT OF HB 1449**

Chairman Lyson and committee members, my name is David Straley, and I am here today representing The North American Coal Corporation. North American Coal is the largest lignite coal producer in the State of North Dakota with operations in both Mercer County (The Freedom Mine) and McLean County (The Falkirk Mine). We urge your support for a "Do Pass" recommendation of House Bill 1449.

Before I go through the provisions of this bill and how this helps our activities, it is important to note that a coal mine is not a stagnant operation. Although our operations are typically slow-moving, covering only a few hundred acres each year with each pit, we are moving. In addition to our existing operations that I mentioned above, North American Coal is in the process of permitting another mine North and West of Center, North Dakota in Oliver County. In the approximately 5,500 acres within the proposed permit, we are

only a couple of miles from a nearby mining operation and a large wind facility. As we plan for mining operations to begin, this bill would help protect our assets in the form of equipment and machinery as well as human resources to perform their duties safely. Section 1 of the bill would ensure that any portions of the wind energy facilities that remain after decommissioning would record those items with the county recorder. This would allow us as a mining company to know exactly where these items are located so that we do not have any surprises as we are mining.

If I may, I would like to offer an amendment and the reasons for that amendment and why we believe they are important to all parties involved.

The Amendment:

**“SECTION 2.** A new subdivision to subsection 1 of section 49-22-08 of the North Dakota Century Code is created and enacted as follows:

A statement explaining the manner in which an energy conversion facility will inform affected subsurface mineral owners or mineral lessees.”

Please note; this is similar language that was removed from the original version in the House for reasons you will hear from others later. It is my hope that we can come to a reasonable conclusion and resolve the differences that exist with this language. We believe the best way to accomplish our intent is through Actual Notice, which we believe the Amendment accomplishes. We have first hand experienced that Constructive Notice does not accomplish the methods of communication necessary to preserve our and others rights of mineral development.

North American Coal would like to put this provision back in to the bill for a couple of reasons. As we are negotiating with local land owners for purchase or

obtaining the right to use the surface for our operations and mineral owners for the right to lease their minerals for development, it is extremely important for us to know of any conflicting rights that may be at issue. This notice could also positively affect decisions as to the timing of leasing and the leasing rights. For example, some surface and mineral owners may want to know of both options and receive lease payments for both surface development and mineral development. Once we remove the coal, our interest in the surface goes away and conflict is resolved, but until the coal is mined, we face telling mineral owners that we cannot lease their minerals because of the surface conflict. As mineral lessees and mineral owners under existing common law in North Dakota have right to ingress and egress to develop those minerals, the surface owner or developer may be liable to damages for stranding their minerals. We know there are at least two situations where some minerals may not being developed because they are leased to us and wind towers were constructed on the surface without any notification to us or the mineral owners. This amendment would provide us (and other interested parties) the necessary procedure for us to object or have input in the surface project so that we are both protected.

This new Section 2 of the bill would require an energy conversion facility to notify the Public Service Commission the manner in which the facility will inform affected subsurface mineral owners and lessees. As part of our regular practice of mining, we lease most, if not all, of the coal within the permit boundary and must do so before we mine it. In the course of normal business, we may acquire rights to coal outside of the permit boundary to allow us to expand our permit boundaries and mining operations. This would allow us, where we are a

subsurface mineral lessee, as well as mineral owner to be informed of intentions of surface usage and plans.

We urge a "Do Pass" recommendation on the Amendment and on House Bill 1449. This concludes my testimony, and I would be happy to answer any questions you may have.

Prepared by John M. Olson

Lobbyist #142

John M. Olson, P.C.  
418 E. Broadway Ave., Suite 9  
Bismarck, ND 58501  
(701) 222-3485  
(701) 222-3091 (fax)  
olsonpc@midconetwork.com

**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1449**

Page 1, replace lines 18 through 22 with "2. The facility owner or operator of a commercial wind energy facility shall record the location of any portion of underground foundation not removed during decommissioning with the county recorder in the county in which any such underground foundation is located."

Renumber Accordingly



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Kevin Cramer  
Tony Clark  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

Honorable Stanley Lyson, Chairman  
Natural Resources Committee  
North Dakota Senate  
600 East Boulevard Avenue  
Bismarck, ND 58505

19 March 2009

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
Web: [www.nd.gov/psc](http://www.nd.gov/psc)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
TDD 800-366-6888 or 711  
Fax 701-328-2410  
Phone 701-328-2400

Re: Engrossed House Bill 1449

Dear Chairman Lyson:

This letter is in response to questions raised by the committee during the hearing on the captioned bill.

North Dakota's One-Call law is codified in Chapter 49-23 of the North Dakota Century Code. Generally, the One-Call law appears to be based on certain assumptions that are not necessarily aligned with what I understand to be the purpose or effect of Engrossed House Bill 1449 and the proposed amendments.

As currently enacted, One-Call is a mechanism for protecting an operator's active buried infrastructure from damage. To this end, obligations are placed on excavators to call and ask before excavation, and obligations are placed on operators to locate and report before expected excavation. Many of the 17 definitions in the One-Call law appear to include the parties of interest in Engrossed House Bill 1449, namely wind developers and coal companies, but the One-Call process seems geared more to protecting facilities in active use than protecting excavators from harm due to abandoned facilities.

Engrossed House Bill 1449, on the other hand, appears to focus on a means to ensure potential future excavators have information about a former operator's abandoned infrastructure in order to prevent harm to the excavators' operations or equipment caused by those abandoned facilities. One-Call works by requiring operators to locate infrastructure when asked. Expecting a former operator to locate abandoned infrastructure when asked may be problematic, depending on the length of time that has elapsed between active operations and the request for location. Locating the former operator would be the first hurdle, and even if that could be accomplished, the second hurdle would be whether that former operator could locate the abandoned infrastructure.

Conceivably, the One-Call law could be tweaked to cover the objectives of Engrossed House Bill 1449, but that approach may not be practical, and may still fall short of

accomplishing the objective. Further, any potential One-Call changes should be brought to the attention of stakeholders who are better able to address the impacts of the revisions.

As we discussed at the hearing, issues regarding whether or not certain types of facilities can easily be located when a request is made would need to be addressed, including whether a certain material should be required during installation so that the facility can later be located. It has been suggested that the locations of underground facilities be reported by means of Geographic Information Systems data, but the responsibility for storage and retrieval of that data is still a question. Today, One-Call is not a data storage service, but a notice and response service. Again, One-Call could be revised to incorporate storage and retrieval of such data, but I have no knowledge or information on how that could work or whether it is a good idea. Any plan for data storage and retrieval will also raise the question of how the costs for that storage and retrieval will be paid.

While the One-Call program is in Title 49 of the Century Code and therefore under the mantle of the Public Service Commission, it is the One-Call Board and personnel who have day to day familiarity with the operation of the program. I recommend that any proposed changes to One-Call under consideration by the committee be provided to the One-Call Board for its comments. As I previously mentioned, the Public Service Commission has no position on Engrossed House Bill 1449 or the proposed amendments. However, if the committee determines that other changes should be made to the bill or the One-Call law, the Public Service Commission respectfully asks for an opportunity to review the proposed changes to determine if the Commission should bring any issues or concerns to the attention of the committee.

Thank you for the opportunity to respond to your questions on Engrossed House Bill 1449 and its relationship to the state's One-Call program.

Best regards,

  
Illona A. Jeffcoat-Sacco  
General Counsel

- c: Sen. David Hogue, Vice Chairman  
Sen. Robert Erbele  
Sen. Layton Freborg  
Sen. James Pomeroy  
Sen. Mac Schneider  
Sen. Constance Triplett