

2017 HOUSE ENERGY AND NATURAL RESOURCES

HB 1243

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau –A Room, State Capitol

HB 1243
1/19/2017
27131

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

relating to administrative rules that would impose a fiscal impact on the oil and gas industry

Minutes:

Attachments #1-#2

Chairman Porter: Called the committee to order on HB 1243. The Clerk read the explanation of the bill.

Rep. Roscoe Streyle: presented Attachment #1.

4:40

Chairman Porter: On Section 2 Number 2, is it possible to put a rule in place without a vote?

Rep. Roscoe Streyle: All I'm saying here is they acknowledge the actual cost. Right now as far as I know, they don't acknowledge, yes this will have, well first of all, there's not a cost benefit financial impact done on every one right now. This just acknowledges that yes, we agree to adopt this rule that will cost \$15 million a year or whatever the cost benefit analysis showed. That's the main, and if the language isn't quite right, that's certainly the intent.

Chairman Porter: Just so I'm clear, the intent is that a cost is figured out for the rule and a roll call vote is taken after the cost is discussed. Questions?

6:00

Rep. Devlin: Following up on the Chairman's question, I believe the new language in Section 1 and the one in Section 2 are in conflict. You're essentially saying in 2 that they can adopt them if they follow these rules and provide the fiscal impact. But on the first one you're giving the administrative rules authority to void it anyway.

Rep. Roscoe Streyle: The intent is that Section 1 could be a reason for them, for the committee to deny. Section 2, maybe when it was written it wasn't clear, but the intent they is still have to acknowledge the cost. They still vote on it. It doesn't change anything on that.

They just acknowledge that as part of the vote. Maybe the language isn't exactly correct, but that's the intent and this is what counsel provided me.

Rep. Devlin: My problem is that it says, it essentially may not be adopted or become effective. So it sounds like they're making a decision to adopt it which we give state agencies permission to do all the time through statute. So we allow them to do it but then you're allowing administrative rules to overrule their statutory authority to adopt that rule just because it exceeds \$500,000. I have a problem with the way it's worded.

Rep. Roscoe Streyle: That's a good point. Maybe the \$500,000 isn't the right number. The point of that is to give administrative rules another checks and balance or give more tools and another check and balance. If you can promulgate a rule, say the original one that went out that will have, they'll say less, but you can say a \$10 million impact, 1000 sites times \$10,000, that's pretty broad authority. I think that deserves additional consideration, additional checks and balances from (inaudible) rules committee, and maybe they don't void it anyway but at least you have another tool. The power of the committee currently isn't as strong as I'd like to see it. I'd like to see this for all rules. You'd have to go to a much higher number than \$500 million obviously for that because there's a lot of rules, various agencies.

8:46

Rep. Keiser: On page 2 line 9, we should amend it. It really should real, become effective unless the estimated fiscal impact is specifically approved. The way it reads now is the fiscal impact for the rules. That's not clear. This is just a technical amendment but I think it is poorly written.

Rep. Roscoe Streyle: Yes in reading it I would agree.

Chairman Porter: Questions? Further support in HB 1243? Opposition?

Lynn Helms: Presented Attachment #2 and opposed the bill in present form. He asked for a Do Not Pass.

Chairman Porter: In this study, is it on a 24-hour clock, or was it an 8 hour day?

Lynn Helms: The study used 24/7 365 days a year in state of ND. The oil and gas industry spends that kind of money 24 hours a day, 365 days a year in the state of ND.

20:10

Rep. Keiser: As I listen to the discussion, the emergency rule making, this doesn't eliminate it but it sure folds it into a grey area. Given the magnitude of dollars, when you implement a rule, especially if it's on an emergency basis, we have a potential leak, or some significant problem out there and (inaudible), it could very easily get \$500,000 given the minute spending. So I guess it can stay in play until the committee meets, but it does kind of create a problem as I see it. Do you think that's an issue or not?

Lynn Helms: I agree. It's not an issue that I specifically looked at. I would be happy to if you feel you need more information on that. I think you're absolutely correct. In the instance where there was an incident on a well site that required an emergency rule, it would exceed \$500k in less than an hour typically. An operating drilling rig in the state today costs \$250k a day and runs 24/7. Even a very minor incident could run afoul up of 500k. I'd be happy to research that more if there's a need.

Chairman Porter: Further questions? Further testimony in opposition to HB 1243? Seeing none, we will close the hearing on HB 1243.

Following close of the hearing Rep. Devlin gave some input on administrative rules.

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Energy and Natural Resources Committee Coteau –A Room, State Capitol

HB 1243
1/19/2017
27148

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

relating to administrative rules that would impose a fiscal impact on the oil and gas industry

Minutes:

Chairman Porter: Opened the hearing on HB 1243. Discussion?

Rep. Devlin: I don't recall jumping up to volunteer, but I certainly like this bill and thinking hard about supporting this when I'm considering who you might have carry it if it goes down!

Chairman Porter: Then you should vote accordingly. (laughter)

Rep. Devlin: I believe Mr. Chairman that it is unworkable, well intentioned, but unworkable and I would move a Do Not Pass.

Rep. Seibel: Second.

Chairman Porter: I have a motion from Rep. Devlin, and a second from Rep. Seibel, for a Do Not Pass on HB 1243. Discussion? Seeing none the Clerk called roll on a Do Not Pass on HB 1243.

Yes	12	No	0	Absent	2
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Chairman Porter: Rep. Seibel will carry the bill.

Date: 1-19-17

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1243

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass
- As Amended
- Place on Consent Calendar
- Without Committee Recommendation
- Rerefer to Appropriations

Other Actions Reconsider _____

Motion Made By Rep Devlin Seconded By Rep Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep. Bosch	✓		Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Seibel	✓	
Rep. Heinert	✓				
Rep. Keiser	A		Rep. Mitskog	A	
			Rep. Mock	✓	

Total (Yes) 12 No _____

Absent 2

Floor Assignment Rep Seibel

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

REPORT OF STANDING COMMITTEE

HB 1243: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
HB 1243 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1243

#1
1-19-17
HB 1243

Testimony HB 1243

Rep. Roscoe Streytle, District 3

January 19, 2017

Chairman Porter and House Energy and Natural Resources Committee Members:

This bill is really very simple; it adds an additional layer of protection to ND businesses from the overreach of government regulation coming from the Executive branch. This isn't the same as the Congressional Review Act in the US Congress, but the theory is the same by giving the co-equal branch of Government power to void burdensome regulations. This bill only covers oil and gas however.

This bill gives the Legislative Administrative Rules Committee an additional tool whereby it could void all or any portion of a rule (Page 1, #1). The options at the Legislature's disposal currently to void all or any portion is very limited, which are listed in bullet points "a-f". This new authority is warranted given the volume and dollar impact of rules that have been placed on the on the oil and gas industry these past couple years, 70+ new rules.

You've all heard of most of hot button rules/orders I'm sure. The ones that I believe needed more consideration and input are the following, but not limited too; Special Places (Additional permitting requirements), Flaring (Strictest regulations and penalties in the nation), Oil Conditioning (More restrictive than national standards), and most recently Gathering Lines (Only State in nation to regulate) and Berms.

The Administrative Rules Committee did ask NDIC to come back with changes to some of the Oct. 1, 2016 rules, this was a good thing and produced better final rules. The NDIC was more responsive and listened to interested parties prior to Oct. 1, 2016 rules drop, in which they didn't listen to public input like they'd done in the past.

In order to make more informed decisions and provide more transparency to the process, we need a cost benefit analysis done on ALL proposed rules. Will this slowdown the rule making process? Of course it will, but providing a financial analysis of what the true impact is for each new rules is appropriate action to require.

The original Berm proposal sounds good in theory, but think about what the impact would've been. It was going to be retroactive and applied to thousands of sites, meaning the industry would've had to install berms on each of those sites. Use 4,000 sites as an example at \$10,000-\$15,000 a site (my estimate), that's a \$40 to \$60 million cost, not including cost on every new site constructed.

The \$500,000-dollar amount in this bill might be too low, but the main purpose of this bill is again to provide more transparency to the public and impacted businesses on the true financial impact on each rules. The second part of this bill on page two, simply requires the NDIC to acknowledge the financial impact the rule will have on businesses in ND. Again, providing transparency and having our elected officials on record.

Thank you for your consideration and I'd be happy to try and answer any questions.



HB1243
1-19-17
Lynn Helms
opposed
#2

House Bill 1243
House Energy and Natural Resources Committee
January 19, 2017

Testimony of Lynn D. Helms, Director

The North Dakota Industrial Commission – Department of Mineral Resources – Oil and Gas Division has had jurisdiction since 1981, and the Geological Survey from 1951-1981, over the drilling, producing, and plugging of wells, the restoration of drilling and production sites, and all other operations for the production of oil or gas.

HB 1243 appears to be a response to the extensive 2016 administrative rule revisions of the Commission. A summary of that rule making process follows:

- 1) Revisions to 33 sections and addition of 5 new sections of rules were proposed.
- 2) Revisions of 29 sections and additions of 3 sections were approved by the Administrative Rules Committee on September 13, 2016.
- 3) Revisions to 4 sections and additions of 2 sections were held over, amended and subsequently approved on December 5, 2016.
- 4) 43-02-06-16 The requirement for a legal street address for every well was removed saving industry an estimated \$5 million.
- 5) 43-02-06-40 The requirement for one additional gas oil ratio test during the life of a Bakken well was added costing industry an estimated \$12.5 million.
- 6) 43-02-06-19.3 Portable-collapsible tanks are allowed saving industry an estimated \$250 million.
- 7) 43-02-06-49 Six-inch berms are now required on an estimated 1,400 existing sites costing industry an estimated \$5 million to \$15 million.

HB 1243 potentially violates North Dakota Constitution Article 1, section 21

No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

HB 1243 potentially conflicts with N.D.C.C. 54-35-02.6 by exceeding the authority delegated to the rules committee under that statute.

The administrative rules committee shall review administrative rules adopted under chapter 28-32. The committee shall consider oral and written comments received concerning administrative rules. The committee shall study and review administrative rules and related statutes to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There is dissatisfaction with administrative rules or with statutes relating to administrative rules.
3. There are unclear or ambiguous statutes relating to administrative rules.

The committee may make rule change recommendations to the adopting agency and may make recommendations to the legislative management for the amendment or repeal of statutes relating to administrative rules. The committee's failure to review proposed rules prior to publication in the North Dakota Administrative Code does not prevent rules from taking effect. Except for action pursuant to section 28-32-17 or 28-32-18, the recommendations or opinions of the committee do not affect the legality of any rule as determined by the attorney general.

Finally, I would like to put HB 1243 in context. In 2013, the most recent year that the "Petroleum Industry's Economic Contribution to North Dakota" was published, the industry spent \$500,000 every 15 minutes on drilling, completions, production, transportation, and processing. Comparing 2013 drilling, completions, production, transportation, and processing numbers to 2016 I estimate the industry spent \$500,000 every 35 minutes.

Mr. Chairman and members of House Industry Business and Labor Committee, the North Dakota Industrial Commission urges a do not pass for House Bill 1243.