

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Thursday, September 16, 2010
Roughrider Room, State Capitol
Fort Union East Room, Great River Energy Building
Bismarck, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Rich Wardner, John M. Andrist, Robert M. Horne, George Nodland; Representatives Mike Brandenburg, Lee Kaldor, Matthew M. Klein, Todd Porter, Dave Weiler

Members absent: Senators Jim Dotzenrod, Joe Miller; Representative Tracy Boe

Others present: See [Appendix A](#) for additional persons present.

It was moved by Senator Andrist, seconded by Senator Nodland, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

NORTH DAKOTA TRANSMISSION AUTHORITY REPORT

Ms. Sandi Tabor, Director, North Dakota Transmission Authority, made a presentation ([Appendix B](#)) on the annual report of the North Dakota Transmission Authority. She said the present transmission system was designed to move power to customers within this area. She said the goal is to move power out of this area. She said MVP projects will be determined by the Midwest ISO and will allocate the cost across the entire Midwest ISO footprint.

In response to a question from Representative Klein, Ms. Tabor said electricity generators will pay more if transmission is not an MVP project.

In response to a question from Senator Wardner, Ms. Tabor said an electricity generator for the Western Area Power Administration (WAPA) would follow the cost allocation system of WAPA.

In response to a question from Representative Brandenburg, Ms. Tabor said open season is the concept that the transmission system and operators have to be open to accepting generation through a system of tariffs.

In response to a question from Senator Horne, Ms. Tabor said developing a transmission plan that encompasses the entire United States has begun through regional groups, including the Upper Midwest Transmission Development Initiative, and through the Strategic Midwest Area Transmission Study with transmission owners with interests in Midwest ISO and outside Midwest ISO. She said this has resulted in looking at interconnections between independent

system operators. She said these efforts are building blocks for the Eastern Interconnection States Planning Council.

In response to a question from Representative Brandenburg, Ms. Tabor said wind farms need to recover the cost of transmission in the sale of energy. She said if a line required for wind is an MVP line, the cost could be covered by the entire footprint. She said if wind would need a 345-kilovolt line, then a portion would be allocated across the Midwest ISO footprint.

In response to a question from Representative Brandenburg, Ms. Tabor said within Midwest ISO there is a limited customer base. She said utilities that serve the area were being stuck with the costs of transmission, and customers in the area were paying for transmission.

In response to a question from Representative Klein, Ms. Tabor said construction is planned for the CapX 2020 line from Fargo to Monticello, Minnesota, in 2015. She said a portion of that, from Fargo to St. Cloud, Minnesota, could begin sooner.

OIL PRICE DIFFERENTIALS

Mr. Lynn Helms, Director, Department of Mineral Resources, made a presentation ([Appendix C](#)) on the supply chain for gasoline and the price differential. He said the supply chain is complex, and each step extracts costs and profits. He said there are 160 producers in this state, a dozen purchasers, and six transporters. He said purchasers aggregate oil for sale to a refinery. He said taxes take the largest share of money from the supply chain. He said all state taxes from extraction to at the pump equal 43 cents per gallon of gasoline. He said the supply chain can get disrupted. He said when the supply chain is disrupted, purchasers are able to increase profit margins, and producers and royalty owners do not realize full profits.

Mr. Helms said when the Mandan Tesoro Refinery shut down, price differentials increased. He said differentials have been dropping since the Tesoro Refinery was brought back online. He said the impact on royalty owners over the last 13 months due to price differentials was \$19.8 million. He said the impact to the state was \$19.5 million. He said the state has 345,000 barrels of export capacity. He said the production is at 321,000 barrels and climbing. He

said 410,000 barrels is expected next biennium. He said the goal is to keep up with production through new transportation projects.

In response to a question from Senator Wardner, Mr. Helms said the Mandan Tesoro Refinery is the only refinery making money for Tesoro. He said there have been \$23 differentials in the past. He said \$19.8 million does not justify a new or expanded refinery.

In response to a question from Senator Wardner, Mr. Helms said many refineries are not staying in business, and especially smaller ones are being closed. He said there is no growth in gas consumption as the world shifts to a diesel market.

In response to a question from Senator Nodland, Mr. Helms said pricing is calculated each day by New York traders. He said the average contract will change hands 20 times, and this creates variations in price. He said local refineries look at the New York Mercantile Exchange (NYMEX) and set a posted price, approximately 10 percent below NYMEX. Purchasers will make offers below the posted price to make a profit to cover the cost of transportation to the refinery.

In response to a question from Representative Klein, Mr. Helms said the hope is to keep state and royalty losses constant or declining over the next year. He said the Enbridge Berthold to Cromer, Manitoba, link needs to be completed. He said export capacity will be used up within four months. He said if this link is not completed, the cost to royalty owners and the state would be approximately \$1 million per month. He said the issue with the link is the truck stations are on the wrong side of the railroad tracks at which trucks must stop. He said it is difficult to burrow under railroad tracks.

REFINERY STUDY

Mr. Kurt Swenson, Vice President of the Northwest Region, Corval Group, made a presentation ([Appendix D](#)) on the North Dakota refining capacity feasibility study. He said the first phase of the study looked at a 100,000-barrel-per-day, 50,000-barrel-per-day, and 20,000-barrel-per-day refinery. He said a 20,000-barrel-per-day plant had the most positive impact. He said a naphtha plant does not make gasoline. He said the plant makes diesel and extra naphthas. He said the naphtha would be sent to Canada to be used as a dilutant in oil pipelines. He said naphtha lowers the viscosity in the pipeline. He said the 34,000-barrel-per-day naphtha plant would provide economies of scale and less input costs than a 20,000-barrel-per-day refinery. He said the return rate with no borrowed money for a 34,000-barrel-per-day naphtha plant is 9.2 percent.

In response to a question from Senator Andrist, Mr. Swenson said the rate of return for a 34,000-barrel-per-day naphtha plant is comparable or slightly less than similar projects. He said the largest savings over a refinery is in the capital costs.

In response to a question from Senator Andrist, Mr. Swenson said the model was over a 15-year term, and that in the first five years of the project there would be no income. He said there would be no taxes paid on any income because of the carryforward on losses.

In response to a question from Senator Nodland, Mr. Swenson said the projections for diesel consumption increase over time. He said there should be significant oilfield production until at least 2025.

Mr. Swenson said diesel is used for transportation on a global scale, and the global economy is moving toward a diesel-based economy. He said the demand for gas is trending downward.

In response to a question from Representative Kaldor, Mr. Swenson said as a result of the first phase of the study, it was determined that regardless of the size of the refinery, there were marginal economics. He said as a result of this discovery, the study investigated a naphtha alternative. He said the economics of a naphtha plant are better than a 20,000-barrel-per-day standard refinery. He said a naphtha plant will not depress the gas market. He said a naphtha plant is cheaper to build than a typical refinery. He said the market for naphtha in Canada is long-term and transparent.

In response to a question from Senator Horne, Mr. Swenson said the rate of return was determined in two ways--real and nominal. He said real uses discounted dollars, and nominal uses inflated dollars.

REMOVAL OF SUNSET FOR SALES TAX EXEMPTION FOR WIND FACILITIES BILL DRAFT

At the request of Chairman Wardner, committee counsel presented a bill draft [[10153.0100](#)] that removes the expiration on the sales and use tax exemption for production equipment and other property used for building, expanding, or upgrading a wind facility.

It was moved by Representative Klein and seconded by Representative Weiler that the bill draft to remove the sunset for sales tax exemptions for wind facilities be amended to sunset in 2017.

Representative Klein said a drop-dead date would be better because the legislature would then review the exemption at a future date.

Representative Brandenburg said the reason for the bill draft is consistency with other energy sectors. He said having the exemption permanent is an issue of fairness.

Representative Kaldor said a permanent exemption brings certainty to the market. He said it takes time to develop a wind facility, and 2017 may be too short of a horizon for a large investment in a wind facility. He said the exemption places wind on the same playing field as other forms of energy. He said the Legislative Assembly can always revisit the issue.

With the consent of Representative Weiler, Representative Klein withdrew his motion.

Ms. Kathy Strombeck, Research Analyst, Tax Department, provided testimony for the committee. She said there are sales tax exemptions for many activities. She said generally all business can receive a sales tax exemption with some exceptions.

In response to a question from Senator Nodland, Ms. Strombeck said many well-publicized projects exist because of the sales tax exemption.

Mr. Ryan Rauschenberger, Deputy Tax Commissioner, Tax Department, made a presentation ([Appendix E](#)) on wind farm sales tax exemptions. He said the estimated equipment cost for all wind farms was \$1.2 billion, which translates to \$60 million in sales tax exemptions. He said the majority of wind towers were installed in 2008 and 2009.

In response to a question from Senator Wardner, Mr. Rauschenberger said the wind incentives in this state are competitive with surrounding states.

In response to a question from Representative Kaldor, Mr. Rauschenberger said there is a full sales tax exemption in Minnesota and a partial sales tax exemption in South Dakota.

Representative Brandenburg said transmission is being pushed by wind, and wind helps build transmission for other forms of power.

Mr. John Olson, Otter Tail Power Company, presented testimony in favor of the bill draft. He said the exemption is important to wind development. He said the exemption provides certainty and confidence when deciding to build in this state.

It was moved by Representative Brandenburg, seconded by Representative Klein, and carried on a roll call vote that the bill draft to remove the sunset on the sales tax exemption for wind facilities be approved and recommended to the Legislative Management. Senators Wardner, Andrist, Horne, and Nodland and Representatives Brandenburg, Kaldor, Klein, Porter, and Weiler voted "aye." No negative votes were cast.

OIL AND GAS RESEARCH COUNCIL PURPOSES AND RELATED POWERS BILL DRAFT

At the request of Chairman Wardner, committee counsel presented a bill draft [[10154.0100](#)] on allowing the Oil and Gas Research Council to promote innovation and safety, enhancement of environment, and an increase in education concerning the distribution of petroleum products and allowing the Industrial Commission, as manager of the Oil and Gas Research Council, to provide financial assistance for processes and activities directly related to the refining industry and the petroleum marketing industry.

Mr. Mike Rud, President, North Dakota Petroleum Marketers Association, answered questions for the committee.

In response to a question from Representative Kaldor, Mr. Rud said change would allow for more renewable fuels marketing.

It was moved by Representative Klein, seconded by Senator Nodland, and carried on a roll call vote that the bill draft to expand the purposes and related powers of the Oil and Gas Research Council be approved and recommended to the Legislative Management. Senators Wardner, Andrist, Horne, and Nodland and Representatives Brandenburg, Kaldor, Klein, Porter, and Weiler voted "aye." No negative votes were cast.

BIODIESEL PLANT PRODUCTION INCENTIVE BILL DRAFT

At the request of Chairman Wardner, committee counsel presented a bill draft [[10152.0100](#)] that creates a biodiesel plant production incentive. He said the language was based on language for ethanol production incentives before the countercyclical program. He said the bill draft does not identify a funding source. He said the funding source for the ethanol production incentive is up to 40 percent of farm vehicle registrations, subject to a maximum of \$7.5 million.

In response to a question from Representative Klein, committee counsel said the bill draft, if passed, would not provide an incentive until funding was provided.

Representative Brandenburg said the Legislative Assembly needs to figure out how to develop the biodiesel industry.

Representative Weiler said he was hesitant to support the bill draft because of the continuing appropriation.

In response to a question from Senator Wardner, committee counsel said the reason for the continuing appropriation for the ethanol incentive is because funds are collected throughout the biennium and sent to a special fund and are paid out as needed.

Senator Andrist said he voted for the ethanol incentive and said tax incentives are good for a developing industry but should not be a subsidy. He said the Legislative Assembly should not be subsidizing somebody's competition.

Representative Brandenburg said the continuing appropriation is premature because there is no funding source.

Mr. Scott Rising, Legislative Director, North Dakota Soybean Growers Association, testified in favor of the bill draft. He said the bill draft came from the EmPower ND Commission. He said the funding was left to be determined because the EmPower ND Commission focused on policy. He said there is a shortage of diesel fuel and incentivizing biodiesel would help this shortage. He said any increase in domestic energy helps with energy independence.

It was moved by Representative Brandenburg, seconded by Representative Kaldor, and carried on a roll call vote that the bill draft to create a

biodiesel plant production incentive be approved and recommended to the Legislative Management. Senators Wardner and Horne and Representatives Brandenburg, Kaldor, and Porter voted "aye." Senators Andrist and Nodland and Representatives Klein and Weiler voted "nay."

GREEN DIESEL PARITY WITH BIODIESEL

At the request of Chairman Wardner, committee counsel presented a bill draft [\[10188.0100\]](#) to treat green diesel the same as biodiesel and remove the ownership requirements of agricultural producers or residents for the biofuels partnership in assisting community expansion (PACE) programs. In addition, committee counsel presented a bill draft [\[10190.0100\]](#) to treat green diesel the same as biodiesel with a clawback provision upon changing the ownership of a facility that received a biofuels PACE grant.

Senator Andrist said he was uncertain as to the policy being set by approving a biodiesel incentive program and then treating green diesel the same as biodiesel.

In response to a question from Representative Kaldor, committee counsel said the biofuels PACE issue is tangential to treating green and biodiesel the same. He said 40 percent of the farm vehicle registrations and one cent from the refund to farmers for fuel tax generates \$3.9 million per biennium. He said \$100,000 per biennium comes from the one cent refund. He said if there were not any incentives paid from the fund, it would take approximately four years for the ethanol production incentive fund to reach the allowed \$7.5 million threshold. He said the present balance of the fund is around \$5,000.

Mr. Shane C. Goettle, Commissioner, Department of Commerce, presented testimony on the bill draft. He said the bill draft came from the EmPower ND Commission, and his direction to staff was to treat green diesel the same as biodiesel. He said green diesel is identical to a petroleum product. He said the Tesoro Refinery in Mandan is looking at making biodiesel out of crambe.

In response to a question from Representative Kaldor, Mr. Goettle said the change as to biofuels PACE relates to all biofuels PACE grants, not just biodiesel.

In response to a question from Representative Kaldor, Mr. Goettle said that Tesoro would not use the biofuels PACE program or agriculture partnership in assisting community expansion (Ag PACE) program to manufacture green diesel.

In response to a question from Representative Klein, Mr. Goettle said Tesoro would have to change its ownership to qualify for biofuels PACE, but would otherwise be eligible for Ag PACE.

In response to a question from Senator Horne, Representative Porter said the clawback provision provides that if the state provides an interest buydown to a cooperative and the cooperative decides to sell within five years, the state can take back the money provided for the interest buydown.

It was moved by Representative Porter, seconded by Representative Weiler, and carried on a roll call vote that the bill draft to treat green diesel the same as biodiesel with a clawback provision for the biofuels PACE grant be approved and recommend to the Legislative Management. Senators Wardner, Horne, and Nodland and Representatives Brandenburg, Kaldor, Klein, Porter, and Weiler voted "aye." Senator Andrist voted "nay." Chairman Wardner said by recommending this bill draft, the committee was not considering the other bill draft for recommendation.

OIL AND GAS IMPACT GRANTS BILL DRAFT

Mr. Goettle provided written testimony ([Appendix F](#)) on the initiatives and progress relating to infrastructure issues, including transportation, public safety, housing, water needs, pipeline capacity, direct funding, and long-term planning. He said there will be a good approximation of the impact of oil and gas development by mid-November when the North Dakota Association of Oil and Gas Producing Counties, the Department of Commerce, and the Department of Transportation have the results of a study by the Upper Great Plains Transportation Institute on short-term, intermediate-term, and long-term transportation needs.

In response to a question from Representative Weiler, Mr. Goettle said the Granite Peak project used the program of incentives for developers and builders to provide for 850 residential lots.

In response to a question from Senator Nodland, Mr. Goettle said the Upper Great Plains Transportation Institute study involved sending students in August to oil country to determine the traffic corridors and types of traffic. He said the study will use information from Mr. Helms on how drilling will occur. He said the study should be able to identify key arteries for drilling and for long-term use. The study should provide a forecast for 10 years to 20 years.

In response to a question from Senator Nodland, Mr. Goettle said the North Dakota Fair Housing Association received \$4.2 million for low-income and moderate-income housing in western North Dakota.

Senator Nodland said the price of homes and rentals has gone up 30 percent to 70 percent, and the average citizen now cannot afford housing.

In response to a question from Senator Horne, Mr. Goettle said the Bank of North Dakota placed a letter of credit on behalf of the bonds issued by the community for the Granite Peak project. He said the developer took half the risk for below grade, and the state took half the risk for above grade.

In response to a question from Representative Kaldor, Mr. Goettle said \$25,000 to \$50,000 was provided as technical assistance grants for planning. He said this money was meant as an incentive.

Representative Weiler provided a memorandum entitled [Federal Flood Control Mineral Lease Revenue Allocation](#) which was provided to the Taxation Committee. He said 75 percent of the lease income, including mineral leases, for land taken by the United States for flood control is allocated by the county. He said half goes to the school district, one quarter goes to the county for road purposes, and one quarter is allocated among organized townships. He said during the 17 months of allocations, three townships have each received more than \$1 million, including Liberty Township, which has received more than \$4 million. He said the Mountrail County road and bridge fund has received almost \$12.8 million, and the New Town School District has received almost \$22.5 million.

Senator Andrist said the Taxation Committee approved a bill draft to address the memorandum provided by Representative Weiler.

At the request of Chairman Wardner, committee counsel presented a bill draft [\[10189.0100\]](#) that leaves open the increase for the oil and gas impact grant fund. He said the bill draft provides that the Energy Development Impact Office director is appointed by the land commissioner, not the Board of University and School Lands. He said the director will make recommendations to the board for approving grants to political subdivisions. He said the bill draft adds planning as a reason for the grants.

Senator Wardner said a number should be provided for the increase in the oil and gas impact fund when the number is known. He said the committee should not recommend the oil and gas impact fund bill draft because any number that is placed in the bill draft would not be based on good information. He said the number placed in the bill draft may skew information the Legislative Assembly receives if the number is not correct.

Senator Andrist said the committee should plug in a number because it will be changed regardless of the number during the next legislative session.

Senator Wardner said people may rely on the number placed in the bill draft. He said placing the number in the bill draft without a reason for the number in the bill draft subjects the committee to criticism.

In response to a question from Senator Klein, committee counsel said the Board of University and School Lands will decide who gets the oil and gas impact grants instead of the director, who presently decides who gets the oil and gas impact grants.

Representative Weiler said the oil and gas impact grant fund was raised from \$6 million to \$8 million last legislative session.

Senator Wardner said the formula money still goes to the county. He said this fund would be for additional upfront needs. He said he would expect this fund to go down over time.

Senator Nodland said the fund has been in existence for many years and has been used for things like fire protection. He said 69 percent of the funds are used for roads. He said there needs to be a

study by county to determine the real needs, including law enforcement, roads, and courthouse personnel.

Representative Kaldor said grants for the last few bienniums have been 25 percent of request. He said these grants are needed at the front end of development. He said the bill draft has two parts--the money and the method for administering the money. He said the committee should review previous requests to determine what the number should be.

Senator Wardner said the director has done a great job in the past making determinations as to grants, but with more money in the fund, the board is a better administrator.

Mr. Goettle said the formula-based funding should take care of sustaining impacts. He said the impact grants are for upfront impacts when the county does not have the producing wells to pay for the impact and for indirect impacts. He said roads have long-term and short-term impacts, and these impacts need to be separated. He said he hoped the impact funds could be used as a source for long-term planning. He said the Upper Great Plains Transportation Institute study will help determine the largest portion of the fund.

Senator Wardner said the fund may be \$100 million next biennium and be reduced near \$8 million over time.

Representative Kaldor said the impact funding cap is an arbitrary number, and one solution would be to remove the cap. He said changing the percentage that goes into the impact fund without a cap may be a solution.

Senator Andrist said the percentage is meaningless because the cap is hit in two months. He said the present process has worked well. He said applications for grants are wish lists as well as needs. He said any number placed in the bill draft will be changed by leadership and the Appropriations Committees.

Senator Wardner said he wants a number the committee can defend.

Mr. Francis Ziegler, Director, Department of Transportation, provided testimony to the committee. He said the department is working with local governments. He said state highway needs are a dynamic number, and a good number should be available by early November.

It was moved by Senator Andrist, seconded by Representative Kaldor, and failed on a roll call vote that the bill draft on impact funding be increased to \$20 million. Senator Andrist and Representative Kaldor voted "aye." Senators Wardner, Horne, and Nodland and Representatives Brandenburg, Klein, Porter, and Weiler voted "nay."

Senator Horne said \$20 million was not enough money.

Representative Kaldor said placing a number in the bill draft keeps the issue in front of the Legislative Assembly.

It was moved by Representative Porter, seconded by Senator Nodland, and carried on a roll call vote that the bill draft to determine impact

grants and change the administration of the grants be amended to remove Section 1 of the bill draft on oil and gas impact grant fund limits. Senators Wardner, Andrisc, Horne, and Nodland and Representatives Brandenburg, Kaldor, Klein, Porter, and Weiler voted "aye." No negative votes were cast.

Representative Porter said the reason for his amendment was to deal with only the policy issues. He said the money issues would be a separate bill draft when there is better information. He said he was comfortable defeating the amendment moved by Senator Andrisc. He said an appropriation bill would go directly to the Appropriations Committees. He said if the number is placed in this bill draft, the bill draft would need four hearings.

Senator Wardner said the number should be at least \$75 million if there is going to be a number in the bill draft. He said members of the committee should support a separate bill draft during the legislative session. He said \$20 million might be offensive to some people.

Senator Andrisc said the committee should keep the number in the bill draft because it shows support of increasing the cap from the committee. He said the number does not particularly matter and would support an amendment for any amount.

Representative Kaldor said the committee should have a discussion on what is the appropriate number.

Senator Wardner said to determine what the appropriate number should be, the committee needs information from the counties which will not be available until November. He said if the committee chooses a number before there is county involvement, the counties may assume the Legislative Assembly is ignoring the counties.

Senator Andrisc said the committee could remove the cap, and someone would place a limit in later during the legislative process.

In response to a question from Representative Brandenburg, Mr. Goettle said the community does not need to have oil production to be eligible for oil impact grants. He said the impact fund is for indirect impacts and short-term funding.

Representative Klein said he is not ready to put a number in the bill draft and supports the amendment moved by Representative Porter.

It was moved by Representative Klein, seconded by Senator Nodland, and carried on a roll call vote that the bill draft, as amended to remove Section 1, relating to the procedure for administering the oil and gas impact fund be approved and recommended to the Legislative Management. Senators Wardner, Andrisc, Horne, and Nodland and Representatives Brandenburg, Kaldor, Klein, Porter, and Weiler voted "aye." No negative votes were cast.

PUBLIC SERVICE COMMISSION JURISDICTION OVER WIND FACILITIES

Mr. Goettle provided written testimony ([Appendix G](#)) on legislation being developed by the EmPower ND Commission and the Public Service Commission to address the Public Service Commission's jurisdiction over wind farms. He said a bill will be drafted once there are suggested rules differentiating between small and large wind projects. He said there is concern about small projects and the time it would take for Public Service Commission approval.

In response to a question from Representative Porter, Mr. Goettle said small wind projects could have a cumulative effect. He said although the bill draft may give the Public Service Commission jurisdiction over small wind projects, the process would be expedited.

In response to a question from Representative Porter, Mr. Goettle said the Public Service Commission does not supersede local zoning jurisdiction. He said the jurisdiction is dual.

Representative Brandenburg said the Public Service Commission should find a balance for the state. He said it creates a comfort level for local governments so local governments are not pressured into making decisions.

Representative Porter said although the local townships or counties can be more stringent than the Public Service Commission, they may not be more lax. He said everything will have to go to the Public Service Commission.

In response to a question from Representative Porter, Mr. Goettle said a small wind farm might just need to provide notice to the Public Service Commission. He said he did not want to overregulate and that was the reason for waiting to have the bill draft proposed with accompanying rules.

ENERGY CONSERVATION AND EFFICIENCY STANDARDS FOR PUBLIC BUILDINGS BILL DRAFT

At the request of Chairman Wardner, committee counsel presented a bill draft [[10067.0200](#)] to require rules to be adopted that are consistent with the silver building rating of the leadership in energy and environmental design (LEED) rating system for new construction and major renovation projects to apply to new public improvements that are new buildings in excess of \$2 million. He said the bill draft provides for an exemption if the cost significantly outweighs the benefits.

Mr. Al Christianson, Manager, North Dakota Business Development and Governmental Affairs, Great River Energy, made a presentation ([Appendix H](#)) on the new headquarters of Great River Energy in Minnesota, which is the first platinum LEED building in Minnesota. He said energy efficiency is the cheapest watt and is good for customers. He said the

Minnesota building is an Energy Star building as well as a LEED building.

Mr. Jeffrey J. Ubl, President, UBL Design Group, P.C., made a presentation ([Appendix I](#)) on the Great River Energy building in Bismarck. He said the building in Bismarck has a LEED core and structure certification. He said it is a LEED gold-certified building.

In response to a question from Senator Wardner, Mr. Ubl said there may be a gain in having an asphalt parking lot over a cement parking lot in that snow melts better with a black surface. He said the LEED standard gives points for having a concrete parking lot that reflects the sun and keeps heat around the building down.

In response to a question from Senator Andrist, Mr. Ubl said a certified forest is a forest certified as being managed as to its harvesting.

In response to a question from Senator Andrist, Mr. Ubl said additional cost for a LEED-certified building is approximately 10 percent. He said the certification process costs less than 1 percent. He said the payback is in 5 years to 7 years. He said the most expensive portion of the building is a geothermal heating and cooling system. He said it is difficult to extract what would have been done without using the LEED-certified system, so it is difficult to determine the additional cost of being LEED-certified.

In response to a question from Senator Wardner, Mr. Ubl said the third-party certification system helps push the sustainability issue when building. He said if there is not a third-party certification system, people start sacrificing sustainability for cost.

In response to a question from Representative Porter, Mr. Ubl said the standards have changed three times since the beginning of the construction of the Bismarck building. He said the certification gets tougher over time. He said what is included in previous versions becomes the norm, and expectations are increased over time. He said some standards have been lessened. He said there are changes approximately every three years, which is comparable to the State Building Code, which is changed all the time.

In response to a question from Representative Weiler, Mr. Ubl said a building does not lose its LEED certification if the standards change after the process has begun.

In response to a question from Senator Andrist, Mr. Ubl said there are different opinions as to which standard to use when building. He said the United States Green Building Council is the leader in sustainable buildings, but there is competition.

In response to a question from Representative Porter, Mr. Ubl said there are other standards, which include the Energy Star standard and the homebuilder's standard.

Ms. Rebecca Molldrem, Chair, United States Green Building Council, North Dakota Chapter, Fargo, presented testimony ([Appendix J](#)) in support of the bill draft. She said 34 states have used the LEED

standard. She said other standards include Green Globes, Energy Star, Green Star, American Society of Heating, Refrigerating and Air-Conditioning Engineers, and the International Green Building Code. She said the United States Green Building Council recommends modeling this state's law after South Dakota's law.

In response to a question from Senator Andrist, Ms. Molldrem said the LEED standards vary across the United States. She said there are regional priority credits that focus on regional issues.

In response to a question from Representative Porter, Ms. Molldrem said if an addition is more than 50 percent of the existing facility, the original building would have to be LEED-certified as well as the new addition, unless it was separated by a firewall or address or other meaningful manner.

Mr. Zachary Weis, State Energy Engineer, Office of Energy Efficiency and Renewable Energy, Division of Community Services, Department of Commerce, provided written testimony ([Appendix K](#)) on the State Energy Code and the adoption of the 2009 International Energy Conservation Code. He said the 2009 International Energy Conservation Code was adopted the day before the meeting.

In response to a question from Representative Porter, Mr. Weis said American Society of Heating, Refrigerating and Air-Conditioning Engineers is referenced in the LEED standards and is complementary, not competing.

In response to a question from Senator Wardner, Mr. Weis said the energy code is for residential and commercial building.

Senator Andrist said he was not ready to support the bill draft.

It was moved by Representative Kaldor, seconded by Representative Klein, and failed on a voice vote that the bill draft to require the LEED silver building rating standard for new public improvements be approved and recommended to the Legislative Management.

Ms. Doreen Riedman, Executive Officer, North Dakota Association of Builders, presented written testimony ([Appendix L](#)) on the adoption of energy efficiency codes within the State Building Code. She said programmable thermostats were removed from the code because they are not appropriate for geothermal heating. She said the required R-value was placed at 19 instead of 20 or 21 because of the unavailability of 20-rated and 21-rated insulation. She said requiring a duct blaster test was amended out. She said requiring 50 percent of permanent lamps to be compact fluorescent lamps was amended out. She said the changes will become effective January 1.

In response to a question from Representative Weiler, Ms. Riedman said varying groups are on the State Building Code Advisory Committee and adopt the changes in the code.

In response to a question from Senator Wardner, Ms. Riedman said the building industry has a lot of work learning the new changes.

In response to a question from Representative Porter, Ms. Riedman said she wanted the requirement of basement insulation amended out of the code, but it was included in the code. She said the requirement of fire suppression in residential buildings was amended out of the State Building Code by the Legislative Assembly last session.

Representative Porter said insulating a basement may be unwise because some people do not wire a basement and would need to deal with the insulation when finishing the basement at a later date than building the home.

In response to a question from Representative Weiler, committee counsel said the Legislative Assembly can change the insulation in basement requirements; however, there may be a federal law on the matter. He said the issue is whether there is a penalty under federal law for not requiring basements to be insulated when constructed.

Mr. Kim Christianson, Director, Great Plains Energy Corridor Office, Bismarck State College, presented written testimony ([Appendix M](#)) on the LEED program. He said his office is generally supportive of the LEED program. He said his office recognizes the concern with the cost and burden of following the LEED standard. He said an option is to require the Energy Star standard. He said the Energy Star standard primarily relates to energy use. He said an Energy Star building is 75 percent more efficient than a building of a similar type.

Mr. Richard Bohrer, architect, Architectural Concepts, Inc., provided testimony on the bill draft. He said a building may be energy efficient without being a LEED building. He said additions of 50 percent or more can create issues as to whether

there is a new construction or modification. He said if a new building is larger than the old building and connected to the old, the LEED standard requires the old building to be upgraded as well. He said the American Society of Heating, Refrigerating and Air-Conditioning Engineers 90.1 standard has four categories of buildings--housing, office, medical, and school. He said some buildings are none of these.

In response to a question from Representative Weiler, Mr. Bohrer said the LEED silver building rating was required in the example of the renovation that is larger than the original building because the owner is the National Guard.

In response to a question from Representative Porter, Mr. Bohrer said it is difficult to determine the cost difference between the LEED standard and the Energy Star standard because the LEED standard requires points. He said generally, the building owner chooses points that are easily obtained.

It was moved by Representative Weiler, seconded by Senator Nodland, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management and adjourn sine die.

No further business appearing, Chairman Wardner adjourned the meeting at 4:30 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:13