

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/16/2015**

Amendment to: HB 1179

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$500,000	\$0	\$500,000
<b>Appropriations</b>	\$0	\$0	\$0	\$500,000	\$0	\$500,000

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
<b>Counties</b>	\$0	\$0	\$0
<b>Cities</b>	\$0	\$0	\$0
<b>School Districts</b>	\$0	\$0	\$0
<b>Townships</b>	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This measure would remove the exception from being an “administrative agency” in regards to the Industrial Commission with respect to certain agencies.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the measure applies the term “administrative agency” to the Industrial Commission with respect to the Bank of North Dakota, ND Housing Finance Agency, Public Finance Authority, ND Mill & Elevator Assoc., ND Farm Finance Agency, ND Transmission Authority, and ND Pipeline Authority. It also applies the term “administrative agency” to the Industrial Commission with respect to the Lignite Research Fund and approving or setting water rates under chapter 61-40.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Unable to determine a fiscal note without a detailed analysis of the number of rules that might be affected by each of the agencies listed. There would be costs related to the rulemaking process which would reduce the profits of the State’s businesses which in turn may reduce the revenues those entities provide to the State.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The costs for doing a rulemaking average between \$10,000 to \$13,000 per rulemaking for staff time and advertising. At this point unable to determine the number of rules without a detailed analysis of the number of rules that might be required by each of the agencies listed. If there are 50 rules over the period of a biennium at \$10,000 the cost would be \$500,000 which would include additional FTE positions.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The costs for doing a rulemaking average between \$10,000 to \$13,000 per rulemaking for staff time and advertising. The appropriations would have to be placed in the appropriate agency budgets. At this point unable to determine the number of rules without a detailed analysis of the number of rules that might be required by each of the agencies listed. If there are 50 rules over the period of a biennium at \$10,000 the cost would be \$500,000 which would include additional FTE positions.

**Name:** Karlene Fine

**Agency:** Industrial Commission

**Telephone:** 701-328-3722

**Date Prepared:** 02/17/2015

**2015 HOUSE POLITICAL SUBDIVISIONS**

**HB 1179**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Prairie Room, State Capitol

HB 1179  
2/5/2015  
23000

- Subcommittee  
 Conference Committee

*Amanda Muscha*

### Explanation or reason for introduction of bill/resolution:

Relating to the composition of the industrial commission

### Minutes:

Testimony 1

Chairman Klemin: Opened hearing on HB 1179.

Representative Kempenich: It gives more members to the industrial commission which manages state bank and mill. Some say we should have looked at this sooner but we didn't. It is here because of what happened last winter. There was a proposal involving private and public lands. There was a push back and when we got into it we found out how poorly the conversation was on the commission. There was a major communication issue when this happened. This is an attempt to improve the functionality of the commission. The duties have been added but this is mainly aimed at the special issues part and the lack of communication. We should add the chairman of the PFC for starters. The people that run in these positions know what is going on across the state. The tax commissioner would also be a good addition. The functionality of the commission needs communication. When we leave here we leave all the authority at the door. It is a concern what we leave in the hands of two men. It could be more functional if we add a couple.

Representative Koppelman: It focused on two issues. The open meetings dilemma and the fact that one only needs to convince one to move on. Have you taken any look at the powers and authority of the commission and do you think the commission was going beyond its bounds?

Representative Kempenich: Yes I do. If they don't pushback executive will take their authority. This was established to run some state industries (not a shining moment). There is history as to why this happened but with today we need more eyes on the commission. There was an overreach on policy issues. This is the legislative prerogative.

Chairman Klemin: How would five instead of three improve commission?

Representative Kempenich: With an open record issuants can communicate without the quorum. You are putting a quorum on the commission then. I think it prohibits direct communication. When you get into public you choose your words carefully. That would be

when your words are on record. At least you have communication can be done without record.

Chairman Klemin: This would allow them to get around the open meetings requirement?

Representative Kempenich: They couldn't pass anything in a closed meeting but it would allow for frank communication.

Representative Oversen: Would there be any conflict with what PFC oversees and adding them to the commission?

Representative Kempenich: PFC is interstate pipeline and I don't think there would be a big overlap other than the interstate. I don't think it would add conflict. I think there would be more understanding.

Representative Oversen: The overlapping timing? Would there be any when they have hearings across the state? Is there going to be difficult scheduling meetings?

Representative Kempenich: I think there is a large enough timeline as to where there won't be. Some thought to add legislature but then you would be entering executive discussion. Times have changed.

Opposition:

Karlene Fine: Testimony 1

Representative Oversen: Can you explain what your roll is?

Karlene Fine: I am executive director and secretary.

Representative Oversen: You mentioned how they make outlines with recommendations from different agencies. Why is there a difference if it is coming from oil and gas in the form of orders versus a recommendation? What is the difference and how does it impact what roll the industrial commission has in those decisions?

Karlene Fine: That is the process they have and they request it is provided in the form of an order. It follows the administrative practices act they have to follow.

Chairman Klemin: Closed the hearing on HB 1259

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Prairie Room, State Capitol

HB 1179  
2/12/2015  
23762

- Subcommittee  
 Conference Committee

*Amanda Muschio*

### Explanation or reason for introduction of bill/resolution:

Relating to the composition of the industrial commission.

### Minutes:

Testimony 1

Chairman Klemin: Opened discussion on HB 1179.

Representative Koppelman: I have those amendments I said I would bring up. I don't think the amendments the bill sponsor would work or the bill itself. The amendment would place the industrial commission under the administrative practice act and restore the balance of power with checks and balances. I would move the amendments as well. (Testimony 1)

Representative Maragos: Seconds the motion.

Representative Koppelman: I also talked with the bill sponsor and he is not adverse to it. He knows there was some question with the bill growing the commission and it does address the issue of separation of powers.

Chairman Klemin: As I recall the testimony of Representative Kempenich, he was concerned about the industrial commission adopting some rules relating to special places that didn't go through the administrative rule making process and this amendment they would be required to do that?

Representative Koppelman: Yes.

Representative Oversen: I understand the change but I am not comfortable supporting the change because it is so drastic.

Representative Koppelman: It is a far less drastic change than what the original bill would do.

A Voice Vote Was Taken: All in favor

Motion carries

Representative Koppelman: Moves a do pass as amended

Representative Kretschmar: Seconds

Representative Beadle: I could stir the pot a little more and also remove the board of higher education from this and force them to come through for rule making.

Chairman Klemin: I would hold that kind of amendment out of order because we had no hearing on that issue.

Representative Beadle: With that regard we could make the argument that we no hearing on making this up because the hearing was on adding two people to the commission not on changing their rule making practice. We knew the issue but the bill itself was on something different.

Representative Koppelman: I think the chairman is correct. This is clearly germane because it does deal with the industrial commission of activity whereas the other idea is germane to the amendment but not the original bill. We did look at this a few years ago.

A Roll Call Vote Was Taken: Yes 7, No 6, Absent 1 (Strinden)

Motion carries

Representative Koppelman will carry the bill

AKB  
2-12-15  
102

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1179

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to the administrative agency status of the industrial commission.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
  - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
  - b. The adjutant general with respect to the department of emergency services.
  - c. The council on the arts.
  - d. The state auditor.
  - e. The department of commerce with respect to the division of economic development and finance.
  - f. The dairy promotion commission.
  - g. The education factfinding commission.
  - h. The educational technology council.
  - i. The board of equalization.
  - j. The board of higher education.
  - k. The Indian affairs commission.
  - l. ~~The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota~~

2 of 2

~~farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.~~

- ~~m.~~ The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- ~~n.m.~~ The pardon advisory board.
- ~~o.n.~~ The parks and recreation department.
- ~~p.o.~~ The parole board.
- ~~q.p.~~ The state fair association.
- ~~r.g.~~ The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- ~~s.r.~~ The board of university and school lands except with respect to activities under chapter 47-30.1.
- ~~t.s.~~ The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- ~~u.~~ ~~The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.~~
- ~~v.t.~~ The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
- ~~w.u.~~ The commission on legal counsel for indigents.
- ~~x.v.~~ The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
- ~~y.~~ ~~The industrial commission with respect to approving or setting water rates under chapter 61-40."~~

Renumber accordingly

Date: 2/12/2015  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1179

House Political Subdivisions Committee

Subcommittee  Conference Committee

Amendment LC# or Description: 15.0093.01001

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Koppelman Seconded By Maragos

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

voice vote motion carries

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

Absent \_\_\_\_\_

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

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

Hoy House Amendment

Date: 2/12/2015  
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1179**

House Political Subdivisions Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Koppelman Seconded By Kretschmar

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson		X
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh		X
Rep. Thomas Beadle	X		Rep. Kylie Oversen		X
Rep. Rich S. Becker	X		Rep. Marie Strinden		/
Rep. Matthew M. Klein		X			
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos		X			
Rep. Nathan Toman	X				
Rep. Denton Zubke		X			

Total (Yes) 7 No 6

Absent 1 Strinden

Floor Assignment Koppelman

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

motion carries

**REPORT OF STANDING COMMITTEE**

**HB 1179: Political Subdivisions Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1179 was placed on the Sixth order on the calendar.

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  - d. The state auditor.
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- ~~t.~~ The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- ~~u.~~ The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- ~~v.~~ The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
- ~~w.~~ The commission on legal counsel for indigents.
- ~~x.~~ The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
- ~~y.~~ The industrial commission with respect to approving or setting water rates under chapter 61-40."

Renumber accordingly

**2015 TESTIMONY**

**HB 1179**



# INDUSTRIAL COMMISSION OF NORTH DAKOTA

Jack Dalrymple  
Governor

Wayne Stenehjem  
Attorney General

Doug Goehring  
Agriculture Commissioner

Testimony on House Bill 1179  
Karlene Fine, Executive Director  
February 5, 2015

I am appearing today at the request of the Industrial Commission in opposition to House Bill 1179. The Industrial Commission was established in 1919 as a three-member commission. It consists of three state-wide elected officials and they are charged with the responsibility "to conduct and manage, on behalf of the State of North Dakota, certain utilities, industries, enterprises....." There is a lengthy history that shows that having this makeup of the Commission - the Governor - the State's Chief Executive, the Attorney General - the State's Chief Lawyer and the Agriculture Commissioner who represents business and specifically agriculture - works.

It was indicated that the reason for this legislation was "to lend extra expertise on fiscal impacts and regulation of pipeline infrastructure." The positions that are proposed in this bill certainly have expertise in those particular areas. However, the Commission deals with far more issues than pipelines or fiscal impacts. Managing the Bank of North Dakota, State Mill and Elevator, Department of Mineral Resources and Housing Finance Agency are equally important duties. Further, the Commission has dealt with the issue of expertise in a couple of ways. First, the Commission has hired managers with experience in oil and gas, banking, milling, finance, etc. Commission members also bring their own experience to the table--whether it is legal expertise or business expertise gained from a board room or from farming the land. Along with the experience they bring individually they are also able to rely on the extensive specific expertise among the staff from each of the entities they oversee.

The Commission does not do its work in a vacuum -- it relies on the experts that they hire and, similar to a judge or a businessman, weighs all the facts and recommendations and then makes their decision. In addition a number of the entities under their control have Advisory Boards that assist them -- Bank of North Dakota Advisory Board consisting of bankers and other businesses, Housing Finance Agency Advisory Board consisting individuals representing bankers, realtors, manufactured housing, etc., Outdoor Heritage Fund Advisory Board consisting of conservationists, agriculture representatives, etc.

Briefly, here is how the Industrial Commission works. The Commission's agency directors' prepare their recommendations for the Commission's consideration

- in regards to the Bank of North Dakota those recommendations come after review by Bank management and consideration by the Bank of North Dakota Advisory Board,
- in regards to oil and gas those recommendations come in the form of an order or rules after public hearings are held, (hearings are held every month - usually they take two days - before a panel of experts consisting of petroleum engineers, geologists, legal staff, petroleum geology analyst, assistant attorney general, reservoir engineer -- some with experience in excess of 40 years

- in regards to the Housing Finance Agency after public hearings (Low Income Housing Tax Credit Program or Housing Incentive Fund Program, review by Agency management and staff and review by the Housing Finance Agency Advisory Board,
- in regards to the research programs after receiving recommendations from the particular councils after independent technical reviews,
- in regards to the Outdoor Heritage Fund after receiving recommendations from the Outdoor Heritage Fund Advisory Board,

-- and then the item comes before the Commission at a monthly 4 to 5 hour meeting.

Any time you expand the number of individuals making the final decision you dilute the accountability for the decisions that were made. Under this proposal there would be five individuals that would be held accountable rather than three. Adding the Chairman of the Public Service Commission would result in a lack of continuity because the Chairman is elected by the PSC every other year.

Over the years the three-member Commission has served the state well. The Industrial Commission does not believe that there has been an expression by the citizens that the Commission make-up should be changed. In the most recent election when one of the issues was who sits on the Industrial Commission, the voters re-elected two members of the current Industrial Commission. Voters have not indicated through the ballot box that the three-member Commission needs to be changed.

For those reasons the Commission requests a Do Not Pass on House Bill 1179.

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Renumber accordingly