

2016 South Dakota Legislative Update

The South Dakota legislature met for 38 days beginning January 12, 2016. There were 418 bills considered.

In SD, all the statewide and federal elected positions are held by Republicans. The House is 58 R – 12 D. The Senate is 27 R – 8 D. Both the House and the Senate members serve two year terms with an eight year term limit (though you can switch houses and begin anew). Every seat is up every two years. The 3 member elected Public Utilities Commission is the primary regulatory body. Each of the Commissioners are Republican.

We began session expecting to spend significant time protecting the South Dakota State Implementation Plan. The year before we killed several bills brought in response to the Clean Power Plan requiring or allowing legislative participation in the SIP.

The Feb 9 federal court stay of the CPP stopped those initiatives. Instead, we encountered several eminent domain related bills introduced because our PUC had approved construction of the Dakota Access Pipeline and reauthorized the Keystone XL line immediately prior to session. With several transmission projects just beginning or underway for the utilities, we pivoted quickly and eventually successfully.

The majority of legislative attention though, was to the Governor's proposed half cent state sales tax increase for education and whether or not to expand South Dakota's Medicaid system. The discussion was hyper contentious as the year before both parties had voted to raise gas taxes 6 cents, excise taxes 25%, and license fees 20% (\$85 million dollar annual impact). The sales tax increase passed (4 to 4.5%). Medicaid expansion did not and will likely return in 2017.

Bills of Interest / HB = House Bill; SB = Senate Bill

HB 1032. Revise certain provisions regarding guaranteed energy savings contracts. Signed by the Governor.

Brought by the Bureau of Administration, the bill changed statutes enacted in 1990 allowing public buildings to undergo energy audits and then apply for energy efficiency project loans. The savings pay for the improvements. The Bureau testified that small school districts hope to use the program.

HB 1038. Update certain citations to federal regulations regarding pipeline safety inspections. Signed by the Governor.

Brought by the Public Utilities Commission, the bill updates to the most recent federal version the State statutory citations of federal regulations related to pipeline safety law.

HB 1106. Exempts certain trees from requirements related to the removal of vegetation and debris from township road rights-of-way and to extend general immunity from certain civil liability for trees located in the township road right-of-way. Failed on the House Floor.

A township began cutting down a three mile stretch of 100 year old Cottonwood trees as they're liable for damages within 33 feet of a right of way. Locals protested and legislation was introduced to provide new options to the township. We considered amendments but worried that townships would use their newfound ability to affect other right of ways, so we joined with other utilities to defeat the bill.

HB 1134. Provide for access to certain property for the purpose of making surveys. Signed by the Governor.

A placeholder bill we introduced to manage the eminent domain discussions. It borrows language from existing law to clarify the recourse for companies who are turned away when trying to survey private property. It allows the company to give 30 days written notice for an new expected date of entry and allows a payment to the owner for any actual damage caused by the entry.

HB 1153. Reform eminent domain by consensus. Signed by the Governor.

Another placeholder that we introduced. During conversations with the landowner groups, there was a wide consensus to avoid the court system if

possible and everyone thought mediation was a good alternative. And while it's currently available, there is no reference to mediation in the fairly antique eminent domain statutes. The bill states in its entirety that, "the parties may by agreement refer a dispute that is the subject of a proceeding under this chapter for resolution by mediation using the services of a mediator selected by the parties." It was passed enthusiastically as all sides were seeking some consensus.

HB 1177. Revise certain provisions concerning tax incentives for certain energy facilities. Signed by the Governor.

Brought by NextEra Energy, the bill replicates the wind farm tax treatment for solar facilities with a "nameplate capacity of at least five thousand kilowatts."

HB 1197. Prohibit hydraulic fracturing. Died in House Agriculture 12 to 1.

"Notwithstanding any other provision of law, no person may engage in hydraulic fracturing in this state." The API lobbyist was the sole opponent.

HB 1216. Provide for the determination of avoided cost by certain public utilities. Died in House Commerce 11 to 2.

Brought by the citizens group, Dakota Rural Action, the bill defined avoided costs to include "the value of energy and the energy's delivery, the value of the generation capacity, the value of transmission capacity and avoided transmission line loss, and the value of any system installed at a high value location on the distribution grid." The investor owned utilities collaborated to defeat the bill.

House Concurrent Resolution 1005. Urging the federal government to refrain from enacting regulations that threaten the reliability and affordability of electric power in the northern great plains. Passed the House 65 to 3. Passed the Senate 33 to 0. Amended. The House concurred with Senate amendments 64 to 4.

Introduced by Rep. John Wiik of Big Stone City (near the State's only coal plant), the resolution asked the EPA to stop enacting harmful regulations and encourages them to work with the state and the utility companies to find low cost solutions for customers.

House Concurrent Resolution 1008. Urging Congress to support and to ask the United States Secretary of State to approve the Keystone XL Pipeline project. Passed the House 56 to 10. Passed the Senate 23 to 9.

Does just what the title states. It had nearly 50 sponsors (all Republican).

SB 51. Revise certain provisions concerning the use tax. Died in Senate State Affairs 9 to 0.

Introduced by the Department of Revenue in response to DOR losing two separate court cases where they asserted use tax was due (Northern Border Pipeline and Iberdrola). Use tax is often paid when sales tax is not. Senate State Affairs tabled the bill because of concerns raised by a large number of lobbyists (ourselves included) about the impact and breadth of change. The original bill changed the threshold for use tax application from when one “stores, uses, AND consumes personal property” to whether it is stored, used, OR consumed. Also, to define the transfer of electronic information as a use. DOR was very unhappy their initiative was tabled and resurrected a portion of the bill as SB 139.

SB 76. Revise certain codes and standards regarding wind energy set back requirements. Died on the Senate Floor 12 to 21.

Current law requires a wind turbine to be set back either 500 feet or 1.1 times the tower height away from adjacent property lines. The bill removed the 500 foot requirement to accommodate turbines on a wind farm already constructed that were built within that distance. The Senators were tolerant, but not supportive.

SB 127. Revise certain provisions regarding the requirements for placement of a utility facility across a railroad right-of-way. Signed by the Governor.

Sponsored by the Senate majority leader, the bill was a vehicle for the anti-railroad coalition (of which we participated). This version limited fees charged by the railroad for rights of way. It also compels action within a specified time frame for crossing requests.

SB 131. Establish a target teacher salary and a target teacher ratio, to revise certain provisions regarding education funding, to create the School Finance

Accountability Board, and to provide for certain school district reporting and penalties. Signed by the Governor.

SB 131 was used to accommodate many of the conditions, etc. placed on the millions being directed toward the schools. It contained wind tax changes necessary to gain wind advocate votes for the education increase. The Senate amendment to 131 was:

“(6B) "Wind energy tax revenue," any wind energy tax revenue apportioned to school districts pursuant to § 10-35-21 from a wind farm producing power for the first time before July 1, 2016, shall be considered local effort pursuant to subdivision (6) and other revenue base amount pursuant to subdivision (6A). However, any wind energy tax revenue apportioned to a school district from a wind farm producing power for the first time after June 30, 2016, one hundred percent shall be retained by the school district to which the tax revenue is apportioned for the first five years of producing power, eighty percent for the sixth year, sixty percent for the seventh year, forty percent for the eighth year, twenty percent for the ninth year, and zero percent thereafter;”.

SB 134. Prohibit the Public Utilities Commission from granting certain permits until federal approval is granted. Died in Senate Commerce and Energy 5 to 2.

Brought by a handful of Democrats and directed at Keystone XL, the bill did just what the title states.

SB 139. Revise certain provisions regarding the use tax. Died in Senate State Affairs 7 to 1.

After SB 51 died, the Dept. of Revenue circulated a rewrite and gathered enough Democrat signatures to turn it in. it was intended to tax the value of the gas burned in the Northern Border pump stations. MDU, NorthWestern and MidAmerican all use NBP. We opposed the bill.

SB 145. Require certain provisions to be met before allowing public utilities or carriers to exercise eminent domain procedures. Died in Senate Judiciary 5 to 2.

The bill would not allow a company to exercise its eminent domain powers until a permit was issued by the PUC. Also, it prohibited a utility from exercising eminent domain unless 80 percent of the landowners voluntarily allow an easement. It was brought because of pipelines, but the sponsor is from the Aberdeen area and has been very interested in the Big Stone to Ellendale transmission line process.

SB 146. Impose a fee on certain pipelines carrying crude oil and to create a crude oil pipeline compensation fund that may be used in the event of a crude oil spill. Died in Senate Transportation 4 to 3.

The bill would impose a 2 cent per barrel fee on pipelines in SD. Proceeds would go to a cleanup fund. It was amended to exempt companies that pay the federal oil spill liability excise tax. Tough committee. Good win for TransCanada.