

2015 HOUSE ENERGY AND NATURAL RESOURCES

HB 1114

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1114
1/15/2015
Job #220008

- Subcommittee
 Conference Committee

Committee Clerk Signature

Becki Streege

Explanation or reason for introduction of bill/resolution:

Relating to solid waste management correspondence and environmental protection; and to provide a penalty.

Minutes:

Attachments #1

Chairman Porter opens hearing on HB 1114.

Scott Radig, Director of Waste Management Division of the North Dakota Department of Health (Attachment 1)

Rep. Curt Hofstad : Do we have defined, in code, on what solid waste is?

Scott: Yes we do, it's consistent with federal definitions of solid waste, as well. A summary of the rule is: it includes all solid, and liquid waste, includes any waste materials that are not regulated under the Hazardous Waste law. There are subcategories, such as special waste and industrial waste.

Chairman Porter: In section 2, changing the infraction from a Class B misdemeanor to a civil penalty for dumping larger volumes of waste (i.e. dumping a couch in a ditch out in the county) seems like a small penalty. Why would we take something that has the teeth of a Class B misdemeanor and change it?

Radig: The penalty currently is an infraction, with penalties up to 1000 dollars per day, per violation. For larger volumes than 1 cubic foot, this would change it to a Class B misdemeanor. It would also be subject to a civil penalty up 12,500 dollars per day.

Chairman Porter: Line 16 appears you are overstriking Class B misdemeanor, putting civil penalty in place. You're removing the Class B misdemeanor, then adding a civil and criminal penalty, provided Section 23-29-12. So, in Section 23-29-12, we have to cross-reference that back to see that there still is a Class B misdemeanor for putting a couch in my ditch? What are you actually doing here?

8:04

Radig: I believe I misspoke. The Class B was taken out and changed to a Class C, it's considered criminal.

Chairman Porter: If I get caught throwing a couch into Rep. Hofstad's ditch, is it going to be a Class B misdemeanor, or is it now going to be an infraction, based on the changes in Section 2? (Someone actually getting caught is infrequent, which is the whole point.)

Dave Glatt, Chief of the Environmental Health Section for the North Dakota Department of Health

Glatt: The reason this change was made is to be consistent with oil and gas. We have issues where potentially large amounts of oil field waste could be dumped, and it was still considered an infraction of 1000 dollars per day. We felt this was different than your couch dumped in a ditch. This is primarily to address the large issues of oil field waste being dumped - it is a lot different than a couch, and we would treat those differently. The couch could be an infraction, the larger quantities would get into that upper category. That's how we would address that.

9:47

Chairman Porter: On line 14, the wording states this is a Class B misdemeanor. You are overstriking the line that makes it a Class B misdemeanor and making it an infraction?

Glatt: Our intent was to make the law consistent currently where we have oil and gas type situations, to address the bigger issues. In a case where you would have multiple couches then the overall impact on the environment grows. The problem we had is that the penalties weren't sufficient for the violation. This is in an effort to have the penalty meet the infraction.

If that isn't clear I would say we would be willing to step back and take a look at this, so that your issue of a couch doesn't get into a Class B misdemeanor, but the issue of an oil field dump of material does.

Chairman Porter: I think a couch currently is a Class B misdemeanor and you are changing it to something less. It says "...except if the litter discarded and abandoned amounted to more than one cubic foot in volume or if the litter consisted of furniture or a major appliance, the offense is a Class B misdemeanor". You are moving to civil and criminal penalties provided under Section 23-29-12. Does the offense of a couch, which is currently a Class B misdemeanor, stay a Class B misdemeanor with this proposed amendment?

Glatt: No, it doesn't. It would potentially be a Class C.

Chairman Porter: It is moved down?

Glatt: We'll bring our attorney in.

12:53

Maggie Olson with the Attorney General's Office:

On littering more than one cubic foot of furniture or major appliances, I agree with you that it is changing from a Class B and moving it, increasing it to a maximum Class C felony.

Chairman Porter: I'm not sure, from my stand point, if I'm very interested in that. I'm the guy who has to clean up the ditch, too.

Rep. Mike Nathe: On the definition of solid waste, where does salt water sit? Is it in this section, or is it a hazardous waste?

Radig: Saltwater, produced water brine, is a defined as a special waste, which is a subcategory of solid waste. It is not a hazardous waste.

Rep. Mike Nathe: It would be covered by this?

Scott: Yes it would.

Rep. Lefore: The main reason you are working to change this is be consistent with other provisions that you have? Has there been an increase in complaints that you feel you need to increase the capacity, as far as the fines concerned?

14:20

Radig: Yes there has been an increasing number of dumping incidents, primarily out in the oil field. Materials have been dumped to avoid the cost of proper disposal. We've had quite an increase in the number of cases over the past couple of years. We feel 10000 dollars a day is not adequate, and it's not consistent if it were dumped in or near waters of the state, or if it was an air quality violation. We want to make it consistent with other environmental regulations.

Rep. Curt Hofstad: Under the repeal, I'm trying to understand, why official correspondence, certified mail, is in some way cumbersome or a problem in today's era. Can you explain why that is?

15:30

Radig: It does not define specifically what official communication is. We always do enforcement related issues, new permits, permit renewals under certified mail. However, official correspondence could be understood to mean any letter that's sent out by the department with letterhead on it. I don't know what communications we have that are not official. It's also hindering us from doing online services, where everything would then need to be sent out as certified mail. We would like to implement a program for registration and permitting of waste transporters - it could be a simple online form with an online payment. Then it would require certified mail to be sent out afterwards. It adds a lot to the time fram that people are expecting services to be handled quickly.

Mr. Glatt: To address your issues about the concerns about furniture, etc., I'd be willing to step back and take a look at that. Furniture is a lot different than oil field waste, and maybe we could provide more clarity in that language so that they are not treated the same, but they are treated.

Chairman Porter: I would agree. The big thing is that it's not multiple instances on the same person, it's trying to catch one person once. By reducing it, isn't nearly the financial burden for that one time individual as it would be in the case of a multi-incident where we aren't getting enough because of the large quantities. I do think they need to be treated separately. It's impossible to catch the person dumping, because it doesn't happen when you're there. It would be nice to keep the fine up high enough so that when, and if, they do get caught that there is enough of a penalty they won't do it again.

Glatt: Do you want differentiation between the smaller amounts, or do you want the high penalty?

Chairman Porter: My personal thought is it should stay Class B. I don't know why we would ever reduce it.

Glatt: I agree they are extremely difficult to catch.

Chairman Porter: We will work on some amendments with you.

No Opposition.

Hearing closed on HB 1114.

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

1114
2/5/2015
Job # 23316

- Subcommittee
 Conference Committee

Committee Clerk Signature *Beckie Stuge*

Explanation or reason for introduction of bill/resolution:

"Click here to type reason for introduction of bill/resolution"

Minutes:

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Chairman Porter: Opens hearing on HB 1114

Chairman Porter: This amendment was provided by the Health Department. This is the solid waste bill that we heard in January. Our concern was with one time incidents of dumping couches and other items into ditches. This amendment says that throwing a couch in a ditch is still a Class B misdemeanor. Multiple offenses out in the oil patch, where there is an accumulation, will be a separate violation and will be assessed daily. We should look at Line 13 & 14 regarding what the fine is for littering. It seems too low.

Representative Nathe: I make a motion for a Do Pass on the amendments.

Representative Hofstad: Seconded.

Chairman Porter: We have a motion and a second to adopt the amendment to HB 1114.

Chairman Porter: The couch is still a Class B misdemeanor. Solid waste becomes a daily penalty that escalates and is an infraction.

Voice Vote - Motion carries.

Representative Hunkskor: What's the next step up from infraction?

Chairman Porter: I wouldn't change it from an infraction. I would change the fine from 100 dollars to 200 dollars.

Representative Froseth: I make a motion to further amend Line 13, changing it from 100 dollars to 200 dollars.

Representative Anderson: Seconded

Chairman Porter: Line 13, overstrike "one" and insert "two".

Voice Vote, motion carries.

Representative Hofstad: I would move a Do Pass on HB 1114 as amended.

Representative Nathe: Seconded

A roll call vote was taken. Yes: 12 No: 0 Absent: 1

Do Pass carries

Representative Froseth will carry the bill.

February 5, 2015

Handwritten:
2-5-15
103

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1114

Page 1, line 1, remove "subsection 13 of"

Page 1, replace lines 7 through 10 with:

"SECTION 1. AMENDMENT. Section 23-29-03 of the North Dakota Century Code is amended and reenacted as follows:

23-29-03. Definitions.

1. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
2. "Department" means the state department of health.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
4. "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
5. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
6. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
7. "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
8. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or other similar appliance.
9. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities; by public and private facilities; and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
10. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide

2013

sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.

11. "Person" means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.
12. "Political subdivision" means a city, county, township, or solid waste management authority.
13. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from ~~municipal~~ solid waste.
14. "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
 - a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
 - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
15. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
16. "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
17. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
18. "Transport" means the offsite movement of solid waste.

Page 1, line 13, overstrike "one" and insert immediately thereafter "two"

Page 1, line 16, remove the overstrike over "~~offense is a class B~~"

3013

Page 1, line 17, remove the overstrike over "~~misdemeanor~~" and insert immediately thereafter "and the"

Page 1, line 17, replace "and criminal penalties" with "penalty"

Page 2, line 9, remove "For multiple violations, penalties may"

Page 2, remove lines 10 and 11

Page 2, line 12, replace "knowingly" with "willfully"

Page 2, line 16, replace "knowingly" with "willfully"

Page 2, line 20, remove "For multiple violations, penalties may be assessed up to the maximum"

Page 2, remove line 21

Renumber accordingly

Date: 2/5/15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1114

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 15.8057.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep Nathe Seconded By Rep Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunsakor		
Vice Chairman Damschen			Rep Mock		
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

Voice vote carried

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep

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

Date: 2-5-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1114

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 15.8057.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep Froseth Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunskor		
Vice Chairman Damschen			Rep Mock		
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

*Voice
Vote carried*

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep

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

To further amend Line 13, overstrick "one" and insert "two"

Date: 2/5/15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1114

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 15.8057.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By Rep Hofstad Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hunskor	✓	
Vice Chairman Damschen	✓		Rep Mock		A
Rep D Anderson	✓		Rep Muscha	✓	
Rep Brabandt	✓				
Rep Devlin	✓				
Rep Froseth	✓				
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Lefor	✓				
Rep Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep Froseth

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

REPORT OF STANDING COMMITTEE

HB 1114: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1114 was placed on the Sixth order on the calendar.

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Page 1, replace lines 7 through 10 with:

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 - a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
 - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
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maximum"

Page 2, remove line 21

Renumber accordingly

2015 SENATE ENERGY AND NATURAL RESOURCES

HB 1114

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1114
3/20/2015
25169

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Olive

Explanation or reason for introduction of bill/resolution:

Relating to solid waste management correspondence and environmental protection; and to provide a penalty

Minutes:

Scott Radig: Director of Waste Management Division of North Dakota Department of Health. Mr. Radig explained the changes in the bill.

Senator Triplett: The repeal of the certified mail. Is there an argument for using it in some circumstances?

Scott Radig: We will still use certified mail in enforcement actions; to have it for all communications makes it cumbersome.

Ron Ness: North Dakota Petroleum Council. We have no oppositions to the bill in front of you, the point we want to make it easy for people to do the right thing. The larger companies have no problem bringing their waste wherever but we have a lot of small business people who get into a business that do not know about waste disposal. The department is working on rules for landfills in the state. What are we doing in terms of managing the waste in our state and consider the effects of this. Imagine that this is a process and we need to dispose of our waste, allow this to proceed without our objection but we have to seriously consider the other side of this.

Senator Armstrong: I get concerned is not the felony penalty but is there a misdemeanor charge as well? And if this passes is the felony the only place you can go?

Ron Ness: I am not the person to ask; recognize what you are doing here, you have a filter socks and no one has the test to and they stick you with the max penalty a day. In essence it would have never worked in court; we have an imbalance of what is happening.

Senator Armstrong: Are there any misdemeanors? The reason I ask is we run into the situation in felony drug crimes where there are no lesser included offences then you get stuck with a situation where after the crime is charged and all the facts come out you have

choices of prosecuting the felony, dismissing the felony, and nothing else. Are there misdemeanors in this code or is it just felonies now?

Scott Radig: The infractions for littering general solid waste are still a misdemeanor, the penalty for dumping waste is the same type of penalties and matches oil and gas law up to a class C felony. Normally the department only does civil penalties it is strictly up to the local state's attorney government will determine what level they want to criminally prosecute it at.

Senator Armstrong: So you are saying that there are misdemeanors in the same section of the code, correct?

Scott Radig: I do not specifically know if it mentions misdemeanors directly or if it is up to a class C felony

Maggie Olson: Assistant Attorney General. Under the bill littering a small amount would be an infraction, littering a large amount would be a class C misdemeanor and the larger solid waste violation would be the class C felony.

There was no further discussion and the hearing on HB 1114 was closed.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1114
3/20/2015
25206

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate O'Neil

Explanation or reason for introduction of bill/resolution:

Relating to solid waste management correspondence and environmental protection; and to provide a penalty

Minutes:

Senator Armstrong: The industrial commission's penalty provisions so I think without a massive structural rewrite of both of them I think that it makes sense that the language in the health department is consistent with 3808. They may be taking this up over the interim and looking at it for both sections, this language is identical to what is in the industrial code.

Senator Armstrong then made a motion for a do pass with a second by Senator Laffen, there was no further discussion, roll was taken, the motion passed on a 6-0-1 count with Senator Armstrong carrying the bill to the floor. There was no further discussion and Chairman Schaible closed the committee work on HB 1114.

REPORT OF STANDING COMMITTEE

HB 1114, as engrossed: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1114 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1114

#1
1-15

**Testimony
House Bill 1114
Energy and Natural Resources Committee
January 15, 2015, 10:00 a.m.
North Dakota Department of Health**

Good morning, Chairman Porter and members of the Energy and Natural Resources Committee. My name is Scott Radig, and I am director of the Waste Management Division of the North Dakota Department of Health. I am here today to testify in support of House Bill 1114, which primarily addresses a number of housekeeping issues in the Solid Waste Management law, and makes the Solid Waste Management law consistent with other environmental regulations.

Section 1 changes the definition of resource recovery to include the reuse or recycling of any solid waste, not just municipal waste. This amendment would allow for the recycling of a wide range of non-hazardous wastes, including oilfield waste materials.

Sections 2 and 3 make the penalty provisions of the Solid Waste Management law consistent with the penalties in water quality, air quality, and hazardous waste. The penalty for littering one cubic foot or less remains an infraction with a fine up to \$100. The bill changes the penalty for dumping larger volumes of waste to a Class B misdemeanor and thus, treats this dumping like other solid waste violations. The bill increases the maximum civil penalty for all solid waste violations from \$1,000 per day per violation to \$12,500 per day per violation. It also adds criminal penalties up to a Class C felony for any person who willfully or knowingly violates provisions of the solid waste law, consistent with other state environmental laws.

Section 4 of the bill repeals two sections in the solid waste law that are outdated and difficult to enforce. Section 23-29-09 requires that any notice, order or "official correspondence" of the department under the solid waste law be sent by certified mail. This section was implemented in 1975, but is no longer workable in today's era of electronic communication. The department is moving to providing online services that are much more efficient for the public and the department, making the requirement for certified mail cumbersome, inefficient and unnecessary.

Section 23-29-16, Environmental Protection Act, was enacted as a result of an initiated measure in 1996. This initiated measure included 1) banning privately

owned hazardous waste disposal facilities; 2) privately owned landfills would be required to have financial assurance insurance policies for a minimum of 100 years after the landfill closes, while publicly owned landfills have a requirement for 30 years of post-closure financial assurance; and, 3) a mandatory county vote to approve continued operation of existing privately owned landfills. This section was declared unconstitutional in North Dakota District Federal Court in Municipal Services Corporation v. State of North Dakota, Docket No. A4-96-80, on October 9, 1996. Because this section has been declared unconstitutional and is unenforceable, we ask that it be repealed.

This concludes my testimony. I am happy to answer any questions you may have.