

2009 SENATE NATURAL RESOURCES

SB 2140

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2140

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 8, 2009

Recorder Job Number: 6676, 6677, 6678

Committee Clerk Signature



Minutes:

**Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee brought the committee to order.

Attendance was taken indicating all members of the committee were present.

**Senator Lyson** opened the hearing on SB 2140, relating to the time period for successful revegetation on lands permitted for surface coal mining and reclamation operations and limitations for filing liens on abandoned mine lands that are reclaimed.

**Jim Deutsch**, director of the Reclamation and Abandoned Mine Lands Divisions at the Public Service Commission introduced SB 2140 (see attached testimony #1).

**Senator Triplett** asked how many acres of old unreclaimed abandoned mine land could be potentially be subject to this if anyone wanted to remine them.

**Jim Deutsch** replied there are probably thousands of acres, around 14,000, but the current active mines are a small percentage of that.

**Senator Triplett** can you tell if the five years versus the 10 years is going to have any significant affect on the revegetation of these areas?

**Jim Deutsch** answered that in the western part of the United States they use the 10 year period and the eastern states use the 5 year period. He doesn't think that the time period will

have an effect because there are more important factors that play a role in the revegetation of the land.

**Senator Freborg** asked if this is to serve as an incentive.

**Jim Deutsch** replied that it is to serve as another reason to go after that land.

**Senator Lyson** closed the hearing on the bill and opened up discussion for the committee.

**Senator Triplett** was concerned that if the revegetation went well for the areas over the five years due to the amount of rainfall and good soil etc. will they come back and want to shorten the time period even more?

**Senator Freborg** knows that there are some people who are worried that ten years is not enough time. He knows the land is good and is producing well, so he feels that if this ever took in several thousand acres it would be worth looking at exempting five years and proving reclamation.

**Senator Triplett** asked if they could hold the bill over for a couple days.

**Senator Lyson** agreed and closed discussion on the bill.

→ A/

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2140


Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 22, 2009

Recorder Job Number: 7512

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the discussion on SB 2140, relating to the time period for successful revegetation on lands permitted for surface coal mining and reclamation operations and limitations for filing liens on abandoned mine lands that area reclaimed, all members were present.

**Senator Triplett** We were talking mostly about 100 acres. It wasn't really a fix that they were really interested in following up on. I feel that if no one wants it, then there is no reason to put it in the law.

**Senator Freborg**, I had mentioned that I talked to a guy who owns a couple of quarters of land in my district. His land has been sold to the mine and he told me the land is still caving in. The guy who sold the land told me his father has had numerous tractor accidents because of the land. I am assuming they will mine that land regardless, but if the 5 years is an incentive to clean it up, it will be well worth it.

**Senator Triplett** I am not suggesting that the caving isn't a problem. My understanding is that this bill is not likely to solve that problem because the coal company didn't seem interested in accepting this incentive. I have some concerns about putting incentives into the law that will

not likely be used, but then they also take away from the commitment that our staters had to reclamation. I think it sets a bad precedent. I move a **do not pass**.

**Senator Schneider** seconds the motion.

**Senator Freborg** I doubt that the incentive will make a difference. I don't think they can go around these two quarters, it's possible. I think it is well worth getting that kind of land reclaimed even if it is 5 years.

Roll call was taken, 6 no – 1 yea, motion **failed**.

**Senator Freborg** I move a do pass on SB 2140.

**Senator Hogue** I second the motion.

Roll was taken, 5 yeas-2 no, motion **passed**. Senator Freborg assigned as carrier.

Date: Jan 22, 2009

Roll Call Vote #: 21417 #1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

Senate \_\_\_\_\_ Natural Resources \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass

Motion Made By Sen. Triplett Seconded By Sen. Schneider

Senators	Bill	Yes	No	Senators	Bill	Yes	No
Senator Stanley W. Lyson, Chairman	X		X	Senator Jim Pomeroy	X		X
Senator David Hogue, Vice Chairman	X		X	Senator Mac Schneider			X
Senator Robert S. Erbele	X		X	Senator Constance Triplett		X	
Senator Layton W. Freborg	X		X				

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

Absent \_\_\_\_\_

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

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

Date: Jan 22, 2009

Roll Call Vote #: 2140 #2

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."**

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass

Motion Made By Sen. Freborg Seconded By Sen. Hogue

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	X		Senator Jim Pomeroy	X	
Senator David Hogue, Vice Chairman	X		Senator Mac Schneider		X
Senator Robert S. Erbele	X		Senator Constance Triplett		X
Senator Layton W. Freborg	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Sen Freborg

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

**REPORT OF STANDING COMMITTEE (410)**  
January 22, 2009 1:36 p.m.

**Module No: SR-13-0747**  
**Carrier: Freborg**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2140: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO PASS**  
(5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2140 was placed on the  
Eleventh order on the calendar.



2009 HOUSE NATURAL RESOURCES

SB 2140

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2140

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 2-27-09

Recorder Job Number: 9853

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – We'll open the hearing on SB 2140.

Jim Deutsch – Director of the Reclamation and Abandoned Mines Lands Division at the PSC –

See **Attachment # 1**. Questions?

David Strailey ?? – North American Coal Corp. – We support this bill. I was hoping to have an amendment for this bill. I will have that amendment to you first thing Monday morning.

Questions?

Chairman Porter – Further testimony in support? Opposition? We will close the hearing on SB 2140.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2140

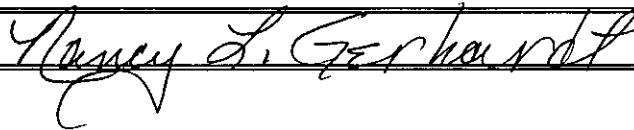
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 10267

Committee Clerk Signature



Minutes:

Chairman Porter – Lets pull our SB 2140. We heard this last week in relationship to reclamation of abandoned mines land division. It was talked of a proposed amendment for study and that has kind of vanished away, so we have the bill as it was presented to us.

Discussion? Motion?

Rep. Hofstad – I move a Do Pass.

Chairman Porter – We have a motion for a Do Pass from Rep. Hofstad on SB 2140.

Rep. DeKrey – 2<sup>nd</sup>.

Chairman Porter – 2<sup>nd</sup> from Rep. DeKrey. Discussion? Seeing none the clerk will call the roll on a Do Pass on SB 2140.

Yes 11 No 0 Absent 2 Carrier Rep. Hofstad

Date: 3-5-09  
Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2140 SB

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By Hofstad Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunskor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal			Rep Pinkerton		
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Hofstad

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

**REPORT OF STANDING COMMITTEE**

**SB 2140: Natural Resources Committee (Rep. Porter, Chairman) recommends DO PASS**  
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2140 was placed on the  
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2140

**Senate Bill 2140**

**Presented by:**      **Jim Deutsch, Director  
Reclamation & Abandoned Mine Lands Divisions  
Public Service Commission**

**Before:**              **Senate Natural Resources Committee  
Honorable Stanley W. Lyson, Chairman**

**Date:**                **January 8, 2009**

**TESTIMONY**

Mr. Chairman and committee members, I am Jim Deutsch, Director of the Reclamation and Abandoned Mine Lands Divisions at the Public Service Commission. I appear on behalf of the Commission in support of Senate Bill 2140.

Senate Bill 2140 is an agency bill introduced by the Commission and it proposes to amend a section in North Dakota's reclamation law for active surface coal mining operations and a section in the abandoned mine lands reclamation law. North Dakota's reclamation laws for active coal mining and for eliminating hazards associated with abandoned mines need to be consistent with the federal Surface Mining Control and Reclamation Act of 1977. The changes proposed in Senate Bill 2140 are based on amendments to the federal reclamation act that were enacted in December 2006. These amendments re-authorized the abandoned mine lands reclamation program and extended the federal reclamation fee that funds this program. While the proposed changes in Senate Bill 2140 are not mandatory, the Commission believes it is in the best interest of the State to do so.

Section 1 of the bill proposes to amend subsection 18 of N.D.C.C. Section 38-14.1-24 to reduce the ten-year revegetation responsibility period to five years on previously mined areas that are re-mined. <sup>see notes</sup> This change may result in an incentive for some companies to re-mine and reclaim some abandoned coal mine workings that otherwise would not be re-affected and reclaimed by future mining activities. If abandoned mine areas are re-mined and reclaimed, any hazards associated with them should be eliminated through the re-mining and reclamation process eliminate the need for the Commission to do any work on these areas under the abandoned mine land reclamation program.

Section 2 of Senate Bill 2140 proposes to modify the lien provisions in North Dakota's abandoned mine lands reclamation law. The Commission has the authority, under certain circumstances, to file a lien on abandoned mine lands if there is an increase in value due to the reclamation work that is performed. However, the current provisions in subsection 2 of N.D.C.C. Section 38-14.2-14 state that no lien can be filed if a person owned the surface prior to May 2, 1977 and that person neither consented to nor participated in the mining activities which necessitated the reclamation work. Based on this, a person who bought abandoned mine land after May 2, 1977 would be subject to a lien if reclamation work done by the Commission increases the land's value. The December 2006 amendments to the federal reclamation act removed the language that required a person to own the land prior to May 2, 1977 to be exempt from the lien provisions. If the change proposed in Section 2 of Senate Bill 2140 is enacted, the Commission will have the authority to place a lien on reclaimed abandoned



mine lands only if the current owner consented to or participated in the mining that necessitated the reclamation work. <sup>notes</sup> It should be noted that the Commission has never placed a lien on any of the abandoned mine lands that have been reclaimed under this program and, in nearly all instances, this change will eliminate the need for pre and post reclamation appraisals of abandoned mine lands that are reclaimed by the Commission.

The Commission urges a Do Pass recommendation for Senate Bill 2140.

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

Senate Bill 2140

**Presented by:** Jim Deutsch, Director  
**Reclamation & Abandoned Mine Lands Divisions**  
**Public Service Commission**

**Before:** **House Natural Resources Committee**  
**Honorable Todd Porter, Chairman**

**Date:** **February 27, 2009**

**TESTIMONY**

Mr. Chairman and committee members, I am Jim Deutsch, Director of the Reclamation and Abandoned Mine Lands Divisions at the Public Service Commission. I appear on behalf of the Commission in support of Senate Bill 2140.

Senate Bill 2140 is an agency bill introduced by the Commission and it proposes to amend a section in North Dakota's reclamation law for active surface coal mining operations and a section in the abandoned mine lands reclamation law. North Dakota's reclamation laws for active coal mining and for eliminating hazards associated with abandoned mines need to be consistent with the federal Surface Mining Control and Reclamation Act of 1977. The changes proposed in Senate Bill 2140 are based on amendments to the federal reclamation act that were enacted in December 2006. These amendments re-authorized the abandoned mine lands reclamation program and extended the federal reclamation fee that funds this program. While the proposed changes in Senate Bill 2140 are not mandatory, the Commission believes it is in the best interest of the State to do so.

Section 1 of the bill proposes to amend subsection 18 of N.D.C.C. Section 38-14.1-24 to reduce the ten-year revegetation responsibility period to five years on previously mined areas that are re-mined. The Commission cannot approve final performance bond release on most reclaimed lands for at least ten years following the regrading, replacement of soil, and reseeded. This ten-year period is required to ensure that the reclamation work continues to be successful and that reclaimed lands having an agricultural post-mining land use remain productive during that time period. The proposed change will reduce the ten-year period to five years for any previously mined lands that are re-mined. Previously mined lands are those that were mined prior to the effective date of North Dakota's first reclamation law, which was January 1, 1970.

If the change proposed in Section 1 of the Senate Bill 2140 is enacted, it may serve as an incentive for some companies to re-mine and reclaim some abandoned coal mine workings that otherwise would not be re-affected and reclaimed by future mining activities. If abandoned mine areas are re-mined and reclaimed under the coal regulatory program, the hazards associated with them should be eliminated through the re-mining and reclamation process and the Commission would not have to do any work on these areas under the abandoned mine lands reclamation program.

Section 2 of Senate Bill 2140 proposes to modify the lien provisions in North Dakota's abandoned mine lands reclamation law. The Commission has the authority, under certain circumstances, to file a lien on abandoned mine lands if there is an increase in value due to the reclamation work that is performed.

However, the current provisions in subsection 2 of N.D.C.C. Section 38-14.2-14 state that no lien can be filed if a person owned the surface prior to May 2, 1977 and that person neither consented to nor participated in the mining activities which necessitated the reclamation work. Based on this, a person who bought abandoned mine land after May 2, 1977 would be subject to a lien if reclamation work done by the Commission increases the land's value. The December 2006 amendments to the federal reclamation act removed the language that required a person to own the land prior to May 2, 1977 to be exempt from the lien provisions.

If the change proposed in Section 2 of Senate Bill 2140 is enacted, the Commission will have the authority to place a lien on reclaimed abandoned mine lands only if the current owner consented to or participated in the mining that necessitated the reclamation work. It should be noted that the Commission has never placed a lien on any of the abandoned mine lands that have been reclaimed under this program and, in nearly all instances, this change will eliminate the need for pre and post reclamation appraisals of abandoned mine lands that are reclaimed by the Commission.

The Commission urges a Do Pass recommendation for Senate Bill 2140.

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