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ROLL NUMBER

DESCRIPTION

1315

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1315

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1315

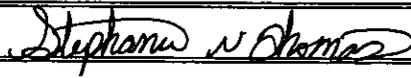
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: 1179

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1315.

Rep. Mike Brandenburg, District 28: This is a bill that deals with electrical generation and transmission safety, and is involved in the Electrical Board and the commission. There are a number of amendments being drafted for this bill, so I ask that we wait for those amendments to come forward.

Rep. Kasper: Does the word commission in the bill mean the Public Service Commission?

Rep. Brandenburg: Yes, it is the Public Service Commission who will be involved with this oversight.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1315

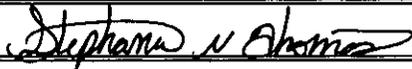
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1492

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1315.

Rep. Mike Brandenburg, District 28: Overview of proposed amendment.

Don Offerdahl, State Electrical Board: This bill is the result of wind farms that are developed in ND. We've inspected wind generators on farms for years. When it's privately owned, that's when it becomes under the jurisdiction of the ND State Electrical Board. There's areas in there where facilities are not covered under that, it's generating plants, facilities that operate generating plants. Who determines what a utility is, and what is not? The generating is done by a government entity, such as the PSC that we have in ND so, at that time we contacted the PSC at our meeting, and they said that they didn't have authority over the wind farms. For the protection of the installers, and the electrical contractors, the State Electrical Board in this state of ND wanted to make sure that they complied and were safe. We'll get evaluations by each engineer on how they do that. When this came up, it's more of a fit for utilities for the PSC then it is for the electrical board. They have underground transformers, overhead mines 13 miles, that is generally seen and is a utility, so what we want is to have some legislation in there to take responsibility away from the electrical board, and have it

where it's a jurisdictional issue, but we do not want to put a burden on the rest of the utilities by adding line 8.

Rep. Johnson: You said that the facilities that were not covered were utilities, and what other group?

Don: There's a long list. We have communication companies, the telephone companies, and all the generating plants are not covered by us. Most facilities have engineers on staff all the time monitoring the electrical wiring and equipment. When it's privately owned, those people get it designed once, and use minimum standards.

Harlan Fuglesten, ND Association of Rural Electric Cooperatives: I just want to make some comments about the bill. I have some hesitation in standing up, because I really don't know what the unintended consequences of this bill might be. Certainly, our electric cooperatives operate under the National Electric Safety Codes, which is a volunteered industry standard. They also operate under OCEA regulations, and under engineering standards of the rural utility service. We're very much in favor of safety, the concern I have is we're dealing with somewhat of an isolated problem with a solution that is quite broad. A number of states have adopted the National Electric Safety Code in some form or another, as the standard in the state legislatively, and that may be appropriate here. I think we should do some investigation however, of what impact that may have. The National Electric Safety code itself is a fairly large and detailed document that has many different versions. I'm not against this bill per say, I'm just raising some questions.

Rep. Keiser: Do you have any idea of what might be the problem that you would want to check through your investigation?

Harlan: One issue would be whether or not this language is sufficient to grandfather in facilities constructed under a prior addition of the code. Some attorney's might try to make the

argument that we're adopting a current addition of the code for all facilities that are currently in place without any grandfathering, although I believe that the code itself probably has some grandfathering provisions. Some states have adopted the code wholesale legislatively, and I'd be interested in knowing how they did it, and what impact, if any, it had on operations.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1315**

House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **6 February 2007**

Recorder Job Number: **2883**

Committee Clerk Signature *Jan Prindle*

Minutes:

Chairman Kaiser opened discussion of HB 1315. We have before us three sets of amendments and the first set was handed out by the Public Service Commission. It is a technical amendment.

Ilona Jeffcoat Sacca, PSC: The first change removes reference to facility--if you use facility it brings in the 100 megawatt threshold. The second distinguishes people who are producing electricity for resale versus their own use. The third cleans up the language a little bit. The amendments were a result of people in our office. I don't think any of these changes the original theory of the original bill. The PSC approved these changes. They also saw the amendment that Brian has and those were acceptable as well. Now the Harlan amendment has one problem and that is the ability to use the valuation. That is missing from Harlan's amendments.

Chairman Kaiser: Are either Brian's amendment or Harlan's amendment in conflict with this amendment?

Sacca: I don't think any of them are really in conflict except for the part that takes away the ability to use the money.

Vice Chairman Johnson: I move we adopt the amendment prepared by PSC.

Representative Dosch: I second.

Member of the Audience: I think the way the Committee ought to look at these are three

alternatives that say the same thing. I think you need to consider all three or you will confuse the issue.

Vice Chairman Johnson and Representative Dosch withdrew their motion and second.

Ryan Bornstein, legal counsel for the Governor, gave an overview of his amendment. This is also a technical change that has been worked with some members.

Harlan Fugelsten, ND Association of Rural Electric Cooperatives, gave an overview of his amendment. Our amendment simplifies this statute even further. It's very similar to Mr. Bornstein's amendment. The primary difference we have the language of the national electric safety codes in effect at the time of the construction. They get changed every several years and new standards come out. That would be a good idea. The other difference is it takes out the ability of the PSC to assess costs of investigation back to the utility.

Representative Ruby: You mention we have to follow this national code anyway. Do we really need this?

Fugelsten: The utilities do follow the national safety code. The PSC does have an administrative rule that adopts this. I don't know why it would be necessary here.

Vice Chairman Johnson: Currently if there is violation, who pays for the investigation.

Fugelsten: I'm not aware of any violations that have been brought to the attention of the PSC. I'm not aware that this is a problem. I don't know that we have to create a situation of hiring consultants to go out and monitor what other engineers and others have already done.

Curtis Jeffs, (?) Basin Electric Power: I would support Harlan's amendment. I think what we are trying to do is give the state electrical board assurances that everybody was following the national electric safety code. His amendment does that.

Scott Poresberg, special assistant attorney general for the electrical board: For years the board has been inspecting small windfarms and then these big utility owned windfarms started

coming in. It was quickly determined that this is outside of the scope of what the electrical

board should be doing. There are two codes at issue; the national electrical code which is worked with by electricians and the national electric safety code which is used by electrical engineers. When the national electric safety code is used the electrical board doesn't get involved. The purpose of this bill is to give clarity to the inspectors out in the field. Either of the amendments presented do that. Our purposes are satisfied by either of them. The important thing to us is that we do get a place so that jurisdiction is clear.

Sacca: There is one additional point I need you to recognize. The windfarm, or other generation, are not under the PSC jurisdiction. They are not industrial utilities, they are not public utilities like the cooperatives where we have safety jurisdiction and they are not cited under the citing act. We have other ways of getting these companies to do what needs to be done. When they want a citing certificate from us a condition of that certificate for the next 50 years is they follow the code. We don't have any other jurisdiction. If the bill passes without the safety jurisdiction over this group, we won't have any other means of carrying out our duties should the need arise. Hopefully, it never will. We're not trying to have an open pocket; we just wanted one additional way of trying to convince them to the right thing if the need arises. The resource issue is an issue. If we are going to have an inspection program, we have to another FTE. We decided that if we had a big problem we wanted some way to pay for that.

Chairman Kaiser: What is the job description of the PSC? Shouldn't they be doing this? Why do we need extra FTEs to do the job that I think they are supposed to be doing?

Sacca: Where this would fall we have two engineers, one half time accountant, my time half time, and another analyst. There is no way that this division could be doing safety inspections unless we have additional people or contract it out.

Vice Chairman: I move we adopt the amendment that Mr. Bornstein provided. (#2)

Representative Thorpe: Just looking at the two amendments, the amendment brought in by Harlan is to me clearer.

Representative Boe: I too have some problems to the broad scope of just coming in and charging them for it. I like the idea of having some control. If it's an unfounded investigation they don't have to pay. If they actually do find something, they have to pay. I'd like to see something like that in there rather than an open checkbook.

A roll call vote was taken on the amendment: Yes: 2, No: 12, Absent: 0.

The amendment failed.

Representative Thorpe: I move we adopt the amendments that Harlan brought in. (#3)

Representative Gruchalla: I second.

A roll call vote was taken: Yes: 12, No: 2, Absent: 0 The amendment was accepted.

Representative Dosch: I move to further amend to add the language that if an investigation is conducted and they are found to be in violation they would be assessed the charges for the investigation.

Representative Nottestad: I second.

Representative Thorpe: I'm wondering if how we are doing this, does PSC put on more staff.

Chairman Kaiser: They may put on a fiscal note. That is there prerogative.

A roll call vote was taken: Yes: 9, No: 5, Absent: 0

The motion to further amend carried.

Representative Johnson: I move Do Pass as Amended.

Representative Dosch: I second.

A roll call vote was taken: Yes: 11, No: 3, Absent: 0

Representative Johnson will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1315

Page 1, line 6, remove "that owns or operates a facility"

Page 1, line 6, replace "for generating" with "that generates electricity for the primary purpose of resale"

Page 1, line 7, replace "transmitting" with "transmits"

Renumber accordingly

HB 1315

“Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the National Electric Safety Code and any corresponding rules adopted by the commission. The commission may order that expenses associated with investigating an alleged violation under this section be paid by the utility in accordance with section 49-02-02.”

Date: 2-6-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. AB 1315

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment #2

Motion Made By Rep Johnson Seconded By Rep Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark		X	Rep. Gruchalla		X
Rep. Dietrich		X	Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser		X
Rep. Kasper		X			
Rep. Nottestad		X			
Rep. Ruby		X			
Rep. Vigesaa		X			

Total Yes 2 No 12

Absent 0

Floor Assignment Rep. Johnson

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

PROPOSED AMENDMENT TO HB 1315

Page 1, line 6, replace "a facility" with "electric generation", replace "generating or" with "the primary purpose of resale"

Page 1, line 7, remove "transmitting electricity", after "the" insert "standards of the", after "Code" insert "in effect at the time of construction of the generation.", remove "and an"

Page 1, remove lines 8 through 10

Renumber accordingly

PROPOSED AMENDMENT IN CONTEXT

Section 1. A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

Safety. Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the National Electric Safety Code in effect at the time of construction of the generation.

Date: 2-6-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1315

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment #3

Motion Made By Rep Thorpe Seconded By Rep. Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson		X	Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby		X			
Rep. Vigesaa	X				

Total Yes 12 No 2

Absent 0

Floor Assignment Rep Johnson

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

February 6, 2007

**House Amendments to HB 1315 (78273.0101) - Industry, Business and Labor
Committee 02/06/2007**

Page 1, line 6, replace "a facility" with "electric generation" and replace "generating or" with "the primary purpose of resale"

Page 1, line 7, remove "transmitting electricity", after "the" insert "standards of the", and replace "and any" with "in effect at the time of construction of the generation. If a utility is found to be in violation of this section, the"

Page 1, line 8, remove "corresponding rules adopted by the commission. The"

Renumber accordingly

Date: 2-6-07
Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1315

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Further Amend

Motion Made By Rep Dosch Seconded By Rep Nottestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark		X	Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa		X			

Total Yes 9 No 5

Absent 0

Floor Assignment Rep. Johnson

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

Date: 2-6-07
 Roll Call Vote #: 4

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1315

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass, AS Amended

Motion Made By Rep Johnson Seconded By Rep Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla	X	X
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 11 No 3

Absent 0

Floor Assignment Rep. Johnson

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

REPORT OF STANDING COMMITTEE

HB 1315: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1315 was placed on the Sixth order on the calendar.

Page 1, line 6, replace "a facility" with "electric generation" and replace "generating or" with "the primary purpose of resale"

Page 1, line 7, remove "transmitting electricity", after "the" insert "standards of the", and replace "and any" with "in effect at the time of construction of the generation. If a utility is found to be in violation of this section, the"

Page 1, line 8, remove "corresponding rules adopted by the commission. The"

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1315

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1315**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 6, 2007**

Recorder Job Number: **4425**

Committee Clerk Signature



Electrical Generation and Transmission Safety:

Rep. Brandenburg – District # 28 - In Favor

In District 28 we have an abundance of wind energy. HB 1315 is here because, I don't like it, the coops don't like it, the PSC doesn't like it, the electrical board doesn't like it, nobody likes it, so we're here to get it figured out. This is a new issue that everyone is trying to figure out how to deal with it because of the wind generation, we have a new industry in the state. This industry has created some interests have been created from different parties on how we're going to handle the qualifying of the electrical parts within the wind tower. Through this hearing you can hear what they have to say and get it worked out. It is an important industry and we need a resolve.

S Klein: So this is still a work in progress. We haven't seen the last amendment to get it right?

Brandenburg: I was hoping it was right. To be fair, let us vent our concerns and talk about it and it will be resolved in the end.

Scott Porsborg – special assistant to the Attorney General for ND State Elec Board - In Favor

Will explain the bill and what it's ultimate purpose is. The electrical board for years has been inspecting electrical installations around the state, including wind generating facilities. Such as

the Richardton Sisters have a small wind farm on their properties. That was inspected by the state electrical board and certified by them. Farmers that have wind generators on their farm, the electrical board has approved and inspected them for safety. When the large wind farms started coming in, the electrical board inspected some and it became apparent that they really weren't the electrical boards work, they were more utility-like. The purpose of this bill and the PSC drafted it, is to put large wind farms whose sole purpose is to generate electricity for resale, like a utility, under the jurisdiction of the PSC. That will impose the requirements of the National Electrical Safety Code on these wind farms. There are 2 codes that apply in ND.

1. National Electrical Code (NEC) – the ballywork of electricians
2. National Electrical Safety Code (NESC) – ballywork of electrical engineers & utilities

What this bill does, first sentence, imposes the requirements of the NESC on any utility that generates power for the purpose of resale. It doesn't pose that requirement on farmer or the Sisters in Richardton, only on facilities that generate only for resale.

The Electrical Board ask that you vote a DO PASS, so it is taken out of the realm of the Electrical Board. The NEC just doesn't apply to these facilities and not our area of expertise. It should be under the PSC.

S Klein: So this group wants to pass the buck.

Scott P: It's not passing the buck, so much as making applicable the right code to what these things really are.

S Hacker: I'm confused. You have two: NEC and NESC. The one that's in the legislation is NESC and the other is NEC. You're saying that the SAFETY code is more applicable to resale companies.

Scott P: Yes NEC is generally considered to be the standard of electricians. That's what they consult when they wire your house and what the board's inspectors apply when they

inspect residences and commercial property. The NESC is considered to be the ballywork of engineers. It's different and considered to be applicable to utilities.

S Klein: It's beyond putting up a couple of outlets in your house, it's putting a little more juice in this thing.

S Potter: I see a loophole here. What if the utility utilized the power themselves? They're a utility, but they're using it for their own purposes, rather than resale, then whose going to regulate them?

Scott P: That's why we put "primary purpose" for the purpose of resale in there. The reason was because the question was raised, because it DID say "of any size" period. We did add "primary purpose" to avoid that loophole.

S Potter: Point is, there could be uses that not only are trying to get around this, but that they are actually using it in another generating facility. Who then regulates it, inspects it at that time?

Scott P: If it's not enough power and nothing available for resale, just to power a facility, that would be the NEC. If just lights in buildings, even factories. NEC has jurisdiction over that.

S Wanzek: So the intent of the bill is to clarify with entities are over regulations.

Scott P: That's correct.

S Klein: You "grew out" – initially you thought it was your purview and now it's gotten too big, or from the get-go of wind towers, when you have a wind tower at Richardton it's one issue, but when you have Edgely-Kulm example with 41 towers, that is beyond what we can do and need to step.

Scott P: Yes. If it becomes more utility like, it becomes more complicated. Don can tell you more details why the NEC doesn't apply to these wind farms.

John Olson, Ottertail Power Co. - In Favor

This still has a lot of work on it. Thank you to Illona Jeffcoat Sacco for her participation in drafting the bill. She's in favor of everything here if I can speak for her EXCEPT one little part, and that is the COST that they think they need to recover for doing inspection.

There was a lot of heartburn in the House side about how this bill was drafted and a lot of heartburn of the payment for the investigation. The compromise was that the House split the baby in ½. There were no costs on one proponents side, and the PSC and wanted all of it's costs no matter if there was a violation established or not. But all the costs for investigation. The House came up with the alternative here to establish costs only in a case where there is a violation established. I think this is reasonable. The PSC has jurisdiction over safety of ALL generating facilities, whether coal-powered plants, wind towers or what have you. The requirement is to make sure right now is to make sure that these generating facilities comply with the NESC. The PSC doesn't have a batch of electrical engineers that inspect, they need to have that jurisdiction and ability to do so, but if there are routine inspections done on these wind facilities it causes some concerns with the utilities and the RECs on wind generators. We believe "good faith" efforts that take complaints based on facts and circumstances that suggest that there is a violation, that those rate investigation costs against utilities. For frivolous complaints, the PSC has to weigh those to see if they want to go forward.

S Klein: Are their national inspectors who come to these facilities just like we have the state inspectors come after the completion of the project? Or do we rely on the PSC to send Commissioner Wefald to take a look at those?

John O: I don't believe we rely on the Commissioners to go out. There are consultants and experts that are involved.

S Klein: There are experts in the National....

John O: Can't speak for every company. I know there are professional engineers that are involved in the projects. Whether they are licensed or not licensed in ND, they are there.

S Potter: As an attorney, if your client was a utility, you'd suggest that they comply with these safety requirements so they're not sued, right?

John O: That is correct. And we have a concern about safety. We're not trying to avoid the safety issue. We want safety established, we believe that this does it.

S Klein: We certainly don't want one of those blades flying through Kulm some afternoon when kids are going home from school.

John O: Lot of people even in the Governor's office that participated in working out this draft that you have before you.

Harlan Fuglesten, NDAREC - In Favor

We were a number of people that worked on the bill, for a 2 sentence bill, it got worked over pretty well. We supported the first sentence of the bill originally passed by the House and then an amendment was added because we had concerns about the second sentence of the bill which I think the House in it's wisdom came up with a compromise that has satisfied the vast majority of interest. Has not been a problem with respect to safety. If the PSC finds a violation, there needs to be a fair compromise.

S Hacker: Who's been paying for this before?

Harlan F: Been no provisions on payment. This is going on the citing provision of the code, the PSC has jurisdiction over the size of the site and is presumably part of the regulatory process in approving that sighting.

S Hacker: Is it easy to violate the code?

Harlan F: I have a copy of the code, that's "this big" and written by engineers and there are LOTS of provisions that would be judgments or circumstances in which you can avoid standards on emergency conditions, short answer, there are ways that you can violate.

S Hacker: Since we have not expected a lot of the wind towers out there, would you expect that we have wind towers out there that would have to pay if inspections come around?

Harlan F: I don't claim any expertise in electrical engineering. These are large commercial operations, standardized. I would be confident that they are building them to national acceptance standards. Obviously there are inspections from OSHA and federal agencies.

S Klein: I don't think they can turn on the juice before the inspection? Don't think they start up without inspection, rather than coming back a year later and saying, "shut that one down and that one down."

Harlan F: I'm not certain that there is a Federal electrical inspector.

S Wanzek: If we don't properly fund their abilities to investigate, if an investigation is initiated, the way it's worded, wouldn't there be a little incentive TO FIND a violation? Because if they do, they get paid.

Harlan F: That would be a risk. I wouldn't incur that. They'd take a look at in on the front end. Everybody has a responsibility to comply with the NESC. I think they would be forthcoming with information even before you watch an investigation if there were a complaint.

S Wanzek: It might be the NEXT Commissioner, certainly not this one.

Harlan F: That's what concerns us, it's a broad charge of authority to the PSC to charge costs back to the utilities, but not concerned about how the current Commissioner's operating, but this law could be in effect for 20 years from now, may be an entirely different aspect.

S Behm: I can't get heartburn over this, to me it seems like if there is a violation it should be paid for by the utility.

