2019 SENATE ENERGY AND NATURAL RESOURCES

SB 2109

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2109
1/10/2019
Job Number 30645

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the duties and responsibilities of the department of environmental quality, to provide an effective date, and to declare an emergency.

Minutes: 1 attachment

The public hearing was opened; a quorum was present.

David Glatt, North Dakota Department of Health Environmental Health Section Chief (0:15-5:45) Introduced the bill, please see attachment 1.

Chair Unruh: Passing this bill would make all fixes you need for the transfer over to Department of Environmental Quality?

Mr. Glatt: Yes, *knocks on wood*

No further agency or opposing testimony.
Public Hearing closed.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2109
1/31/2019
Job Number 31916

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the duties and responsibilities of the department of environmental quality, to provide an effective date, and to declare an emergency.

Minutes: No Attachments

Chair Unruh: 2109 was brought to us by the State Department of Health, soon to be the Department of Environmental Quality. This was their clean-up bill with a couple of changes needed in the code to complete their transition.

Senator Roers: I move a do pass.

Senator Schaible: Second.

Senator Cook: One small note, on the last page, the repeal section, line 9 section 5, the last repealer is 61-20, that should be 61-30.

Senator Schaible: Under the testimony Mr. Glatt gave us, there is an error in line 9, which addresses a lake protection and rehabilitation implemented federal EPA 31-314 clean lake permit and that's what he suggested.

Senator Cook: I don't know if that takes an amendment or if council just corrects that.

Chair Unruh: Since we've identified it, and it's easy enough to correct, if we could rescind the do pass.

Senator Roers: I rescind my motion.
Senator Schaible: and my second.

Chair Unruh: In front of us we have SB 2109 with the need for an amendment.

Senator Schaible: I move an amendment on line 9 of the bill chapter 61-20 replace that with chapter 61-30.
Senator Cook: Second

A voice vote was taken.
Motion carries.

Senator Roers: I move do pass as amended.
Senator Schaible: Second.

A roll call vote was taken.
Motion passes 6-0-0.

Senator Schaible: will carry.

Chair Unruh: closed the meeting.

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Adopted by the Energy and Natural Resources Committee

January 31, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2109

Page 1, line 6, replace "61-20" with "61-30"

Page 3, line 9, replace "61-20" with "61-30"

Renumber accordingly

Date: 1/31/
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2109

Senate 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 Sen. Schaible Seconded By Sen. Cook

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Jim Roers		
Senator Curt Kreun			Senator Merrill Piepkorn		
Senator Donald Schaible					
Senator Dwight Cook					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote

Motion Carries

Date: 1/31
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2109

Senate 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 Sen. Roers Seconded By Sen. Schaible

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Jim Roers	X	
Senator Curt Kreun	X		Senator Merrill Piepkorn	X	
Senator Donald Schaible	X				
Senator Dwight Cook	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Schaible

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

REPORT OF STANDING COMMITTEE

SB 2109: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2109 was placed on the Sixth order on the calendar.

Page 1, line 6, replace "61-20" with "61-30"

Page 3, line 9, replace "61-20" with "61-30"

Renumber accordingly

2019 HOUSE ENERGY AND NATURAL RESOURCES

SB 2109

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau A Room, State Capitol

SB 2109
3/1/2019
33052
☐ Subcommittee
☐ Conference Committee

Committee Clerk, Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to the duties and responsibilities of the Dept. of Environmental Quality, to provide an effective date and declare an emergency

Minutes: Attachment 1

Chairman Porter: opened the hearing on SB 2109.

David Glatt, ND Dept. of Health's Environmental Health Section Chief: presented **Attachment 1.**

Rep. Devlin: We're talking municipal waste, there's nothing in there that affects animal agriculture or agriculture at all?

Glatt: that's true

Chairman Porter: further support? Opposition? closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau A Room, State Capitol

SB 2109
3/21/2019
34106
☐ Subcommittee
☐ Conference Committee

Committee Clerk, Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to the duties and responsibilities of the Dept. of Environmental Quality, to provide an effective date and declare an emergency

Minutes:

Chairman Porter: opened the hearing on SB 2109.

Rep Bosch: move a Do Pass.

Rep. Zubke: second.

Chairman Porter: We have a motion for a Do Pass and a second. Discussion?
Roll call vote: 14 yes 0 no 0 absent. Motion carried. Rep. Zubke is carrier.

Date: 3-21-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2109

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 Bosch Seconded By Zubke

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. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Eidson	✓	

Total (Yes) 14 No 0

Absent 0

Floor Assignment Zubke

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

REPORT OF STANDING COMMITTEE

SB 2109, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2109 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2109

SB 2109
1.10.19
#1

Testimony
Senate Bill 2109
Senate Energy and Natural Resources Committee
January 10, 2019, 10:00 a.m.
North Dakota Department of Health/North Dakota Department of Environmental Quality

Good morning Chairman Unruh and members of the Energy and Natural Resources Committee. My name is David Glatt, and I am the North Dakota Department of Health's Environmental Health Section Chief. I am here today to testify in support of Senate Bill 2109, which is primarily a housekeeping bill to address various issues that arose while preparing for the transfer of responsibilities for environmental protection from the Department of Health to the North Dakota Department of Environmental Quality.

- Section 1: Amends NDCC Section 23.1-01-11 to authorize the department to adopt procedures governing appeals that alter the general appeal procedure currently provided in that statute. This may be done only when the department determines such procedures are "necessary and appropriate to develop, implement, or enforce a federally delegated, authorized, or approved program." The need for this amendment was identified by the Attorney General's Office during its recent review of a department rulemaking. The department was adopting rules required by the U.S. Environmental Protection Agency (EPA) to implement the Title V Air Permitting Program. Although the Attorney General agreed that the department had the authority to adopt the federally required rules, he was concerned that the rules potentially conflicted with current appeal procedure in Section 23.1-01-11 and recommended that the statute be amended.

- Section 2: Creates a new subsection to Section 23.1-04-08, which authorizes the department to require and issue hazardous waste permits. This language was inadvertently deleted when the state's hazardous waste laws were moved from Chapter 23-20.3 to Chapter 23.1-04, as part of the creation of the Department of Environmental Quality. During its review, EPA noted the missing language and requested it be put back into the state's hazardous waste laws.

- Section 3: Amends subsection 6 of Section 23.1-04-15 to delete the reference to obsolete administrative rules and instead clarify that administrative actions

must comply with Chapter 28-32, Administrative Agencies Practice Act. This is consistent with the procedures used for other department actions.

- Section 4: Amends Section 23.1-08-10 to use the term "special waste solid waste management facilities" instead of the outdated term "special use solid waste management facilities."

- Section 5: Repeals unnecessary and obsolete statutes identified while preparing for the creation of the Department of Environmental Quality.

    - Section 23.1-06-03, which provides for an environmental review advisory council to hold hearings and make recommendations on air pollution control rules, is unnecessary because Section 23.1-01-02 already provides for review of all department rules by an environmental review advisory council, and Chapter 28-32 requires public hearings on all rules. Repeal of Section 23.1-06-03 will avoid confusion by making clear that air pollution control rules follow the same rulemaking procedures (including environmental review advisory council input and Chapter 28-32 public notice and comment procedures) required for other department rules.

    - Chapter 23.1-09, which provides for a municipal waste landfill release compensation fund, is obsolete. Landfill participation in the fund was voluntary, and the fund was never established due to lack of interest. Municipal waste landfills are required to obtain financial assurance through existing provisions in rule and law.

    - There is an error in line 9 of the bill. Instead of Chapter "61-20" it should be amended to "61-30." Chapter 61-30, which addresses lake protection and rehabilitation by implementing the federal EPA 314 Clean Lakes Program grant, is obsolete as the 314 Clean Lakes Program has not been funded since the late 1990s and has been replaced by the broader 319 Nonpoint Source Program grant. Authority for the 319 Nonpoint Source Program is already included in NDCC Section 61-28-04.

- Section 6: Makes the bill effective upon the transfer of responsibilities from the Department of Health to the Department of Environmental Quality, consistent with the rest of the state's environmental laws. Currently, we are

SB 2109
1.10.19
#1

waiting on receiving final EPA approvals and then should be able to complete the transfer.

- Section 7: Makes the bill an emergency measure so that these issues are addressed immediately to avoid any problems when responsibilities are shifted to the Department of Environmental Quality.

Testimony
Senate Bill 2109
House Energy and Natural Resources Committee
March 1, 2019, 9:00 a.m.
North Dakota Department of Health/North Dakota Department of Environmental Quality

Good morning Chairman Porter and members of the Energy and Natural Resources Committee. My name is David Glatt, and I am the North Dakota Department of Health's Environmental Health Section Chief. I am here today to testify in support of Senate Bill 2109, which is primarily a housekeeping bill to address various issues that arose while preparing for the transfer of responsibilities for environmental protection from the Department of Health to the North Dakota Department of Environmental Quality.

- Section 1: Amends NDCC Section 23.1-01-11 to authorize the department to adopt procedures governing appeals that alter the general appeal procedure currently provided in that statute. This may be done only when the department determines such procedures are "necessary and appropriate to develop, implement, or enforce a federally delegated, authorized, or approved program." The need for this amendment was identified by the Attorney General's Office during its recent review of a department rulemaking. The department was adopting rules required by the U.S. Environmental Protection Agency (EPA) to implement the Title V Air Permitting Program. Although the Attorney General agreed that the department had the authority to adopt the federally required rules, he was concerned that the rules potentially conflicted with current appeal procedure in Section 23.1-01-11 and recommended that the statute be amended.

- Section 2: Creates a new subsection to Section 23.1-04-08, which authorizes the department to require and issue hazardous waste permits. This language was inadvertently deleted when the state's hazardous waste laws were moved from Chapter 23-20.3 to Chapter 23.1-04, as part of the creation of the Department of Environmental Quality. During its review, EPA noted the missing language and requested it be put back into the state's hazardous waste laws.

- Section 3: Amends subsection 6 of Section 23.1-04-15 to delete the reference to obsolete administrative rules and instead clarify that administrative actions

must comply with Chapter 28-32, Administrative Agencies Practice Act. This is consistent with the procedures used for other department actions.

- Section 4: Amends Section 23.1-08-10 to use the term "special waste solid waste management facilities" instead of the outdated term "special use solid waste management facilities."

- Section 5: Repeals unnecessary and obsolete statutes identified while preparing for the creation of the Department of Environmental Quality.

    - Section 23.1-06-03, which provides for an environmental review advisory council to hold hearings and make recommendations on air pollution control rules, is unnecessary because Section 23.1-01-02 already provides for review of all department rules by an environmental review advisory council, and Chapter 28-32 requires public hearings on all rules. Repeal of Section 23.1-06-03 will avoid confusion by making clear that air pollution control rules follow the same rulemaking procedures (including environmental review advisory council input and Chapter 28-32 public notice and comment procedures) required for other department rules.

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- Section 6: Makes the bill effective upon the transfer of responsibilities from the Department of Health to the Department of Environmental Quality, consistent with the rest of the state's environmental laws. Currently, we are

waiting on receiving final EPA approvals and then should be able to complete the transfer.

- Section 7: Makes the bill an emergency measure so that these issues are addressed immediately to avoid any problems when responsibilities are shifted to the Department of Environmental Quality.