

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE**

Wednesday, September 17, 2014  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 10:30 a.m.

**Members present:** Senators Rich Wardner, John Andrist, Kelly M. Armstrong, David Hogue, Philip M. Murphy, Connie Triplett; Representatives Ben W. Hanson, Todd Porter, Mike Schatz, Peter F. Silbernagel

**Members absent:** Representatives Tracy Boe, Chuck Damschen

**Others present:** John Walstad, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

**It was moved by Representative Silbernagel, seconded by Senator Armstrong, and carried on a voice vote that the minutes of the August 14, 2014, meeting be approved as distributed.**

**KLJ REPORT**

Mr. Niles Hushka, Chief Executive Officer, KLJ, gave a presentation ([Appendix B](#)) on the 2014-19 North Dakota oil and gas industry impact study ([Appendix C](#)). He said oil production could reach two million barrels per day. He said each month the per day oil production amount is increasing by about 18,000 barrels. He said there is 40 to 50 percent depletion in the first year of a Bakken well.

In response to a question from Senator Andrist, Mr. Hushka said the payback timeline comparisons are all on pad costs. He said the costs do not include gathering systems.

In response to a question from Senator Andrist, Mr. Hushka said the boundaries for the high-production areas are fairly consistent and do not move more than a mile or two. He said federal lands in Billings County have low productivity but high potential.

In response to a question from Senator Armstrong, Mr. Hushka said the population growth rates in the study are from today's date forward. He said using a medium scenario for the growth of Williston from 2014 to 2019 results in a need for 26,000 housing units. He said under the same conditions, there will be a need for 6,000 housing units in Minot and 10,000 housing units in Dickinson.

Mr. Hushka said carbon dioxide recovery will be a small issue in the next five years.

In response to a question from Representative Porter, Mr. Hushka said in the past, a rig has moved on site and then has called for a frack job and a gathering line. He said now gathering lines can be put in place sooner because operators have more information earlier on. He said previous drilling was to hold leases, and presently, 90 percent of the drilling is pad drilling. He said gathering lines may have to absorb eight wells in a single week. He said it is difficult to size the line because of the drop off in production. He said drillers will try to stage drilling in different areas so there is not so much production in one area at one time.

Mr. Hushka said one concern is local regulation of crude oil trains. He said another concern is the siting process for transmission pipelines.

Mr. Hushka said in the next five years, oil companies may be able to export light sweet crude. He said there is talk of removing the depletion allowance for oil development. He said the depletion allowance makes oil exploration profitable. He said the rail industry cannot recover fast enough to meet the needs of the oil industry and there will be car shortages. He said there will need to be more electricity supplied to pads with 24 to 36 wells per pad.

In response to a question from Senator Murphy, Mr. Hushka said the needed social infrastructure includes day care, education, affordable housing, mental and physical health services, and affordable air travel.

In response to a question from Senator Andrist, Mr. Hushka said bypassing cities through new rail construction most likely will not happen. He said railroads have switches, fueling facilities, and other rail facilities in cities that cannot be bypassed. He said the response of the railroad has been to strengthen track operating systems in cities.

In response to a question from Representative Silbernagel, Mr. Hushka said the amount of capital is presently good and will get better. He said conservative banks have begun to finance projects in the Bakken.

In response to a question from Senator Triplett, Mr. Hushka said he surveyed his employees in Williston and none of the employees wanted to live in Williston in five years. He said the employees looked at working in Williston as a term of duty. He said only two of the 32 employees brought families. He said the cost of living is high, and even if paid 25 percent more, it is not enough. He said the employees came to work, not live. He said a vast majority had no intention of moving to Williston because of non-job-related reasons like kids being the wrong age to relocate and a spouse with a good job in a different area.

In response to a question from Senator Triplett, Mr. Hushka said it is difficult to find information on how effective a frack job is because of oil companies keeping that information confidential. He said employee churn shares the information among oil companies. He said KLJ does not know this information.

In response to a question from Senator Triplett, Mr. Hushka said he strongly believed two years ago that there would be four to six wells per pad, instead of as now predicted 36 wells per pad. He said at that time there were no thoughts of three-dimensional field development.

In response to a question from Representative Schatz, Mr. Hushka said there are many reasons why the tribe has not developed the oil and gas resources on the reservation. He said the tribe requires that powerlines are buried. He said powerlines are overhead off of the reservation. He said burying the line requires that it is double jacketed and is cooled. He said this is not economical. He said this results in generators being used on the reservation. In addition, he said, there are long permit approval times. He said there is some uncertainty as to who holds the lease. He said it is all about relationships on tribal lands.

Mr. Dean A. Bangsund, Department of Agribusiness and Applied Economics, North Dakota State University, answered questions for the committee. In response to a question from Senator Andrist, Mr. Bangsund said there is some regionality as to the population modeling. He said Bowman is a trade center and not all the employees are entirely oil and gas employees.

In response to a question from Senator Triplett, Mr. Bangsund said the numbers provided assume the building of infrastructure. He said he does not know if a community can or will build the infrastructure or if workers will bring their families requiring different infrastructure.

Chairman Wardner said the report provides information he did not know even though he lives in oil country. He said the report will help the legislature in going forward.

**It was moved by Representative Schatz, seconded by Senator Triplett, and carried on a roll call vote that the committee accept the completion of Phase 4 and the report for payment.** Senators Wardner, Andrist, Armstrong, Murphy, and Triplett and Representatives Hanson, Porter, Schatz, and Silbernagel voted "aye." No negative votes were cast.

### **FUNDING FOR ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND BILL DRAFT**

Committee Counsel presented a bill draft [[15.0113.01000](#)] to increase funding to the abandoned oil and gas well plugging and site reclamation fund from \$5 million to \$10 million per year and increase the cap on the fund from \$75 million to \$100 million.

Senator Triplett said she was in favor of increasing the dollar amount and knows that the present amount is not enough but did not know what the amount should be. She said the bill draft was a good vehicle.

It was moved by Representative Silbernagel, seconded by Representative Hanson, and carried on a roll call vote that the bill draft to increase funding for the abandoned oil and gas well plugging and site reclamation fund be approved and recommended to the Legislative Management. Senators Wardner, Andrist, Armstrong, Murphy, and Triplett and Representatives Hanson, Porter, Schatz, and Silbernagel voted "aye." No negative votes cast.

### **FUNDING FROM OIL AND GAS PRODUCTION TAX FOR CERTAIN HIGHWAY PROJECTS IMPACTED BY ENERGY DEVELOPMENT BILL DRAFT**

Committee Counsel presented a bill draft [[15.0114.01000](#)] to transfer \$75 million per biennium from the oil and gas production tax to the state highway fund for major improvements and construction of highway corridors impacted by energy development, with a priority for four lanes for United States Highway 85.

Representative Porter said the bill draft is to build up money for projects while waiting for the project to begin. He said the southern portion of United States Highway 85 will need to be four lanes and this will make sure there will be money to do it.

Senator Triplett said she would vote no because it is not appropriate for the Legislative Assembly to choose one project over another. She said the Department of Transportation has a mechanism to choose projects. She said the mechanism was used for the four lanes north of Watford City. She said the bill draft was micromanaging, and the Legislative Assembly should set policy and the executive branch should execute the law.

Representative Porter said United States Highway 2 would still be two lanes unless the Legislative Assembly would have said it had to be four lanes. He said the Department of Transportation said United States Highway 2 should only be two lanes. He said the Western Area Water Authority was prioritized by the Legislative Assembly, and the State Water Commission did not like the prioritization. He said the Legislative Assembly has the benefit of being close to the people.

Senator Triplett said she was being consistent in not supporting any legislative prioritization for certain projects.

It was moved by Representative Porter, seconded by Senator Armstrong, and carried on a roll call vote that the bill draft to transfer \$75 million per biennium from the oil and gas production tax to the state highway fund for oil-impacted highway projects be approved and recommended to the Legislative Management. Senators Wardner, Andrist, Armstrong, and Murphy and Representatives Hanson, Porter, Schatz, and Silbernagel voted "aye." Senator Triplett voted "nay."

### **SALES AND USE TAX EXEMPTION FOR MATERIALS USED FOR OIL GATHERING PIPELINES BILL DRAFT**

Committee Counsel presented a bill draft [[15.0187.01000](#)] to create a sales and use tax exemption for materials used for oil gathering pipelines.

Representative Hanson said that he did not know if the exemption would encourage growth of gathering pipelines.

Chairman Wardner said the incentive is targeted at getting trucks off the road.

Senator Triplett said the gathering pipeline industry does not need the incentive. She said gathering pipelines have the capital and are able to plan better to meet the needs. She said landowner fatigue is the greatest impediment to pipelines. She said this is not a direct benefit to landowners. She said the new gas gathering rules have just become effective, and the gas capture rules will not be effective until later. She said this is not a pressing issue. She said with more information she might support it in the future.

Representative Porter said the committee should move the bill draft to the legislative session for hearing.

Senator Andrist said he may not necessarily endorse the bill draft but the bill draft should be considered during the legislative session.

Senator Triplett said the motion does not contain the phrase that the committee does not endorse the bill draft but is merely moving it along to the legislative session.

**It was moved by Senator Andrist, seconded by Representative Silbernagel, and carried on a roll call vote that the bill draft to create a sales and used tax exemption for materials used for gathering pipelines be approved and recommended to the Legislative Management.** Senators Wardner, Andrist, Armstrong, Hogue, and Murphy and Representatives Porter, Schatz, and Silbernagel voted "aye." Senator Triplett and Representative Hanson voted "nay."

### **SUPPLEMENTAL FUNDING FOR POLITICAL SUBDIVISIONS IF OIL AND GAS TAX REVENUE EXCEEDS LEGISLATIVE FORECASTS BILL DRAFT**

Committee Counsel presented a bill draft [[15.0219.02000](#)] to provide supplemental funding to political subdivisions when oil and gas tax revenues exceed legislative forecast. He said the bill draft provides a trigger mechanism and an appropriation if in the first six months of the biennium revenues exceed the forecast by 20 percent. He said there would be a \$200 million appropriation to oil and gas-producing political subdivisions using the current funding formula.

Senator Triplett said the committee did not see the testimony received by the EmPower North Dakota Commission or have a summary of it. She said the committee did not know who was involved in the decision. She said she did not support the motion and would not vote for the bill draft.

Representative Silbernagel said if the price of oil goes to \$150 per barrel, this sort of law should be in place.

**It was moved by Representative Schatz, seconded by Senator Armstrong, and carried on a roll call vote that the bill draft to provide supplemental funding for political subdivisions if tax revenue exceeds legislative forecasts be approved and recommended to the Legislative Management.** Senators Wardner, Andrist, Armstrong, Hogue, and Murphy and Representatives Hanson, Porter, Schatz, and Silbernagel voted "aye." Senator Triplett voted "nay."

### **OIL AND GAS STRATEGIC PLANNING AUTHORITY BILL DRAFT**

Committee Counsel presented a bill draft [[15.0220.02000](#)] to create an oil and gas development strategic planning authority.

Senator Triplett said the bill draft was a direct affront to the power of the Governor. She said the coordination of executive branch work should be done within the Governor's office. She said if the Governor or the Industrial Commission asked for a full-time employee to do this kind of work, she would support it.

Mr. Justin Dever, Manager, Office of Innovation and Strategic Initiatives, Department of Commerce, said the bill draft was based on the pipeline authority and transmission authority and the powers these authorities have for coordination. He said these authorities provide information so decisions can be made. He said EmPower North Dakota did not discuss putting the authority within the legislative branch.

Chairman Wardner said the legislature may need this type of individual. He said it was worth passing the bill draft on to the legislative session where changes can be made if needed.

Senator Andrist said by voting for the bill draft, he was not recommending the legislation but the idea.

**It was moved by Representative Silbernagel, seconded by Representative Porter, and carried on a roll call vote that the bill draft to create an oil and gas strategic planning authority be approved and recommended to the Legislative Management.** Senators Wardner, Andrist, Armstrong, Hogue, and Murphy and Representatives Hanson, Porter, Schatz, and Silbernagel voted "aye." Senator Triplett voted "nay."

### **LICENSING OF COMMERCIAL DRILL CUTTINGS RECYCLERS AND WELL OPERATOR TAX INCENTIVE BILL DRAFT**

Committee Counsel presented a bill draft [[15.0233.01000](#)] to have the State Department of Health license commercial drill cuttings recyclers and provide an extraction tax reduction for well operators that use recyclers.

Senator Triplett said she will vote no on the bill draft because there is not enough information on how EmPower North Dakota made the decisions in the bill draft.

Mr. Myles Vosberg, Director, Tax Administration Division, Tax Department, answered questions for the committee. In response to a question from Senator Triplett, Mr. Vosberg said the Tax Department had input into the bill draft as to the administrative portions of the bill draft.

Chairman Wardner said when the committee votes on the bill draft, the committee is voting to recommend the bill draft to the Legislative Management.

**It was moved by Representative Hanson, seconded by Senator Armstrong, and carried on a roll call vote that the bill draft to license commercial drill cuttings recyclers and provide a well operator tax incentive be approved and recommended to the Legislative Management.** Senators Wardner, Armstrong, and Hogue and Representatives Hanson, Porter, Schatz, and Silbernagel voted "aye." Senators Andrist, Murphy, and Triplett voted "nay."

### **SALES AND USE TAX EXEMPTION FOR TANGIBLE PERSONAL PROPERTY FOR FERTILIZER OR CHEMICAL PROCESSING FACILITY BILL DRAFT**

Committee Counsel presented a bill draft [[15.0240.01000](#)] to create a sales and use tax exemption for a fertilizer or chemical processing facility.

Senator Triplett said maybe the Legislative Assembly should lower the sales tax instead of providing so many exemptions. She reiterated her concern with approving EmPower North Dakota legislative proposals and extended her disapproval to all EmPower North Dakota bill drafts unless more information is provided or the motion is changed.

**It was moved by Representative Silbernagel, seconded by Representative Schatz, and carried on a roll call vote that the bill draft to create a sales and use tax exemption for a fertilizer or chemical processing facility be approved and recommended to the Legislative Management.** Senators Wardner, Armstrong, and Hogue and Representatives Porter, Schatz, and Silbernagel voted "aye." Senators Andrist, Murphy, and Triplett and Representative Hanson voted "nay."

### **WIND TAX INCENTIVE LEGISLATION**

Committee Counsel presented a bill draft [[15.0241.01000](#)] to increase the property tax valuation on wind generation units commenced before January 1, 2015, and completed before January 1, 2017, from 1.5 to 3 percent, to provide a grace period for the income tax credit relating to those wind towers, to remove the sunset on the sales tax exemption for wind, and to remove the \$5 million cap on the sales and use tax exemption for new coal mines located in this state.

Mr. Dever said the wind tax incentives were about to expire for projects that were under construction. He said if the projects are completed on schedule, the tax rate would have been 1.5 percent. He said the tax rate will be 3 percent if completed by the end of 2016 if the wind project has a purchase power agreement or a determination of prudence. He said the production tax will apply to projects after that, which has approximately a 4.5 percent rate equivalency.

Chairman Wardner said commercial property is taxed at 10 percent, residential at 9 percent, and wind was 3 percent and lowered to 1.5 percent. He said this bill draft brings wind back to 3 percent for certain unfinished projects.

Mr. Dever said Section 1 of the bill draft relates to the property tax, Sections 2 and 3 relate to the capacity and production factor, Section 4 relates to the income tax credit, Section 5 removes the sunset on the sales tax exemption for wind, Section 6 removes the sales tax exemption cap of \$5 million for a new coal mine, Section 7 relates to use tax, and Section 8 relates to the effective dates.

In response to a question from Senator Triplett, Mr. Dever said he was not aware of any specific consultation with counties.

Senator Triplett said without the consultation with counties, the committee does not know how the change in property tax will affect the counties. She said counties make their budgets based upon property tax collections.

Chairman Wardner said it will be thoroughly debated in the legislative session.

**It was moved by Senator Murphy, seconded by Representative Silbernagel, and carried on a roll call vote that the bill draft to provide for wind tax incentives be approved and recommended to the Legislative Management.** Senators Wardner, Armstrong, Hogue, and Murphy and Representatives Hanson, Porter, Schatz, and Silbernagel voted "aye." Senators Andrist and Triplett voted "nay."

### COAL BENEFICATION INCENTIVES BILL DRAFT

Committee Counsel presented a bill draft [\[15.0242.01000\]](#) to provide for an exemption from the coal conversion facilities privilege tax for beneficiated coal used within a coal conversion facility and to remove the sunset on the sales and use tax exemptions for beneficiated coal and the severance tax exemption for coal used in certain plants.

In response to a question from Representative Hanson, Mr. John Walstad, Legislative Council, said the expiration date for beneficiated coal tax reductions is being removed. He said at the time the beneficiated coal tax reductions were created, the legislature was cautious about revenue effect and the reductions were put into law on a trial basis. He said there has been a report to the interim Tax Committee and beneficiated coal is under 1 percent of mined coal. He said it appears concerns have been satisfied about this becoming a runaway exemption.

Chairman Wardner said beneficiated coal also provides the benefit of less emissions.

**It was moved by Representative Schatz, seconded by Representative Porter, and carried on a roll call vote that the bill draft to provide for coal beneficiation incentives be approved and recommended to the Legislative Management.** Senators Wardner, Andrist, Armstrong, Hogue, and Murphy and Representatives Hanson, Porter, Schatz, and Silbernagel voted "aye." Senator Triplett voted "nay."

### CRUDE OIL AND NATURAL GAS EXPLORATION LANDFILLS

Committee Counsel presented a bill draft [\[15.0238.01000\]](#) that would remove the special election vote option of a county that could prohibit a permit for an oil and gas exploration landfill from being issued by the State Department of Health.

Representative Porter said he asked for the bill draft because waste created in this state needs to be disposed of in this state. He said this law provides for a "not in my backyard" vote.

Senator Armstrong said testimony on the bill draft will provide an opportunity for the State Department of Health to provide information on staffing, the relationship with counties, and a general update.

Senator Triplett said the process for EmPower North Dakota bill drafts should be improved by providing more information and more of the testimony provided to the EmPower North Dakota Commission to this committee.

Representative Porter said the committee does not ask for this information from an agency proposing a bill draft.

Senator Triplett said she is only against not having enough information. She said the opposition does not come to EmPower North Dakota meetings.

Chairman Wardner said the industries developing different forms of energy used to have a big fight in the legislative session. He said the EmPower North Dakota Commission has been good for North Dakota because it gets these industries to cooperate.

No further business appearing, Chairman Wardner adjourned the meeting at 2:07 p.m.

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Timothy J. Dawson  
Counsel

ATTACH:3