

2023 HOUSE AGRICULTURE

HB 1302

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1302
1/20/2023

Relating to anhydrous ammonia facility applications.

Vice Chairman Beltz call the meeting to order 9:38 AM

Members present: Chairman Thomas, Representatives Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.
Members Absent: Representatives Christy, Finley-DeVille

Discussion Topics:

- County recommendations
- Auditor notification
- County level knowledge
- Local control

In favor:

Representative Cynthia Schreiber-Beck, District 25, primary bill sponsor, #14721
Eric Delzer, Pesticide and Fertilizer Division Director for the ND Department of Agriculture, #14663
Stu Letcher, ND Agricultural Association & ND Grain Dealers Association (no written testimony)

Opposed:

Sam Wagner, Dakota Resource Council #14250

Vice Chairman Beltz adjourned the hearing 10:08 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1302
1/20/2023

Relating to anhydrous ammonia facility applications.

Vice Chairman Thomas call the meeting to order 11:04 AM

Members present: Chairman Thomas, Representatives Beltz, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle. Members Absent: Representatives Christy, Finley-DeVille

Discussion Topics:

- Local control

Representative VanWinkle moves to amend and change 30 days to 45 days.
Representative Fisher seconded.

Chairman Thomas calls for a voice vote, unanimously passed.

Representative Olson will carry the bill.

Chairman Thomas adjourned the meeting at 11:09 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1302
1/20/2023

Relating to anhydrous ammonia facility applications.

Vice Chairman Thomas call the meeting to order 11:23 AM

Members present: Chairman Thomas, Representatives Beltz, Fisher, Headland, Henderson, Kiefert, Olson, Pritchard, Schreiber-Beck, Tveit, VanWinkle.

Members Absent: Representatives Christy, Finley-DeVille

Discussion Topics:

- Committee action

Representative Olson moved to adopt amendment #20379, LC#23.0855.01001
Representative Schreiber-Beck seconded.

Motion passed with unanimous voice vote.

Representative Tveit moved do pass as amended.
Representative Olson seconded.

Roll call votes:

| Representatives | Vote |
|---------------------------------------|-------------|
| Representative Paul J. Thomas | Y |
| Representative Mike Beltz | Y |
| Representative Josh Christy | AB |
| Representative Lisa Finley-DeVille | AB |
| Representative Jay Fisher | Y |
| Representative Craig Headland | Y |
| Representative Donna Henderson | Y |
| Representative Dwight Kiefert | Y |
| Representative SuAnn Olson | Y |
| Representative Brandon Prichard | Y |
| Representative Cynthia Schreiber-Beck | Y |
| Representative Bill Tveit | Y |
| Representative Lori VanWinkle | Y |

Motion carries 11-0-2

Representative Olson will carry the bill.

Chairman Thomas adjourned the meeting at 11:30 AM

Diane Lillis, Committee Clerk

January 20, 2023

OH 1-20-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1302

Page 1, line 22, replace "and" with "or"

Page 2, line 14, replace "thirty" with "forty-five"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1302: Agriculture Committee (Rep. Thomas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1302 was placed on the Sixth order on the calendar.

Page 1, line 22, replace "and" with "or"

Page 2, line 14, replace "thirty" with "forty-five"

Renumber accordingly

2023 SENATE AGRICULTURE AND VETERANS AFFAIRS

HB 1302

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1302
3/2/2023

A BILL for an Act relating to anhydrous ammonia facility applications

2:12 PM Chairman Luick opened the meeting. Senators Hogan, Weston, Weber, Luick, Myrdal, and Lemm were present.

Discussion Topics:

- Anhydrous ammonia facility application
- Denial of a license
- Licensure of new owner
- County oversight
- Local control

2:14 PM Representative Schreiber-Beck, North Dakota State Legislature, District 25, introduced the bill and testified in favor #21682

2:20 PM Eric Delzer, Fertilizer Division Director, ND Department of Agriculture, testified in favor #21628

2:26 PM Stu Lecher, Lobbyist, ND Agricultural Association, testified in favor verbally.

2:29 PM Senator Weber, moved DO PASS HB 1302.

2:29 PM Senator Myrdal, seconded.

Roll call vote.

| Senators | Vote |
|-----------------------|------|
| Senator Larry Luick | Y |
| Senator Janne Myrdal | Y |
| Senator Kathy Hogan | Y |
| Senator Randy D. Lemm | Y |
| Senator Mark F. Weber | Y |
| Senator Kent Weston | Y |

Motion Passed 6-0-0. DO PASS HB 1302

2:30 PM Senator Lemm will carry.

Additional written testimony:

Sam Wagner, Dakota Resource Council, testified in opposition #21416.

2:31 PM Chairman Luick closed the meeting.

Dave Owen, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1302, as engrossed: Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1302 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1302

Testimony HB1302

Sam Wagner on behalf of
Dakota Resource Council
1720 Burnt Boat Dr. Ste 104
Bismarck ND 58503
Testimony in Opposition for HB 1302

To the Honorable Chairman of the House Ag Committee and to the representatives of the house. DRC would like to submit the following comments on HB1302.

This bill takes local control away from the counties and continues the trend of top down power of the Ag Commissioner. In my previous experience as a worker at an Anhydrous Ammonia Plant in Sanborn ND with Dakota Plains Cooperative, I know firsthand the dangers that a plant can pose to the local community. The community and the county must decide if they are okay with these risks, not a commissioner that lives miles away from the project.

This bill would make it easier for anhydrous plants to be applied for without the county's consent and our organization would believe that local control should be strengthened rather than taken away. This bill strips the authority that the county commission has to see the zoning permits until the ag commissioner's office looks at them and the power to deny licenses for non-compliance of existing facilities at the expense of sole authority to the commissioner.

We would urge you to recommend a DO NOT PASS vote on this legislation.

COMMISSIONER
DOUG GOEHRING



ndda@nd.gov
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NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

Testimony of Eric Delzer
Pesticide and Fertilizer Division Director
House Agriculture Committee
Room 327C
January 20, 2023

Good morning, Chairman Thomas and members of the House Agriculture Committee. I am Eric Delzer, and I am the Pesticide and Fertilizer Division Director for the Department of Agriculture.

Commissioner Goehring supports and urges the passage of House Bill 1302 which amends chapter 4.1-37 of the North Dakota Century Code regarding anhydrous ammonia storage facility licensing requirements. This bill proposes streamlining the process for licensing anhydrous ammonia facilities and allow them to be brought into service more quickly.

Current statute requires that anhydrous ammonia facility owners must apply to both the Agriculture Commissioner and the applicable board of county commissioners for an anhydrous ammonia storage facility operator's license.

When the licensing requirements were enacted in the 1980s, most facilities resided within or very near the city limits of most small towns in the state.

At that time, it would have made a lot of sense that local authorities would be required to be included in the licensing process so they could review and approve the siting of these facilities before the Agriculture Commissioner issued a license. However, that process may now be outdated and in some cases completely unnecessary.

For example, the way the statute is currently written, it requires the county to provide approval for the issuance of a license in every case. Even a simple transfer of ownership of a grandfathered facility that has been in service and in good standing for over 40 years would have to be approved by the county before we can issue a license.

While most counties have been very good to work with and provide a quick turnaround, other counties have not been so responsive. We have had certain instances where it has taken over eight months to get an approval and currently, we have an application that was submitted 13 months ago and despite many attempts to engage with the county, we are still awaiting a response.

House Bill 1302 would still allow the opportunity for local zoning review if a county chooses to do so but would also allow them to opt out of the process if they wish. The bill also proposes reasonable timelines to complete a local zoning review and would give the Agriculture Commissioner the authority to issue a license if the county declines to provide a response.

We believe the proposed language of the bill would allow licenses to be approved and issued much more quickly while still allowing local authorities to be involved in the process if they choose to do so.

Chairman Thomas, and members of the committee, thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

Introduction and Testimony in Support of House Bill 1302
House Agriculture Committee – January 20, 2023 – C Schreiber-Beck, District 25 Representative

Chair Thomas, Vice-Chair Beltz and members of the House Agriculture Committee:

For the record, I am Cindy Schreiber-Beck, District 25 Representative.

House Bill 1302 simplifies the process of licensing anhydrous ammonia facilities

Section 1 of the bill is an amendment to North Dakota Century Code 4.1-37-03. The amendment would streamline the process of securing a license for anhydrous ammonia facilities and anhydrous mobile storage containers. Additionally, clean-up was done in section 1.

To address timeline issues, the agriculture commissioner would manage the following:

- Accept the application for a license and required information regarding the siting for an anhydrous ammonia facility or anhydrous mobile storage containers and be responsible for issuing a license after the board of county commissioners had the opportunity to review and rule on all applications (see below in italics)
- Deny a license for failure to remit the proper fee; failure to comply with the siting requirements of the chapter and rules adopted under this chapter if constructed after June 30, 1985; or the facility failing to meet the initial inspection standards required by this chapter and any rules adopted under this chapter

*After receiving and reviewing the application and siting information, the agriculture commissioner is required to provide a written notification of intent to issue a storage facility operator's license for a new proposed facility to the board of county commissioners, in the county where the facility is located. The written notification must include copies of the submitted application materials. Upon receipt of the notification, the county has **thirty** days to request an allowance for a local zoning review. If a local zoning review is requested, the agriculture commissioner shall allow the county **sixty** days to complete the review and give written approval. If the county fails to respond within the specified time, the agriculture commissioner may issue a license. If the county applies additional zoning requirements, the agriculture commissioner may require compliance with the local zoning ordinance before issuing a license.*

In Section 2 of the bill, section 4.1-37-04 of the North Dakota Century Code is amended by adding the requirement that if a storage facility changes ownership, the agriculture commissioner shall provide a written notification to the county when the commissioner issues a license to the new owner.

As the regulatory agency, the ag commissioner has the responsibility to adopt rules necessary to implement chapter 4.1-37 anhydrous ammonia facilities and adopt the 2014 American national standard safety requirements for the storage and handling of anhydrous ammonia. Chapter 4.1-37 includes license requirements, license fee, state siting requirements, transfer hose requirements, pressure relief devices, inspection, reinstalled and secondhand anhydrous ammonia storage containers, use of fees-safety promotion, prohibitions, bulk delivery, hydrostatic test procedures, wet fluorescent magnetic particle test procedures, enforcement, and penalty. HB 1302 only simplifies the license and siting process.

Thank you for your consideration of HB 1302.

23.0855.01001
Title.02000

Adopted by the Agriculture Committee

January 20, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1302

Page 1, line 22, replace "and" with "or"

Page 2, line 14, replace "thirty" with "forty-five"

Renumber accordingly

Testimony HB1302

Sam Wagner on behalf of
Dakota Resource Council
1720 Burnt Boat Dr. Ste 104
Bismarck ND 58503
Testimony in Opposition for HB 1302

To the Honorable Chairman of the House Ag Committee and to the representatives of the house. DRC would like to submit the following comments on HB1302.

This bill takes local control away from the counties and continues the trend of top down power of the Ag Commissioner. In my previous experience as a worker at an Anhydrous Ammonia Plant in Sanborn ND with Dakota Plains Cooperative, I know firsthand the dangers that a plant can pose to the local community. The community and the county must decide if they are okay with these risks, not a commissioner that lives miles away from the project.

This bill would make it easier for anhydrous plants to be applied for without the county's consent and our organization would believe that local control should be strengthened rather than taken away. This bill strips the authority that the county commission has to see the zoning permits until the ag commissioner's office looks at them and the power to deny licenses for non-compliance of existing facilities at the expense of sole authority to the commissioner.

We would urge you to recommend a DO NOT PASS vote on this legislation.

COMMISSIONER
DOUG GOEHRING



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NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
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BISMARCK, ND 58505-0020

Testimony of Eric Delzer
Pesticide and Fertilizer Division Director
Senate Agriculture and Veteran's Affairs Committee
Fort Union Room
March 2, 2023

Good morning, Chairman Luick and members of the Senate Agriculture and Veteran's Affairs Committee. I am Eric Delzer, and I am the Pesticide and Fertilizer Division Director for the Department of Agriculture. Commissioner Goehring strongly supports House Bill 1302. This bill proposes streamlining the process for licensing anhydrous ammonia facilities and allow them to be brought into service more quickly.

Current statute requires that anhydrous ammonia facility owners must apply to both the Agriculture Commissioner and the applicable board of county commissioners for an anhydrous ammonia storage facility operator's license. The way it is currently written, it requires the county to provide approval for the issuance of a license in every case. Even a simple transfer of ownership of a grandfathered facility that has been in service and in good standing for over 40 years would have to be approved by the county before we can issue a license.

While most counties have been very good to work with and provide a quick turnaround, other counties have not been so responsive. We have had certain instances where it has taken over eight months to get an approval

and currently, we have an application that was submitted 15 months ago and despite many attempts to engage with the county, we are still awaiting a response.

House Bill 1302 would still allow the opportunity for local zoning review if a county chooses to do so but would also allow them to opt out of the process if they wish. The bill also proposes reasonable timelines to complete a local zoning review and would give the Agriculture Commissioner the authority to issue a license if the county declines to provide a response. We believe the proposed language of the bill would allow licenses to be approved and issued much more quickly while still allowing local authorities to be involved in the process if they choose to do so.

Chairman Luick, and members of the committee, thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

Introduction and Testimony in Support of House Bill 1302
C Schreiber-Beck, District 25 Representative

Chair Luick, Vice-Chair Myrdal and members of the Senate Agriculture and Veterans Affairs Committee:

For the record, I am Cindy Schreiber-Beck, District 25 Representative.

House Bill 1302 addresses changes to the process of licensing anhydrous ammonia facilities.

Section 1 of the bill is an amendment to North Dakota Century Code 4.1-37-03. The amendment would streamline the process of securing a license for anhydrous ammonia facilities and anhydrous mobile storage containers by reducing the direct authority of the board of county commissioners and adding a timeline. Additionally, clean-up there is clean-up to the language in section 1.

If the bill passes, the agriculture commissioner would be responsible to:

- Accept the application for a license and required information regarding the siting for an anhydrous ammonia facility or anhydrous mobile storage containers and be responsible for issuing a license after the board of county commissioners had the opportunity to review the application and rule on the siting (added language below in italics)
- Deny a license for failure to remit the proper fee; failure to comply with the siting requirements of the chapter and rules adopted under this chapter if constructed after June 30, 1985; or the facility failing to meet the initial inspection standards required by this chapter and any rules adopted under this chapter

*After receiving and reviewing the application and siting information, the agriculture commissioner is required to provide a written notification of intent to issue a storage facility operator's license for a new proposed facility to the board of county commissioners, in the county where the facility is located. The written notification must include copies of the submitted application materials. Upon receipt of the notification, the county has **forty-five** days to request an allowance for a local zoning review. If a local zoning review is requested, the agriculture commissioner shall allow the county **sixty** days to complete the review and give written approval. If the county fails to respond within the specified time, the agriculture commissioner may issue a license. If the county applies additional zoning requirements, the agriculture commissioner may require compliance with the local zoning ordinance before issuing a license.*

In Section 2 of the bill, section 4.1-37-04 of the North Dakota Century Code is amended by adding the requirement that if a storage facility changes ownership, the agriculture commissioner shall provide a written notification to the county when the commissioner issues a license to the new owner.

As the regulatory agency, the ag commissioner has the authority to adopt rules necessary to implement chapter 4.1-37 anhydrous ammonia facilities and adopt the 2014 American national standard safety requirements for the storage and handling of anhydrous ammonia. Chapter 4.1-37 includes license requirements, license fee, state siting requirements, transfer hose requirements, pressure relief devices, inspection, reinstalled and secondhand anhydrous ammonia storage containers, use of fees-safety promotion, prohibitions, bulk delivery, hydrostatic test procedures, wet fluorescent magnetic particle test procedures, enforcement, and penalty. HB 1302 only simplifies the license and siting process.

Thank you for your consideration of HB 1302.