15.0924.07000

FISCAL NOTE
Requested by Legislative Council
02/20/2015

Amendment to: SB 2343

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
Revenues						
Expenditures						
Appropriations						

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
Counties			
Cities			
School Districts			
Townships			

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 require the Industrial Commission to report on all orders resulting in a fiscal effect in excess of twenty million dollars per biennium. This is retroactive to orders made after July 31, 2013.

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.*

The measure has no fiscal impact at this time.

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.*

No revenue is anticipated at this time.

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 measure has no expenditures at this time.

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 measure has no appropriations at this time.

Name: Robyn Loumer
Agency: Industrial Commission
Telephone: 701-328-8011
Date Prepared: 02/20/2015

15.0924.06000

FISCAL NOTE
Requested by Legislative Council
02/20/2015

Amendment to: SB 2343

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
Revenues						
Expenditures						
Appropriations						

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
Counties			
Cities			
School Districts			
Townships			

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 require the Industrial Commission to report on all orders resulting in a fiscal effect in excess of twenty million dollars per biennium. This is retroactive to orders made after July 31, 2013.

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.*

The measure has no fiscal impact at this time.

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.*

No revenue is anticipated at this time.

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 measure has no expenditures at this time.

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 measure has no appropriations at this time.

Name: Robyn Loumer
Agency: Industrial Commission
Telephone: 701-328-8011
Date Prepared: 02/20/2015

15.0924.05000

FISCAL NOTE
Requested by Legislative Council
02/12/2015

Amendment to: SB 2343

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
Revenues						
Expenditures			$349,000		$174,500	
Appropriations			$349,000		$174,500	

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
Counties			
Cities			
School Districts			
Townships			

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 require the Industrial Commission to report on all orders resulting in a fiscal effect in excess of five million dollars per biennium. This is retroactive to orders made after July 31, 2013.

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.*

Based on the most recent five months' dockets, economics show that any order that affects two or more Bakken wells will result in more than $5 million per biennium fiscal impact. The Oil & Gas Division hears 50 cases per month and issues orders for them. Therefore, Section 1 of the measure would require the Oil & Gas Division to prepare 50 fiscal notes per month, or 1,200 fiscal notes per biennium. Section 2 of the measure would require the Oil & Gas Division to prepare 24 months of retroactive fiscal notes, thereby adding an additional 1,200 fiscal notes.

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.*

No revenue is anticipated at this time.

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.*

Preparation and reporting will require about one hour evaluating each order and preparing each fiscal note. Additional time will also be required to prepare the monthly fiscal impact report to either the Legislative Assembly or the Budget Section of Legislative Management. Therefore, expenditures for the 2015-2017 biennium are estimated at $349,000 for two FTE budget specialists. Expenditures for the 2017-2019 biennium are estimated at $174,500 for one FTE budget specialist.

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 Oil & Gas Division expenditures as mentioned in 3B are general fund expenses, and are not included in the executive budget.

Name: Robyn Loumer

Agency: Industrial Commission

Telephone: 701-328-8011

Date Prepared: 02/16/2015

15.0924.03000

FISCAL NOTE
Requested by Legislative Council
01/26/2015

Bill/Resolution No.: SB 2343

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
Revenues				$7,700,000		
Expenditures						
Appropriations						

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
Counties		$3,800,000	
Cities			
School Districts			
Townships			

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).*

SB 2343 modifies the law relative to the flaring of natural gas and when gross production becomes due.

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.*

If enacted, SB 2343 will result in an increase in gross production tax revenue from flared gas estimated to total approximately +$11.5 million in the 2015-17 biennium. One-third of this amount would go to the Legacy Fund. Approximately one-third could accrue to counties, cities, and school districts in the impacted areas. The exact distribution among the various state funds and the political subdivisions cannot be determined.

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.*

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.*

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.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/05/2015

2015 SENATE ENERGY AND NATURAL RESOURCES

SB 2343

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2343
2/6/2015
23371

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to flaring.

Minutes: 5 Attachments

Chairman Schaible called the committee to order, roll was taken, all members were present and the hearing on SB 2343 was opened.

Senator Triplett: District 18. I am here to intro Senate Bill 2343 which is a simple bill a companion to Senate Bill 2287 which we have already heard. The second part of the bill is identical to the language in 2287. The reason I agreed to sponsor the bill is the first change it makes on lines 4 and 5. This bill does nothing to stop flaring earlier it says if you are going to flare longer than 14 days you need to pay royalties. It is incentive to the producers and to make the royalty holders whole. The 14 days is based on the time it takes to do the testing and that the well is stable. (1:19-3:54)

Chairman Schaible: The oil company that is drilling, they want to reduce flaring but conditions beyond their control permit that. We are going to penalize them for things that are beyond their control?

Senator Triplett: We already do that after a year we are just moving the timeline up. If we were really serious we would say that they can't do anything until it is under control. I understand that it is not practical in some instances but at the same time there have been a variety of lawsuits from royalty owners who feel they are being short changed this is an offering to help that.

Senator Armstrong: You mentioned lawsuits; do you know how they have worked out?

Senator Triplett: No.

Vice Chair Unruh: Going from 1 year to 14 days did you consider anything in between that time frame?

Senator Triplett: Not specifically the thought was more when would it be too soon? The bill was first drafted with 10 days but the 2 weeks is more appropriate as the earliest possible date. It is an additional incentive to encourage the gas gathering to happen sooner than later.

Wade Shafer: Dacotah Chapter of the Sierra Club. See attachment #1. (7:39-10:14)

Eric Thompson: Representing self. See attachment #2. (10:33-13:13)

Bruce Bale: See attachment #3. (13:35-24:09)

Arthur Langdon: Representing self. My nieces and nephew have 28 mineral acres that were on lease; Hess decided to drill on that land. They told them that they would have to pay call to participate or have a risk penalty. I took over their 28 acres and paid the call but when the royalties cam they paid me 1/7 of what they should have. Twice at oil and gas hearings they promised that they would take care of the matter and they didn't. I don't feel like I should have to sue to get that remedied. I hope that the state will make some force arrangements to make them pay their obligations. In each well several companies have an interest in it, they are paying each other and accessing the small owners an unfair burden. I have no way to prove it because they are unaudited. In the fall and winter of 1950 I heled drill wells south of Tioga and am currently still ranching.

Nicole Donaghy: North Dakota Resource Council. Presenting testimony for Careen Redmond See attachment #4. (28:33-30:23)

Opposition

Ron Ness: North Dakota Petroleum Council. See attachment #5. (31:14-39:33)

Senator Triplett: Can you tell us how many wells have been required to reduce or cease production?

Ron Ness: At the last industrial commission meeting they restricted 12,000 barrels a day, 2 operators that is $14,000,000 a month of oil revenues that won't be received. More importantly, for the last 8 months industry has changed its process where it is bringing on wells which is the indented purpose of the plan. There has been a different reaction that is a company decision.

Allen Nygard: 3 Affiliated Tribes. We are not for or against this bill simply because we have not been included in the drafting of this bill. Our stance is that if we are truly a partner that we should be included in the discussions. We do have a vested interest in these issues and would be willing to sit down and talk about this. We hope the state would be a good partner.

Chairman Schaible: What is the Tribal Council's view on flaring?

Allen Nygard: Very concerned not only from an environmental standpoint but because this is our home. We are also concerned about the loss of revenue. It is literally being burned

up, there needs to be a way to market it and use locally. We are very concerned about it, more than likely going to be more active and aggressive relating to flaring moving forward.

Chairman Schaible: Resistance for easements. It seems like this is part of the problem. We want the same thing but don't know how to get there, allowing access for easements?

Allen Nygard: We do not have a problem discussing it. We do have a problem when things are made without our consultation. We try to take a look at the impact on our citizens and min it as much as possible. We are willing to sit down and talk about any issue. When it infringes on our cultural and natural resources then we will take opposition to those kinds of things.

Senator Triplett: There is a particular 1.8 mile of right-of-way which stands in the way of nearly 10% of the gas flared in North Dakota right now. Are you aware of the area Mr. Ness is talking about?

Allen Nygard: I am not aware of that but I can find it out.

There was no further testimony and Chairman Schaible closed the hearing on SB 2343.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2343
2/9/2015
23536

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to flaring.

Minutes: 1 Attachment

Chairman Schaible opened the committee to SB 2343. Senator Hogue was on hand to explain the amendment he brought forward. See attachment #1

Senator Hogue: The testimony we had was on the order of millions of dollars a month because of adoption of the industrial commission. I am not questioning the wisdom but there needs to be a formal mechanism when admin agencies adopt rules that have a profound fiscal effect on the state of North Dakota. It seems that we certainly should have that for executive branch agencies. See attachment 1. (1:04-4:50)

Senator Armstrong: If they issue a rule it goes to admin rules and if it is an order it goes to budget section?

Senator Hogue: It is two different issues; you cannot adopt rules or call them orders and evade the legislative review process and the administrative rules committee. The point of this amendment is that you have to do the same fiscal analysis that as an executive agency.

Senator Triplett: I would object to the consideration of them relative to SB 2343 as being not germane. This bill is a modest bill on a certain rule regarding flaring. If there were no other vehicle to get to his point but as he just pointed out there is a house bill that is discussing the larger issue, the authority to the industrial commission.

Chairman Schaible: It was the understanding that even though that we knew this was a total different direction. If we were going to not do it then we would have acted last Friday.

Chairman Schaible: Section 2 you have administrative rules and you want it changed to legislative assembly or budget section?

Senator Hogue: Yes.

Senator Murphy: How would that read in context?

Senator Hogue: The budget section is our appropriations committee during the interim, sub admin rules for legislative assembly.

Chairman Schaible: Is $5,000,000,000 an amount that you think is large enough?

Senator Hogue: I thought that we could acknowledge that every rule or order that the executive branch issues has a fiscal effect. I thought it should be higher than our $50,000 as I do not want a burden placed on our agencies. I was trying to figure out if the industrial commission is exempt from the executive practices act? We have an administrative process to make rules, let the pubic know.

Senator Triplett: The industrial commission is exempt. But division of Mineral Resources is not.

Chairman Schaible: If it was indirectly indicated that it was exempt this would make it not exempt.

Senator Hogue: No but I think that is the intent of the bill. My amendment is focused on the fiscal impacts of whatever it is that they do.

Senator Hogue made a motion to adopt the amendment with the removal of the word 'of' and sub 'admin rules' with 'legislative assembly or budget section' with a second by Senator Armstrong.

Senator Triplett: We should make it more generic and have it apply to all state agencies.

There was no further discussion, roll was taken and the motion passed with a 4-3-0 count. Senator Hogue then made a motion for a do pass as amended with a re referral to appropriations with a second by Senator Armstrong, roll was taken and the motion passed on a 5-2-0 count with Senator Hogue carrying the bill to the floor.

15.0924.03006
Title.05000

Prepared by the Legislative Council staff for
Senator Hogue
February 10, 2015

2/10/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2343

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-17 of the North Dakota Century Code, relating to a report on the fiscal impact of certain orders by the industrial commission to the legislative assembly or budget section; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Report to legislative assembly or budget section on the fiscal impact of certain orders of the industrial commission.

If the industrial commission makes an order that has a fiscal effect or estimated fiscal effect on the state in excess of five million dollars in a biennium, the industrial commission shall report to the legislative assembly when in session and otherwise to the budget section of the legislative management on the fiscal impact of the effect of the order on state revenues and expenditures, including any effect on the funds of the industrial commission.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to orders of the industrial commission made after July 31, 2013, and applies specifically to the orders of the industrial commission on flaring. The industrial commission shall report on the fiscal impacts of past orders within ninety days of the effective date of this Act."

Renumber accordingly

Date: 2/9/2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2343

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 15.0924.03006

Action Taken Adopt Amendments

Motion Made By Senator Hogue Seconded By Senator Armstrong

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy		X
Vice Chair Unruh		X	Senator Triplett		X
Senator Armstrong	X				
Senator Hogue	X				
Senator Laffen	X				

Total (Yes) 4 No 3

Absent 0

Floor Assignment

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

Date: 2/9/2015
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2343

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended with a Re Referral to Appropriations

Motion Made By Senator Hogue Seconded By Senator Armstrong

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy		X
Vice Chair Unruh	X		Senator Triplett		X
Senator Armstrong	X				
Senator Hogue	X				
Senator Laffen	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Hogue

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

REPORT OF STANDING COMMITTEE

SB 2343: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2343 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-17 of the North Dakota Century Code, relating to a report on the fiscal impact of certain orders by the industrial commission to the legislative assembly or budget section; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Report to legislative assembly or budget section on the fiscal impact of certain orders of the industrial commission.

If the industrial commission makes an order that has a fiscal effect or estimated fiscal effect on the state in excess of five million dollars in a biennium, the industrial commission shall report to the legislative assembly when in session and otherwise to the budget section of the legislative management on the fiscal impact of the effect of the order on state revenues and expenditures, including any effect on the funds of the industrial commission.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to orders of the industrial commission made after July 31, 2013, and applies specifically to the orders of the industrial commission on flaring. The industrial commission shall report on the fiscal impacts of past orders within ninety days of the effective date of this Act."

Renumber accordingly

2015 SENATE APPROPRIATIONS

SB 2343

2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2343
2/19/2015
Job # 24118

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Carie Whinnings for Alice Delzer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact NDCC, relating to a report on the fiscal impact of certain orders by the Industrial Commission to the legislative assembly or budget section

Minutes: Attachments 1- 2

Chairman Holmberg called the committee to order on Thursday, February 19, 2015 at 9:00 am in regards to SB 2343. All committee members were present except Senator Mathern. Becky Keller, OMB and Chris Kadrmas, Legislative Council were also present.

Senator Triplett, District 18: While the bill does have my name on it as the prime sponsor, it actually was subjected to a hog house amendment in Energy and Natural Resources and Senator Hogue was the author of that. I will step aside and let him present the bill and then I may respond if that is acceptable.

Senator Hogue, District 38: Testified in favor of SB 2343. See Attachment # 1 for amendments that are proposed. The amendment is a product of some discussions with Mr. Lynn Helms of the Mineral Resources Division. The amendment increases the threshold for evaluating fiscal effect from $5 million to $20 million. What the bill requires is that the Industrial Commission would report either to the legislative assembly or to the budget section during the interim rules or policies that have the fiscal effect of $20M or more. (Gives three examples of ones that would have had to do this over the last interim/session) Why would we have the most powerful agency of the executive branch not tell us when they are doing orders, policies or rules and it curtails the revenue of the state of North Dakota. We've been focused on these triggers because they have the potential to reduce our revenues. And we have not been talking about this issue of the Industrial Commission which has the authority in one order to create fiscal impacts of millions. We have to have fiscal notes for our legislative bills and sometimes the fiscal impact is greater than we thought. By requiring the industrial commission to do this analysis for these larger projects, I am hopeful that it will inform their judgments. The amendment does take away the fiscal note. Mr. Helms felt the commission could do those fiscal notes, because they would be less frequent, without additional staff.

Committee Discussion: The committee reviews how the bill would read with the amendment placed in the bill as it stands as a first engrossment. The committee reviewed the bill in context (Attachment #2)

(14:26)Senator Triplett: I am here to ask you to kill the bill. The bill was a very modest bill related to the regulation of taxes in flaring. I want to report to you that this bill had no hearing in the Energy and Natural Resources Committee. It was presented by Senator Hogue after the hearing was closed during committee work. There has been no public notice for this major policy change. I think it is inappropriate for this sort of major policy change to be made under these circumstances. I said that in committee and I am going to say it again here. It could be the subject of a delayed bill if people think it is an important policy to discuss. There is still tome for that and have it scheduled for a hearing and people can come in and discuss. That is my request. The process the three rules that were mentioned earlier the Industrial Commission held hearings and they were open and public. Any legislator could have followed the process. This was not a closed process. I think we are going down the wrong path. The legislature has long since given over virtually all of its regulatory control over oil and gas to the commission. If we are going to have a discussion of pulling back that regulatory authority to the legislature, which is a fine conversation to have, I just think we should have it in a full hearing in a policy committee. I would request you put a do not pass on this bill.

Chairman Holmberg: Closed the hearing on 2343.

2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2343
2/19/2015
Job # 24174

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Carie Winings for Alice Delzer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact NDCC, relating to a report on the fiscal impact of certain orders by the Industrial Commission to the legislative assembly or budget section

Minutes: No Attachments

NEW JOB STARTED # 24174 AT 3:30 PM ON SB 2343.

Chairman Holmberg: Reopened the hearing on SB 2343. All committee members were present except Senator Mathern.
Lori Laschkewitsch, OMB and Chris Kadrmas, Legislative Council were also present.

Senator Carlisle: Moved the amendment 15.0924.05001 on SB 2343.

V.Chairman Bowman: Seconded.

Chairman Holmberg: This is the amendment that he said would eliminate the fiscal note. Senator Triplett suggested that we do not pass the bill. Let's take up the amendment first. The amendment

Senator Carlisle: The amendment takes it from $5 million up to $20 million.

Chairman Holmberg: All in favor of the amendment say aye.

Motion Carried.

Senator Heckaman: Moved a Do Not Pass on amended, engrossed bill.

Senator Robinson: Seconded.

Senator Holmberg: Is there any discussion?

Senator Robinson: In terms of transparency, the bill did not have a hearing, and we get a bad rap anyway and sometimes we contribute to that. Based on that, we have the ability to have a delayed bill. There are lots of options here. Why would we go down this road and get beat up for doing something that is not protocol. Does it happen? Yes. Should it happen? No. I think we should not pass the bill and if we want to deal with it in another way we can do that.

V.Chairman Bowman: When you read the amendment that is a very positive thing for us to know. I wish I had of know this before the session that we had last summer with the Industrial Commission. It was a lot of hard work to do it. At least this brings that idea forward. If there is an issue that is going to cost us money, we need to know that. That is why I am supporting it.

Senator Robinson: I agree, but we have a process here that we should follow. If we don't follow our own process, then we open ourselves to a lot of criticism and suspicion.

A Roll Call vote was taken. Yea: 2; Nay: 10; Absent: 1.

Motion Failed.

V.Chairman Bowman: Moved a Do Pass as Amended.

Senator Carlisle: Seconded.

A Roll Call vote was taken. Yea: 9; Nay: 3; Absent: 1.

Chairman Holmberg: This goes back to Energy and Natural Resources and **Senator Hogue will carry the bill.**

Chairman Holmberg: Closed on committee discussion on SB 2343.

15.0924.05001
Title.06000

Prepared by the Legislative Council staff for
Senator Hogue
February 17, 2015

TD
2/19/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2343

Page 1, line 2, replace "orders" with "actions"

Page 1, line 9, replace "**orders**" with "**actions**"

Page 1, line 10, after "If" insert "any order, regulation, or policy of"

Page 1, line 10, replace "makes an order that" with "to implement the provisions of chapter 38-08"

Page 1, line 11, replace "five" with "twenty"

Page 1, line 13, replace "order" with "action"

Page 1, line 15, replace "orders" with "actions"

Renumber accordingly

Date: 2-19-15
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2343

Senate Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: amendment 15.0924.05001

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 Carlisle Seconded By Bowman

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg			Senator Heckaman		
Senator Bowman			Senator Mathern		
Senator Krebsbach			Senator O'Connell		
Senator Carlisle			Senator Robinson		
Senator Sorvaag					
Senator G. Lee					
Senator Kilzer					
Senator Erbele					
Senator Wanzek					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote
Carried

Date: 2-19-15
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2343

Senate Appropriations Committee

☐ Subcommittee

Amendment LC# or Description:

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 Heckaman Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg		✓	Senator Heckaman	✓	
Senator Bowman		✓	Senator Mathern		
Senator Krebsbach		✓	Senator O'Connell		✓
Senator Carlisle		✓	Senator Robinson	✓	
Senator Sorvaag		✓			
Senator G. Lee		✓			
Senator Kilzer		✓			
Senator Erbele		✓			
Senator Wanzek		✓			

Total (Yes) 2 No 10

Absent 1

Floor Assignment

failed

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

Date: 2-19-15
Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2343

Senate Appropriations Committee

☐ Subcommittee

Amendment LC# or Description:

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 Bowman Seconded By Carlisle

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Heckaman		✓
Senator Bowman	✓		Senator Mathern		
Senator Krebsbach	✓		Senator O'Connell		✓
Senator Carlisle	✓		Senator Robinson		✓
Senator Sorvaag	✓				
Senator G. Lee	✓				
Senator Kilzer	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 9 No 3

Absent 1 (Mathern)

Floor Assignment Grey Hogue

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

REPORT OF STANDING COMMITTEE

SB 2343, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2343 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "orders" with "actions"

Page 1, line 9, replace "**orders**" with "**actions**"

Page 1, line 10, after "If" insert "any order, regulation, or policy of"

Page 1, line 10, replace "makes an order that" with "to implement the provisions of chapter 38-08"

Page 1, line 11, replace "five" with "twenty"

Page 1, line 13, replace "order" with "action"

Page 1, line 15, replace "orders" with "actions"

Renumber accordingly

2015 HOUSE ENERGY AND NATURAL RESOURCES

SB 2343

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2343
3/12/2015
Job # 24767

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to a report on the fiscal impact of certain actions by the industrial commission to the legislative assembly of budget section; and to provide for retroactive application.

Minutes: Attachments 5

Senator Tripplett, District 18: This was hog housed in my committee. I request that you restore this bill to its original intent, kill the bill, or turn it into the study of the appropriate relationship between the legislature and the ND Industrial Commission. I don't think the bill makes sense as it is currently written. I think it puts a damper on the Industrial Commission's ability to respond in a timely way to issues as they come up. I also think it's virtually impossible to determine the fiscal effect of particular orders given the complexity of the oil and gas industry. I would like to refer you to the basic section on the Industrial Commission's authority as it's related to oil and gas resources found in chapter 3808 of our century code section 380804; "The commission has continuing jurisdiction and authority over all persons and property public and private necessary to enforce effectively provisions of this chapter." Meaning, the legislature has long since given over control of oil and gas management to our industrial commission. Further in the code, 380804.2, states, "The commission may delegate to the director of oil and gas all powers the commission has under this title and under rules enacted under this title. Meaning, legislature has specifically given the Industrial Commission the authority to delegate its power to the director of mineral resources.

Senator Hogue, District 38; written testimony #1: I would like to dispute what Senator Tripplett said about it being impossible to put a fiscal number on this bill. It is something we do every session with our bills.

Chairman Porter: Why did it go to appropriations?

Hogue: It was amended from a threshold of 5,000 dollars to 20 million because the State Industrial Commission thought that was a manageable amount. Mr. Helms said that it would require additional staff to go back into the records to obtain all the information we were asking for. We are satisfied with the 20 million threshold because it would capture

things like the flaring order, oil conditioning order, and special places policy. We are asking to be informed on the big ones that have an effect on the revenue of our state.

Opposition:

Bruce E. Hicks, Assistant Director ND Industrial Commission-Department of Mineral Resources- Oil and Gas Division; written testimony #2:

Wayde Schafer, Conservation Organizer-Dacotah Chapter of Sierra Club; written testimony #3:

Chairman Porter: You're well aware that the landowner fatigue in western North Dakota and the ability to get pipelines in place in order to reduce the flaring situation has been a top priority the last three sessions. We have a situation where we have private property owners bottle-necking the ability of the mineral estate to get their product to an end use. What suggestion would you have for us to get the pipelines in the ground? Do we develop a state pipeline and use eminent domain, just force it on the land owners? We can't stop the development of someone else's personal property in the mineral estate. I would be more than happy to hear a suggestion.

Schafer: I don't see that the land owner resistance to pipeline as the problem. I think the problem is the pace of development. Permits are being issued before the plans to capture the gas are in place. The ND Industrial Commission in their policy attempted to address that with these gas capture plans. This bill throws a monkey wrench in the works by requiring that the industrial commission come to them with the fiscal report. It will slow things down further, it puts a fiscal burden on the bill. If you want to kill a bill you throw a high fiscal note on the bill.

Chairman Porter: Does your organization think it's fair that the Industrial Commission is using percentage numbers that include wells that are not under the jurisdiction of the state of North Dakota? That those companies operating under the jurisdiction of the state of North Dakota have no control over those numbers and are being negatively impacted because of that decision?

Scafer: The air and water impacts aren't confined to just one well pad, this is a state wide issue. You have to factor in all of the sources.

Chairman Porter: I understand the statewide issue. What I'm saying is that they are throwing in things that we don't control as a state to negatively impact them based on geographical boundaries.

Schafer: You have to look at the impacts, the environmental impacts I'm assuming you're looking at?

Chairman Porter: I'm looking at all of the impacts.

Schafer: They're having an impact on the whole state. To pluck one operator or one well, if I understand your question.

Chairman Porter: Well no, it's more government to government. There's the federal government, there's the tribal government and then there's the state of North Dakota. We don't control the federal and tribal governments on how they operate and how they perform the functions of gathering lines and pipelines and those things. Yet we use their flaring numbers, which are substantially higher than off of those properties and use those to negatively impact those people who are off of those properties in their production of oil and gas.

Schafer: But that's the reality, if all the flaring sources are having an impact you would have to , you're absolutely right, we only have control of what we have control of, but to solve the problem we need to be doing our part.

Chairman Porter: So you think it's fair for them to use those numbers against them when it's out of their control?

Schafer: It's not a matter of fairness, it's the reality. If we're going to reduce the amount of gas that's going to be flared and the environmental impacts from that flared gas you can only do what you have control of. Work with the other contributors of the problem. Just saying it's not fair is not going to solve the problem.

Chairman Porter: When you work with that that you can control then the numbers should be set to that that you have control of. Not to that that you don't have control of.

Schafer: I guess I don't understand how your question pertains to this bill. By passing this bill how is that going to change that?

Chairman Porter: Well, the number that was used on the flaring order that this bill is directly affecting used a percentage number that isn't totally controlled by the state of North Dakota. That had negative impacts on wells off of those tribal and federal lands that negatively impacted that are solely on land governed and regulated by the state of North Dakota. It did impact them.

Schafer: It depends on what your goal is, if your goal is to reduce flaring I see this bill only making it harder to do by putting this arbitrary fiscal figure on this bill.

Rep. Mike Nathe: It was talked about how the 20 million dollar impact would impact the oil conditioning order, special places, and flaring order I spoke to a representative from a company the other night. Lamenting about the flaring order how they have had to cut back on their drilling and cut back on their production. With this bill it would report the effects on the flaring order, which would have a negative effect. Are you aware of any of that?

Schafer: I was not aware of that.

Eric Thompson; written testimony #4:

Mr. Bruce Bale: I'm here on my own dime. I was going to talk about the Emperor's new clothes, some people who stood to gain, furnished him a suit. He thought it was wonderful,

he asked his populous they agreed, until somebody piped up and said the guy's not wearing anything. He was in deep denial. Looking outside today, who could have ever believed this area could have been under thousands of feet of ice. Shortly our grand kids are going to ask us why do they call it Glacier National Park? What are we going to tell them? That's what climate change is about. Measurements currently show that we are at 400 parts per million CO2 in the atmosphere. Scientist agree that we can continue on this planet to feed ourselves and continue with the rest of the species at 350 parts per million. As it is we're adding 2 parts per million a year to that number. Those climate impact change costs money; Hurricane Sandy, unusually heavy snow repeatedly dumped in the Northeast, plus the confounding weird weather that seems to arbitrarily generate elsewhere. Including droughts throughout the southern US, increased desertification around the globe. Here in North Dakota we had unprecedented flooding. The needlessly wasteful portion to greenhouse gases and climate change are central to this bill. The combustion of 1000 cubic feet of natural gas results in the production of between about 115-122 pounds of CO2. Here we already start with North Dakota's fifteen lignite fired generating units generating over 4200 megawatts, not to mention more lignite that we ship out of state. The instate lignite alone is already responsible for annually dumping over 31 million tons of CO2 into our atmosphere. What was removed from SB2343 was a simple intelligent highly practically method to regulate the capture of natural gas. To honor the royalty producing property owner's right to receive their royalties for the extracted resource and required the producer to pay the extraction tax, whether the producer chooses to capture the gas they liberate through their production or not. It makes you wonder if North Dakotans aren't as smart as Texans because when natural gas comes out of their ground they take care of it. We seem to be unable to do that.
As far as those sovereign nations, separate entities, do we ask the producer to go around, make a detour, it's going to cost them more. Well that's what we might need to do. Or do we say, wait a while with that one because of our regulations and concern for the environment, we'll take that up as fast as we can and we'll keep it moving.

Chairman Porter: You do understand that we don't issue the permits on those lands.

Bale: I've heard arguments that in order to get a natural gas pipeline in 1.8 miles of property in a sovereign nation that we would have to go around that.

Chairman Porter: We are going to break for lunch and I invite you to come back after floor session to continue.

Chairman Porter reopens hearing.

Bale: I don't have an answer as to how the state should deal with the two sovereign entities you are concerned with. Now might be the time to approach the federal government and the native people too. Otherwise it seems we way if it's any trouble, just burn it off.

Nichole Donaghy, Dakota Resource Council; written testimony #5, hands out letter from **Richard Jorgenson:** We would like you to amend to original form or kill the bill. Flaring puts many dangerous and carcinogenic toxins into the air.

OPPOSITION: None.

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2343
3/26/2015
Job # 25502

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Steph Sch

Explanation or reason for introduction of bill/resolution:

Relating to a report on the fiscal impact of certain actions by the industrial commission to the legislative assembly of budget section; and to provide for retroactive application.

Minutes:

Attachments 2

Chairman Porter opens discussion, reviews bill, and explains his proposed amendment **written testimony #1.**

Rep. George Keiser: I move the amendment.

Rep. Mike Lefor: Second.

Voice vote: Carries.

Rep. Corey Mock: Passes out the 06001 version of the bill, **attachment #2**, moves the adoption of the 06001 version of the amendment.

Rep. Bob Hunskor: Second.

Voice vote: Defeated.

Rep. George Keiser: I move a Do Pass as Amended.

Rep. Dick Anderson: Second.

Vote: Yes 5, No 8, Absent 0

Rep. George Keiser: I move a Do Not Pass.

Rep. Mike Lefor: Second.

Vote: Yes 9, No 4, Absent 0.

Rep. Corey Mock: Carrier.

Chairman Porter closes discussion.

Proposed by Rep. Porter
March 26, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 2343

Page 1, line 11, after "38-08" insert ", excluding spacing unit orders,"

Renumber accordingly.

Prepared by the Legislative Council staff for
Representative Mock
March 25, 2015

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2343

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 38-08-06.4 of the North Dakota Century Code, relating to flaring.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-06.4 of the North Dakota Century Code is amended and reenacted as follows:

38-08-06.4. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority.

1. As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a ~~one-year~~ninety day period from the date of first production from the well.

2. After the time period in subsection 1, flaring of gas from the well must cease and the well must be:

   a. Capped;

   b. Connected to a gas gathering line;

   c. Equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well;

   d. Equipped with a system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons; or

   e. Equipped with other value-added processes as approved by the industrial commission which reduce the volume or intensity of the flare by more than sixty percent.

3. An electrical generator and its attachment units to produce electricity from gas and a collection system described in subdivision d of subsection 2 must be considered to be personal property for all purposes.

4. For a well ~~operated in violation of this section~~that flares gas produced with crude oil after fourteen days from the date of first production from the well, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2.

5. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of

flared gas for purposes of payment of royalties under this section and its determination is final.

6. A producer may obtain an exemption from this section from the industrial commission upon application that shows to the satisfaction of the industrial commission that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas or employing a collection system described in subdivision d of subsection 2 is economically infeasible."

Renumber accordingly

15.0924.06002
Title.07000

Adopted by the Energy and Natural Resources Committee

March 26, 2015

HR 3-27-15

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2343

Page 1, line 11, after "38-08" insert ", excluding spacing unit orders,"

Renumber accordingly

Date: 3/26/15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2343

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: Proposed by Rep. Porter

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. Keiser Seconded By Rep Lefor

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 Carries

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Page 1, line 11, after "38-08" insert, "excluding spacing unit orders,"

Date: 3/26/15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2343

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 15.0924.06001

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 Mock Seconded By Rep Hunskor

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 Defeated

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3/26/15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2343

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: _____

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 Keiser Seconded By Rep. D 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		✓			

Total (Yes) 5 No 8

Absent Ø

Floor Assignment _____

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

Date: 3/26/15
Roll Call Vote #: 4

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2343

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: _____

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 Keiser Seconded By Rep Lefor

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	✓				

Total (Yes) 9 No 4

Absent Ø

Floor Assignment Rep Mock

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

REPORT OF STANDING COMMITTEE

SB 2343, as reengrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2343 was placed on the Sixth order on the calendar.

Page 1, line 11, after "38-08" insert ", excluding spacing unit orders,"

Renumber accordingly

2015 TESTIMONY

SB 2343

1.1

Testimony for public hearing on SB 2343, February 6, 2015

Mr. Chairman, members of the committee

My name is Wayde Schafer.
I am the Conservation Organizer for Dacotah Chapter of Sierra Club

Thank you for the opportunity to comment on this bill.

As I have mentioned in previous testimony before this committee, Dacotah Chapter of Sierra Club has been concerned about the amount of natural gas flaring in North Dakota's Bakken oil fields for a number of years. Our main focus has been on flaring's environmental impacts and the waste of an energy resource.

However, this bill, SB 2343, addresses an equally disconcerting impact to North Dakotans from gas flaring. Mineral owners are seeing a natural resource with economic value that they own, extracted and then discarded, literally going up in smoke, without being financially compensated. Likewise, all North Dakota citizens are being short changed because the state is not receiving tax revenue from the flared natural gas.

Right now oil and gas developers are making a unilateral decision to flare the associated natural gas from an oil well because the oil is more valuable than the gas. In doing so, they adversely impact the other stakeholders involved in drilling that well.

SB 2343 protects the financial interests of the mineral owners and the taxpayers of North Dakota. If an oil company chooses to flare the natural gas beyond the 14 days allotted in this bill they should at least fairly compensate the other parties involved in that action.

Dacotah Chapter of Sierra Club respectfully urges this committee to recommend a DO PASS for SB 2343.

Eric Thompson on
SB 2343 2-6-15

2.1

Feb 6 8:00 Ft Lincoln Room

I'm sure part of what we will hear from those against this bill is that it will create some financial problems for them.
My response would be that not passing this bill places a financial hardship on the land owners, lease holders, cities counties & government of this state

Not said but obviously relevant.

Another thing I think we might hear is that this will force production from the oil patch. If there is a profit to be made there will be people to make that profit. My example is that the US Government has tried for decades to kill the drug trade. The drug trade still exists.

The oil companies and thier representatives have said they cannot be held responsible for lease hold-ups while they admit that when gas is what the well is drilled for the leases are in place before they drill. They know the gas is there in ND. and that it can be sold why are they not ensuring the lines are in place in North Dakota?

20 years ago, this area was covered by glaciers. Hard to see, looking out the window, but we believe the science.

3.1 Sen Bill 2343 2-6-15 Ft. Lincoln Rm [HELP them. Us/We/Our]

~~ok out~~ the window, & believe only what you see? This area could never have been under hundreds, or ~~thousands~~, of feet of ice. ~~Simple, right~~? In contributing to devastating climate change, We're at Ground Zero here – in the heart of the beast. ~~I was talking with a friend~~ the other day, who felt that many here still either don't ~~understand, or refuse to~~ believe or admit, the obvious realities of climate change & what's causing it. And if I ~~mentioned it here, before~~ some ND legislators, as a very real, growing & desperately active threat, I might be ~~dismissed as a climate nut~~. ~~But if~~ I'm to explain what I understand to be the facts here, then I have to insist: Climate change is real, as our Pentagon is fully convinced with their planning; & maybe we ought to order our affairs to reduce our contributions to it. Remember the fairytale, about the emperor's new clothes? Those who stood to gain encouraged his fooling himself, until all his subjects finally admitted his folly. ~~When were we~~ ever wrong ~~or misled be~~fore? We're better off staying out of WWII? Joe McCarthy's excessive commie witch hunts & black ~~listing was~~ good? North Viet Nam started that war? *And today*, kids don't need to be vaccinated against ~~dangerous~~ contagious diseases? I'm concerned about the waste of a good planet.

Hopefully by now, each of us knows how carbon dioxide – CO2 – causes unwanted, calamitous climate change: Its excessive production overwhelms our atmosphere, trapping more heat than earth's climate *system* can safely process, & harmfully overheating our air & oceans. You don't have to "believe" – it's not an "article of faith." But it might conflict with some profit-making activities. Your leadership is important here.

Actually, the climate change *debate* is long past – it's *so* 20th century, though despite the overwhelming numbers of nearly all qualified scientists who insist it's very real, threatening to continue to be very expensive, some surprisingly still choose to either ignore, or not believe it. And it's costing us, plenty. The U.N. & U.S. scientists have confirmed that 2014 is the hottest year on record yet; 14 of the 15 hottest years recorded are in the 21st century. **The consensus of virtually the entire worldwide scientific community is that: Climate change is real**; it's caused by human activities; it's already caused devastating problems in the U.S. & around the world; & a *brief* window of opportunity exists before the U.S. & the entire planet suffer irreparable harm. It seems *at ~~least~~* imperative that, while we transform our energy system away from fossil fuels, toward energy efficiency & ~~sustainable~~ energy, we responsibly – not wastefully – steward our continued extraction & use of these fuels & feedstocks. As our vast polar ice caps, Greenland's ice sheet & our glaciers melt, where does all that water vapor & extra atmospheric energy go? Well, for instance, into 2012's Hurricane Sandy, the second-costliest hurricane in U.S. history, over New York & New Jersey coastal areas. Maybe the recent heavy snowdump over the Northeast. Plus, the confoundingly "weird weather" it seems to arbitrarily generate elsewhere: the severe drought that a Texas governor had to interrupt his presidential campaigning to return & attend to? – which continues in California. As does increased desertification elsewhere around the globe. Lately, we keep breaking records.
http://mashable.com/2015/02/02/united-nations-2014-hottest-year/

Here, in N.D., in 2011 for instance, unprecedented overland flooding covered much of N.D. Federal Disaster Declarations were issued for Barnes, Cass, Grand Forks, Pembina, Richland, Traill, Walsh & Ward Counties. High flows occurred in the upper Sheyenne River basin; the Valley City hospital was evacuated as a precautionary measure, in case of a levee failure there. Flows were at near record high stages for days.
http://www.doi.gov/emergency/factsheets/midwest-flooding.cfm Speaking to a joint session of the ND House & Senate at the start of a special legislative session on Nov. 8, 2011, our governor called flood relief "the most important, significant task before you." In many of ND's larger cities, small towns, counties and townships, "flooding has created incredible hardships," he said. His proposed program would apply in Barnes, Benson, Burleigh, McHenry, Morton, Ramsey, Renville, Richland & Ward counties, judged to be especially hard-hit by flooding.

How many Don't understand, Won't inquire & Don't want to know? Here are some nearby experts worth listening to: Successful entrepreneur, businessman & former WCCO meteorologist Paul Douglas; respected Univ. of Minn. Prof. of Climatology Dr. Mark Seely; Univ. of St. Thomas, in St. Paul, Professor of Climatology & Oceanology Dr. John Abraham; scientists at the U.S. Goddard Space Center; & Dr. Richard Alley, Penn State Geology professor, National Academy of Sciences member & former oil company employee. All you need is to ask these honest highly capable scientists, or for that matter, science professors at our own N.D. universities – they'll tell you.

(I apologize for the effects of using someone else's Word 2007 software to print my Word 2010 document – the first page is the worst.)

The 3 or 4 constantly adjusted, science-based climate change models out there differ only by their speed & impending severity: how much worse will it get & how soon? And what can WE do, to limit it? 3.2

Look at the whole picture: 64% of atmospheric concentrations of CO_2 in the atmosphere are due to fossil-fuel combustion, which represents about 14% of the carbon in the atmosphere in the form of OO_2. Since the beginning of human civilization, our atmosphere contained about 275 ppm of carbon dioxide, around the planet "to which life on earth is adapted, & on which civilization developed." http://350.org/about/science/ This has risen steadily since 1850: Atmospheric CO_2 concentrations rose from 288 ppmv in 1850 to 369.5 ppmv in 2000, for an increase of 81.5 ppmv, ~~or 174 Petagrams~~ of Carbon. About 40% of this additional carbon has remained in the atmosphere, while the remaining 60% has been transferred to the oceans & ~~terrestrial~~ biosphere. Carbon Dioxide Information Analysis Center, http://cdiac.ornl.gov/pns/faq.html Our system of food production, ocean levels & all the rest can safely continue undisturbed at 350 ppm CO2 in the atmosphere; but today it's at 400 ppm, & we're adding 2 ppm of carbon dioxide to the atmosphere every year. http://350.org/about/science/

The needlessly Wasteful portion of OUR ND flaring Contribution to greenhouse gases & climate change are central to this bill. The ~~complete~~ combustion of 1,000 cubic feet of **natural gas** results in the production of between about 115 & 122 lbs of carbon dioxide, depending which temperature & pressure is used to calculate it. [Whether you use Standard Temperature & Pressure, *i.e.*, temperature of 32°F & pressure of 1 atm, or the higher energy industry standard, of 1 standard cubic foot (scf) of natural gas defined at 60°F. (Natural gas emissions calculated on 0.12 pounds of carbon dioxide per cubic foot.)] Let's not lose sight of the fact that ND also mines, burns & exports plenty of **lignite**, one step up from peat, to generate electricity.

A **500** megawatt coal plant produces 3.5 billion kilowatt-hours per year, enough to power a city of about 140,000 people. It burns 1,430,000 tons of coal, uses 2.2 billion gallons of water & 146,000 tons of limestone. Each year it also puts out: among other things, like sulfur dioxide (the main cause of acid rain), nitrogen oxide (a major cause of smog, & also of acid rain), "small particles" (a health hazard, causing lung damage), & other hydrocarbons (a cause of smog), plus **3.7 million tons of carbon dioxide**. ~~Carbon dioxide,~~ CO_2, is the main greenhouse gas, & the leading cause of global warming. ~~So far, no regulations limit carbon~~ dioxide emissions in the U.S. http://www.ucsusa.org/clean_energy/coalvswind/brief_coal.html

North Dakota has **15** coal-fired generating units totaling **4,246** megawatts (MW); with more lignite shipped out of state. Therefore, in-state burning of ND lignite alone is responsible for annually dumping over **31 million tons** of CO2 into our atmosphere. Also, our hard working farmers, gambling on weather, pests & prices, to produce food that helps feed the world, *also* produce a great deal of CO2 with THEIR fuel uses. A good estimate is that burning 1 gallon of gasoline discharges 19.6 pounds of CO2. http://cdiac.ornl.gov/pns/faq.html

What's Proper government Regulation? How far must we go, to continue having a "**friendly state climate**" for oil production? Most businesses only rarely welcome being regulated: It costs money to comply, & the paramount legal requirement of a business is first, to maximize profits. That's how *our* society works. It's to any business's advantage to **externalize** the costs of their inconvenient or unwanted byproducts – let someone else pick up the tab: Oil production can leave behind needlessly flared gas. Like the acid rain that fell across the northeastern U.S., spoiling their waters. Or hydraulic gold mining, leaving behind cyanide in its wake. Or unfiltered coal burning in England, once resulting in thousands of deaths. When we're responsible, if we flush the toilet or dump the garbage, we know it doesn't just "go away;" we properly regulate treat or dispose of it, & that costs money.

Is accepting pollution of any kind just "the price we have to pay," the cost of making big money? Why do oil industry spokespeople keep reminding us, every time we consider regulating flaring, waste disposal, taxes or other regulations, that they'll have to fold up shop, take their toys & leave if we don't play nice?, throwing hundreds of oil workers out of work, & hurting those communities' businesses & their employees, plus state revenues? Haven't you heard this same, old pitch in other states, from other extractive industries? "If you force us to end clearcutting, we'll leave your state's forests." "If you safely regulate underground mines, we'll have to fold." "If we can't dump untreated waste into Lake Superior, it's the end for us." Yet none of these veiled threats ever come to fruition. If anyone's still swallowing that, it's time to wake up.

The Oil isn't going away, nor is the Demand, Drilling & production of it. The last mid-range forecast I'm aware of expects seasonal oil price fluctuations, ups & downs, as summer driving demand increases & wanes. 3.3 Since 2008, the Bakken, Three Forks, Spearfish & Tyler formations have experienced a renaissance of activity. ND Dept of Mineral Resources geologist Stephan Nordeng says The Tyler Formation alone – above the Bakken – encompasses nearly all of Western & Southwestern N.D., extending into S.D.

So who's minding the henhouse? Not long ago, while living in our neighbor state to the east, I met a father who'd also been a proud Scout leader. He told me how many young men he'd helped reach their Eagle Scout award, including a son. He and his sons had served in the military. He worked as a state food inspector. When a different group won the governor's office, the first thing his *new* department head told him was, that from now on the ONLY thing he was to inspect was shark meat. Is *that* effective regulation? under his "discretion"

Leaving an exemption open based on "economic feasibility" to the industrial commission's satisfaction doesn't seem to be working out very well here. On the premise that enforcing our laws, as our ND legislature has enacted, couldn't be meant to "overly" penalize egregious violators, & could drive a company out of business, we therefore slash enforcing such penalties down to a fraction of the appropriate amount. What's a penalty for? This week we learned, a contractor who stockpiled used radioactive filter socks in McKenzie County last year paid a $16,000 fine – 85% of the properly assessed fines under this legislature's laws were waived. We were told this drastic reduction was to avoid bankrupting the poor violator. But now they've left the state, saving $87,000 in the bargain! A much larger exploration company, who contracted that violator's services, also received a violation notice from the ND Health Dept, BUT … the department dismissed that violation last month & assessed no fines.

Who are among these revered American capital investors? On October 11, 2010, a **government-run Chinese Corporation**, *National Offshore Oil Corp.*, ~~agreed to~~ paid **$2.2 billion** for oil & gas properties in the Eagle Ford shale formation in South Texas, marking China's first successful energy investment in the American energy market. At least one, reputable & welcome Scandinavian company, experienced & expert at oil exploration & development, is a major entity in N.D. *Above from* The Golden Age for Gas, Brian Hicks, publisher, Wealth Daily, Nov 24, 2010, http://www.wealthdaily.com/articles/oil-in-n-dakota/2852

Take, take, take: Some may suggest going so far as to actually amend our state constitution, allowing "quick taking" of the rest of pipeline rights of way, as if regular eminent domain condemnation isn't enough. Is that for real, or just a scare tactic? This state's rural property owners, whether tending the land onsite or absentee, are a conservative bunch. What a paradox, a conundrum! How well will they receive the notion that the government some ask for *less* regulation when it profits them, would also demand that same government to *take* what they can't get by other existing means?

As the Quakers say, **Each of us has a piece of the puzzle**. I don't yet live "off the grid:" I used gas to drive here this morning, & the heating still depends on natural gas, ① We've only evolved that far, as a society. Collectively, we haven't yet found & broadly encouraged, ② & adopted a better way, for transportation, heating & electrical generation. Also, ND has been ranked 51st in effectively insulating its homes & businesses. Can we do better? I believe this bill 2343 moves us in the right direction.

① the electricity I use still comes mostly from burning lignite

② incentivized

Mike Jacobs, in his 1975 book ***One Time Harvest***, about proposed massive coal gasification then, slowed by Gov. Art Link's use of water permits. http://theprairieblog.areavoices.com/2012/10/08/30-pieces-of-silver/

In 2012, **Halek Operating ND, LLC**, was initially fined $1.5 million for dumping 800,000 gal's of brine down an oil well. The prior year, their $600,000 fine was reduced to $60,000, for not cleaning up an oil spill. http://theprairieblog.areavoices.com/2012/07/26/weekenders-9/

Leadership: It's human nature, where jobs, livelihoods & other businesses depend on an industrial activity, to take a blindered outlook; people accept what they perceive as local uncertainty or indifference – self-satisfied as we make our next day's pay, & walk home whistling through the graveyard, while hoping their jobs aren't on the line. 3/3

64th Legislative Session
Senate Bill 2343

Mr. Chairman & Members of the Committee:

4|6|
2-6-15

I am Corrine Redmond, a rancher from Tioga ND. We raise Red Angus beef cattle for our income and love that way of life. We also raise chickens, vegetables, and fruits on the family farm. I became a widow 2 1/2 years ago and I'm trying to manage this farm and keep it going for the next generations. I care for my grandchildren while their mother works away from home, in Williston. My son-in-law does his best to help run the farm.

I wrote to my friend on 1/28/15,"I wish Jack was here. He was so good at reading things and figuring them out and with his expertise of the oil field it would be so helpful."

On the flaring bill, it seems that the industry is putting the natural gas in gathering lines to go to a location. Then the industry is allowed to flare all of that gas at the wellhead at a central battery. Only now it's just a bigger flare!

Is the state allowing the industry to gather the gas and pipe it to a central location - a central battery - and then flare it? The numbers of flares have reduced but the amount of natural gas being burned off is not less. It stays the same. Using percentages also does not reflect accurate measurements of gas reduction either. There are still many large flares burning in my view in all directions!

The central battery west of my house and farmyard has a huge flare that causes light pollution, and flickering that causes sleep deprivation. It is also detrimental to our winter feeding ground because of its effect on our cattle and operation. I'm afraid it might start our hay stacks on fire.

The emissions are exaggerated when you have flares from 12 wells concentrated at one location - or central battery, which is what is next to my farmstead and home. There are known health risks that are not being shared with the public, but I know from having sore throat symptoms myself that our livestock and other family members are at risks. Wildlife and my families food source are subject to these risks.

There is waste - threefold - in that natural gas is being wasted as a natural energy resource; as a financial benefit loss to school districts, townships, counties, and the state; and as environmental pollution.

I urge that you vote a do pass on Senate Bill 2343. Thank you.

Corrine Redmond
Tioga, North Dakota

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5.1

Senate Bill 2343
Testimony of Ron Ness
Senate Energy and Natural Resources Committee
February 6, 2015

Senator Schaible and members of the committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council (NDPC) represents more than 550 companies directly employing 65,000 employee in North Dakota in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition of Senate Bill 2343.

Senate Bill 2343 is unnecessary. Clearly defined gas capture goals have been established implemented through an order effective October 1, 2014 by the North Dakota Industrial Commission. The order includes a severe penalty (shut-in production) against our recommendations for failure to meet the established capture targets. Although, we feel the Industrial Commission went too far, the process is in place and industry is striving to meet the targets. This bill is punitive, does not coincide with that order, and will have substantial negative impacts on oil activity, further impact on jobs, tax revenues, and investment into natural gas infrastructure.

The industry had made great strides in reducing flaring over the past year, I would hope we get some credit for that and for spending nearly **$13 BILLION on natural gas infrastructure** in North Dakota since 2006. The way to reduce natural gas flaring is getting pipelines in the ground. The oil and gas industry's goal is to have pipelines connected for natural gas sales from the moment of first production. The major roadblocks identified through our Flaring Task Force was struggles to gain easements from specific individual landowners along a pipeline route, the ability of federal agencies to process the permits allowing pipelines, the challenges of weaving through the bureaucracy on tribal lands.

Our current capture targets have been met but the bar will keep going up in 2015 and as we indicated in our presentation to the Industrial Commission, we need the support of all stakeholders to reach these targets. Today, I'm disappointed to report – we are not receiving that support. We currently have three parties holding-up easement agreements over a fraction of the pipeline access needed on three pipelines that account for nearly 1/3 of the total flaring occurring in North Dakota. For example, a major gas processor has been working on one remaining easement on a 1.8 mile section crossing tribal owned land for more than a year. This 1.8 miles of right of way stands in the way of capturing nearly 10% of the total gas flared. The gas processor recently announced to producers that because of delays, it has lost a significant amount of its ability to recapture its return on investment, they have not been unable to reach an agreement with the tribe, and they are giving up on the project. That will leave the gas on private land south of the reservation stranded and flaring – putting these producers in a tough spot. We have another example with the federal government and one with one 33% of the owners in a family trust blocking an easement – each representing substantial amounts of gas. These are substantial roadblocks in reaching the flare capture targets and pose tremendous penalties for companies having to shut-in production. Last month the Industrial Commission indicated 12,000 barrels of oil per-day were shut-in due to not meeting the target. That's $14 million a month even at just $40 oil to one or two companies. In addition, many companies have held-off completing wells this fall to achieve the target. We suspect this could get worse if we don't get some relief.

5.2

If this committee is really serious about addressing flaring, it's time our State makes some bold policy decisions instead of imposing punitive measures such as this that will reduce investment, discourage operators and midstream companies from operating in this state. If an immediate reduction in flaring beyond the goals currently in place is your priority, then, yes, we can deal with that goal, but only if you are willing to reverse the long standing state policies which block our ability to do so. There can be no doubt the flaring" issue" could be resolved quite swiftly if industry had "quick take" eminent domain rights to acquire pipeline right of way as in other states. North Dakota has had a long standing constitutional policy that "quick take" is not an option for private industry. To date, we have respected that and have conducted

business accordingly, yet by this Bill and other measures being proposed, the State policy makers are demanding we achieve the same rate of success and on the same timeframe as other states that allow quick take eminent domain, which is simply unattainable. If the Committee is seriously considering this or similar punitive Bills, then we urge this committee to back it up and make the bold proposal to put us on equal footing as other States and come forward with new a policy to enable us to achieve these goals. And you can achieve that by hog-house this bill and amending the following concepts into the bill:

5.3

1. Recommend a Constitutional amendment creating a quick take provision that if 85% of the easements have been obtained through private negotiations on an oil and gas pipeline line project, the operator may obtain immediate access to the remaining non-consenting land owner's property for the purposes of pipeline construction by depositing with the District Court an amount equal to the highest amount paid per rod for the pipeline project. The Landowner shall have the right to a speedy trial to contest the amount of the deposit, and if the jury returns a verdict in excess of the amount deposited, the Landowner shall be entitled to attorneys fees and costs. .
2. Direct the ND Industrial Commission to develop a notice and hearing process that allows an operator to file documentation verifying they have obtained 85% of the easement agreements for a gas pipeline project, provide the names of the non-consenting landowners the operator was unable to reach agreement , hold a hearing giving all parties an opportunity to be heard to ensure a fair offer was made, and if the Commision determines the operator has acted in good faith, the the Operator will not be penalized as to gas capture requirements for gas flared due to the inability to obtain pipeline easements, and the Operator shall also be exempt from paying royalties and production taxes on gas flared cause by the inability to construct a gas pipeline.

The only tools left in the toolbox for producers to meet the gas capture goal is to further reduce the number of wells that are completed or reducing the rig count (both coming soon), however, some operators are squeezed with assets only on the reservation or in areas waiting for pipelines – this bill has

dire consequences for some. Putting additional pressure into this already difficult situation will only increase the pressure on a stressed industry. In addition, unless sufficient wells are coming on line in a particular location, midstream companies will not have the economic incentive to invest in pipeline infrastructure, a very long term and capital intensive commitment. 5.4

I repeat, the solution is not additional punitive regulations. If policy makers and the public deem a speedy resolution is mandatory, the solution is in streamlining the process of acquiring right of ways in a timely and economic manner. Thus, if you really want to help, this is where you can help.

We urge a Do NOT Pass on SB 2343, I would be happy to answer any questions.

15.0924.03001
Title.

Prepared by the Legislative Council staff for
Senator Hogue
February 6, 2015 2-9-15
Attachment 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2343

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 28-32 of the North Dakota Century Code, relating to administrative rules committee review of certain orders of the industrial commission; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Administrative rules committee review of certain orders of the industrial commission.

The administrative rules committee shall review any order as if the order were a rule made under this chapter, if the order was made by the industrial commission and has a fiscal effect or estimated fiscal effect on the state of in excess of five million dollars in a biennium. The industrial commission shall file with the legislative council a fiscal note that reflects the effect of the order on state revenues and expenditures, including any effect on the funds of the industrial commission.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to orders of the industrial commission made after July 31, 2013, and applies specifically to the orders of the industrial commission on flaring. The industrial commission shall file the required fiscal notes for past orders within twenty days of the effective date of this Act and shall appear at the next scheduled meeting of the administrative rules committee to explain the anticipated and actual fiscal effect of any such order."

Renumber accordingly

15.0924.05001
Title.

Prepared by the Legislative Council staff for
Senator Hogue
February 17, 2015

#1
SB 2343
2-19-20
Job#24118

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2343

Page 1, line 2, replace "orders" with "actions"

Page 1, line 9, replace "**orders**" with "**actions**"

Page 1, line 10, after "If" insert "any order, regulation, or policy of"

Page 1, line 10, replace "makes an order that" with "to implement the provisions of chapter 38-08"

Page 1, line 11, replace "five" with "twenty"

Page 1, line 13, replace "order" with "action"

Page 1, line 15, replace "orders" with "actions"

Renumber accordingly

15.0924.05001

Sixty-fourth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2343

2
SB 2343
2-19-15
Job# 24118

Introduced by

Senators Triplett, Mathern, Warner

Representative Onstad

A BILL for an Act to create and enact a new section to chapter 54-17 of the North Dakota Century Code, relating to a report on the fiscal impact of certain ~~orders~~actions by the industrial commission to the legislative assembly or budget section; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Report to legislative assembly or budget section on the fiscal impact of certain ~~orders~~actions of the industrial commission.

If any order, regulation, or policy of the industrial commission ~~makes an order that~~ to implement the provisions of chapter 38-08 has a fiscal effect or estimated fiscal effect on the state in excess of ~~five~~twenty million dollars in a biennium, the industrial commission shall report to the legislative assembly when in session and otherwise to the budget section of the legislative management on the fiscal impact of the effect of the ~~order~~action on state revenues and expenditures, including any effect on the funds of the industrial commission.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to ~~orders~~actions of the industrial commission made after July 31, 2013, and applies specifically to the orders of the industrial commission on flaring. The industrial commission shall report on the fiscal impacts of past orders within ninety days of the effective date of this Act.

#1 p1

TESTIMONY OF DAVID HOGUE IN SUPPORT OF SB 2343

House Energy and Natural Resources Committee

March 12, 2015 9:00 am

Good morning Chairman Porter and members of the committee. My name is David Hogue. I am a North Dakota state senator representing District 38. I am before your committee to testify in support of Senate Bill 2343.

SB 2343 relates to action of the North Dakota Industrial Commission that has a significant fiscal effect on North Dakota revenues. SB 2343 was hoghoused and amended twice on the Senate side. As originally introduced, the bill called for greater regulation of the practice of flaring. The bill would have required the operating company to pay royalties on natural gas flared after initial production.

The industry opposed the legislation and argued that the existing flaring regulations imposed by the Industrial Commission were already too stringent and imposed unfair burdens on operators. For example, the industry cited holdout landowners who prevent the company from completing gas gathering lines.

The industry also explained that the regulations provide that wells be shut in when the system does not meeting the flaring guidelines established by the

Commission regulations. Of course, when wells are shut in as a result of the Commission regulation, the state of North Dakota loses both gross production revenue and oil extraction revenue. Our committee received an estimate that the state was losing $12 million a month in tax revenues when a particular field is shut in.

This information caused our committee to amend this bill into its current form. We thought it would be a good idea for the Industrial Commission to tell the legislature when it takes action that has a significant impact on revenues of the state of North Dakota. As legislators, we know that when any one of us drops a bill in the hopper it gets studied to determine if it has a fiscal impact. If it does, the bill receives a "fiscal note" for all to consider. The wisdom of the bill is thus measured against its fiscal effect.

As amended SB 2336 would require the Industrial Commission to undertake that same review. But the fiscal effect would only be for policies, orders, or regulations with a fiscal effect of $20 million. The $20 million threshold was established in consultation with the director of the Department of Mineral Resources of the Industrial Commission. The measure also contains a retroactive

clause to make certain that the Legislative Assembly receives information related to the new flaring order adopted by the North Dakota Industrial Commission.

This concludes my testimony related to SB 2336 and welcome your questions.

NORTH DAKOTA
D M R
Department of Mineral Resources

#2 p.1

Senate Bill 2343
House Energy and Natural Resources
March 12, 2015

Testimony of Bruce E. Hicks, Assistant Director
North Dakota Industrial Commission – Department of Mineral Resources – Oil and Gas Division

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Bruce Hicks. I am the Assistant Director of the Oil and Gas Division of the North Dakota Industrial Commission. Our department is opposed to this bill and we offer the following information:

SB2343 creates a new section to North Dakota Century Code Chapter 54-17 relating to a report on the fiscal impact of certain actions by the industrial commission to the legislative assembly or budget section and provide for retroactive application.

Page 1, Lines 10-15 require an agency report if fiscal effect is in excess of $20 million

- 7 wells will generate over $20 million in the first two years of production
  - 350 cases per biennium involve 7 wells or more and will need reports
- Raising the limit to $30 million still burdensome
  - 10 wells will generate $30 million in the first two years of production
  - 225 cases per biennium involve 10 wells and will need reports
- Only negative fiscal notes should require a report since positive impacts are not harmful
- Hearings determining spacing unit density should not require a report
  - Extremely routine cases
  - Time-frame to drill may be 2-3 years out

Our agency would be happy to work with the House Energy and Resources Committee on the consideration of any amendments.

Thank you for the opportunity to comment.

#3 p1

Testimony for public hearing on SB 2343. March 12. 2015

Mr. Chairman. members of the committee

My name is Wayde Schafer.
Am the Conservation Organizer for Dacotah Chapter of Sierra Club

Thank you for the opportunity to comment on this bill.

Dacotah Chapter of Sierra Club has been concerned about the amount of natural gas flaring in North Dakota's Bakken oil fields for a number of years. We are getting all of the pollution and none of the energy from a valuable natural resource. Our members were actively involved in the public process that eventually resulted in the policy to reduce flaring adopted by the North Dakota Industrial Commission (NDIC) in June of last year.

A poll commissioned by Sierra Club and Dakota Resource Council and conducted February 18 thru March 6 of this year by UND's College of Business and Public Administration clearly shows that North Dakotans want this embarrassing, wasteful flaring problem fixed ASAP!

According to the poll, 64% of respondents think oil companies are flaring off more gas than they should and 58% support withholding drilling permits until the oil company has in place the means to capture the gas. 65 % of respondents also support requiring royalty payments to mineral owners for wasted gas.

There were two bills introduced in the Senate that dealt directly with the flaring of natural gas.

The first was SB 2287, a bill to amend Section 38-08-06.4 of the North Dakota Century Code by reducing the time a well is allowed to flare from 1 year down to 90 days. This would have made state law consistent with the gas capture plans that are the foundation of the ND Industrial Commission's Gas Flaring Policy. However The Senate Energy and Natural Resources Committee recommended a DO NOT PASS for SB 2287 because they felt the bill was unnecessary and they wanted to give the NDIC's recently adopted flaring policy a chance to work. SB 2287 was defeated on the Senate floor.

The bill before you, SB 2343, started out on the Senate side as a bill to require oil and gas developers in the Bakken to pay royalties to mineral owners and taxes to the state on natural gas that is wasted by flaring. But ironically, almost cynically, it was "hoghoused" by the same Senate committee exactly one week after the SB 2287 hearing and the language to fairly compensate mineral owners and taxes to the state was struck and replaced with language designed to sabotage the ND Industrial Commission's efforts to reduce gas flaring in the Bakken.

The current language in SB 2343 is code language that attaches a fiscal burden to, and thus kills, any policy that attempts to mitigate the environmental impacts from oil and gas development in the state. The fact that it is retroactive to 1 year before the NDIC adopted the current Flaring Policy makes the intention clear.

This committee now has the opportunity to safeguard the anti-flaring efforts already in place.

Dacotah Chapter urges this committee to recommend a DO NOT PASS for SB 2343.

#4 p.1 Mar. 12, 2013 SB 2343

Mr. Chairman, my name is Eric Thompson and I represent myself.

I was told in a hearing (remove it same bill) on a similar bill to this that environmentalists needed an education on this issue. I would like to go through the points that we, apparently, needed an education on.

1. We needed to know that flaring reduces pollution by burning off dangerous substances. Every substance that comes out of those wells is a dangerous compound (including some we created in order to make those wells produce). Just like oil is saleable, so is natural gas and many of the other compounds we are told it is necessary to burn off. The real reason the other substances are burned off is because they are not worth as much as the oil so, if you are interested only in making the most money for your investment (and don't care much at all for any other set of values), you burn off what could be used elsewhere.

2. We needed to know that the reason flaring needed to be done is that there were hold-ups in getting easements to run pipelines. Then the pro-flaring people went on to repudiate their own statement. They said that the drillers in areas where gas was the object of drilling had the easements in place before they drilled. That statement says that it is possible to have all of the easements in place before the well is even started if it is deemed necessary to have those easements. Once again, the reason that the easements aren't in place is because they weren't deemed necessary because the oil is the major money maker and nobody was interested in getting the easements before the wells were drilled.

3. We needed to know that part of the reason for the hold-up in putting pipe in the ground is because the companies doing the drilling don't know if or how much gas will be coming up (so they don't know what size pipe to put in the ground). We all know if shouldn't even be in the equation. It's there. When they complain about the size of the pipe right after they complain about the overwhelming cost of the easements; they are, once again, arguing against their own case. If one has to pay an overwhelming cost for an easement that one may not be able to get or afford again, why would one worry about the size of the pipe one put in? The cost of the easement and the cost of laying the pipe are going to dwarf the cost of the pipe. Put in the largest pipe deemed reasonable because the wells pads are likely to be used multiple times and you need to be able to move what is brought up in each use. Once again the reason that thinking is not used is because the big money is in the oil and nobody wants to "waste money" on anything that is not as profitable.

4. We needed to know that the oil companies could just quit drilling in North Dakota if we kept pressuring them to do what they didn't wish to do. Perhaps I did need some education here because I was taught by my father (the judge) that threatening others is immoral at the least and criminal at the worst. Add on to that decades of dealing with criminals taught me that allowing someone to threaten you will only lead to more aggressive and costly threats. Then finish with the fact that as long as there is a profit to be made someone will attempt to make it. The government has been openly attempting to close down the illegal drug industry for decades (and using some pretty expensive and threatening methods to do so). The illegal drug industry is still in business. As an interesting side light; Senator Triplett asked how many wells had been forced to close and the response from the oil industry was that there were two smaller operations forced to close wells but no information was available from the

larger operators. It's odd that the smaller operators contribute information to the person representing the oil industry while the larger ones hide what could help their cause.

5. We needed to learn how implementing eminent domain could solve the problem of leasing. It would, undoubtedly, solve the problem of the oil industry having to spend so much for leasing and transfer the loss of resources to the people who actually own the property they wish to cross. I am not sure that is how the law was intended to operate though.

In summary, perhaps the environmental community does need an education. It needs to be educated on how people are allowed to waste what would put money into the hands of property owners that have allowed their lands to be degraded by drilling and mineral rights owners that should have the privilege of knowing that they are getting the most for their mineral rights. We need to be educated on how wasting resources that would put money into our Main Street business's hands is a good idea. We need to be educated on how state government can complain about losing revenue while they allow people operating in their state to waste what could be recovered and used as a tax resource. We need to be educated on how waste is ever a worthwhile idea. What we don't need an education on is how the profit based oil companies in the state think and why they act the way they do. We already know very well how they work.

Thank you for the opportunity to speak [redacted]. Are there any questions?

#4 p2

#5 p. 1 Mar. 12, 2015

I am writing about #SB2343 relating to flaring restrictions.

Hess drilled the Mollet well on Section 20, Range 158N, Township 93W, Mountrail County, and it's flared for seven years! No attempt has been made to lay a line to it. How do the mineral owners get paid for the gas?

The State of ND is concerned about loss of money from lower oil prices recently, but the State has wasted money - by flaring - all this time!

In the first year of production, 30 % of the gas is released! The most amount of gas is then allowed to be wasted by flaring. This is a huge waste of financial resources!

Flaring is a waste of what should be a "precious natural resource". Some states out East are drilling for the sole purpose of capturing natural gas. Here we put Mother Earth through the ringer and waste that limited "natural resource" by flaring it.

There is no monitoring of the air coming off the flares to protect any living thing nearby.

There is much mention about landowners being the holdup. There is reason for landowner fatigue. There is reason because anything the landowners bring up to anyone - except to another landowner - is dismissed by those - wearing suits! The burden of proof is on the people, the landowner, those trying to be good stewards of God's Creation.

We are left with questions and risks!
Are the number of flares being reduced by gathering lines then being flared at more central facilities?
Is the Governor's Task Force for Flaring comprised of anyone living near a flare?

Richard Jorgenson

#1 p. 1

Proposed by Rep. Porter
March 26, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 2343

Page 1, line 11, after "38-08" insert ", excluding spacing unit orders,"

Renumber accordingly.

SB 2343 #2 p.1
Mar. 26, 2015

15.0924.06001
Title.

Prepared by the Legislative Council staff for
Representative Mock
March 25, 2015

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2343

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 38-08-06.4 of the North Dakota Century Code, relating to flaring.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-06.4 of the North Dakota Century Code is amended and reenacted as follows:

38-08-06.4. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority.

1. As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a ~~one-year~~ninety day period from the date of first production from the well.

2. After the time period in subsection 1, flaring of gas from the well must cease and the well must be:

   a. Capped;

   b. Connected to a gas gathering line;

   c. Equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well;

   d. Equipped with a system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons; or

   e. Equipped with other value-added processes as approved by the industrial commission which reduce the volume or intensity of the flare by more than sixty percent.

3. An electrical generator and its attachment units to produce electricity from gas and a collection system described in subdivision d of subsection 2 must be considered to be personal property for all purposes.

4. For a well ~~operated in violation of this section~~that flares gas produced with crude oil after fourteen days from the date of first production from the well, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2.

5. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of

flared gas for purposes of payment of royalties under this section and its determination is final.

6. A producer may obtain an exemption from this section from the industrial commission upon application that shows to the satisfaction of the industrial commission that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas or employing a collection system described in subdivision d of subsection 2 is economically infeasible."

Renumber accordingly