NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Wednesday, October 10, 2012
Roughrider Room, State Capitol
Bismarck, North Dakota

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

Members present: Senators Rich Wardner, Lonnie J. Laffen, Stanley W. Lyson, John Warner; Representatives Scot Kelsh, Shirley Meyer, Todd Porter, Mike Schatz, Gary R. Sukut

Members absent: Senators John M. Andrist, Ryan M. Taylor; Representative Michael D. Brandenburg

Others present: See Appendix A for additional persons present.

It was moved by Senator Lyson, seconded by Representative Schatz, and carried on a voice vote that the minutes of the August 28, 2012, meeting be approved as distributed.

BILL DRAFT TO INCREASE THE HOUSING INCENTIVE FUND TAX CREDIT

Committee Counsel presented a bill draft [13.0159.02000] to increase the tax credit from $15 million to $20 million per biennium for the housing incentive fund and to cap the total fund amount at $50 million. He said the bill draft allows the State Housing Finance Agency to enter public and private partnerships and reserve a share of the housing for the private partner's workforce. He said the expiration date for the housing incentive fund should be coordinated with the tax credit for consistency and clarity. He said the expiration date for the housing incentive fund is through June 30, 2015.

Ms. Jaci Bugbee, Executive Director, Ruth Meiers Hospitality House, provided testimony on the bill draft. She said the law allows for funding for rental assistance, emergency assistance, or targeted supportive services designated to prevent homelessness. She said this is very important because there was stimulus money for these items and now there is not any stimulus funding. She said this assistance and services through the housing incentive fund are important to continue what was being done with federal money.

In response to a question from Representative Meyer, Ms. Bugbee said a guaranteed funding source would be beneficial for planning. She said funding in the housing incentive fund which does not come from tax credits would provide that security.

Senator Wardner said although permanent funding may be necessary, the change is outside the scope of the original bill draft.

In response to a question from Representative Meyer, Mr. Michael A. Anderson, Executive Director, Housing Finance Agency, said the term "developing community" is not defined but through context is interpreted to mean a small, rural community in western North Dakota. He said the housing incentive fund program allocates funds through a yearly plan. He said dedicated funding does not allow the Housing Finance Agency to prioritize needs. He said if there is a need for housing for the homeless, the plan will address those needs.

Senator Warner said he had reservations on allowing a donor to write off a contribution for something the donor is allowed to use for the purpose of advancing low-income housing.

In response to a question from Senator Warner, Mr. Anderson said the reason for the provision is because companies want to use the housing finance program but cannot. He said if these companies could use the program, it would be good for the community. He said the provision does not prevent mixed-income programs. To the contrary, he said, mixed-income programs are promoted in the allocation process.

Mr. Anderson gave a presentation (Appendix B) on a statewide housing needs assessment. He said the population in this state is growing. He said the population is expected to grow 25.2 percent from 2010 to 2025 in this state. He said the population for the same time period in the Williston area is expected to increase 60 percent. He said the housing demand during this time period will increase 30 percent in North Dakota and 59 percent in the Williston area. He said the state has a senior population, and in 2025 there will be a 52 percent increase from present time. He said the young working class group of ages 25 through 44 will increase by 42 percent. He said 55 percent of the total household growth will be low-income. He said with moderate-income households, these households will be three out of four households.

Mr. Anderson said there are more homeless in the summer. He said 22 percent of the seniors are in owner-occupied housing and 49 percent of the seniors are in renter-occupied housing while spending more than 30 percent of income on housing. He said these seniors are housing cost burdened.

In response to a question from Representative Meyer, Mr. Anderson said median income is determined by federal Housing and Urban Development information released on a yearly basis.

In response to a question from Senator Warner, Mr. Anderson said there is a higher percentage of renters by population in Fargo than elsewhere in the state. He said the amount of rental units depends on the demands of young families and seniors. He said it is probable that there will be more apartments. He said, as of late, it has been cheaper to buy than to rent because of the shortage of rentals.

It was moved by Representative Porter, seconded by Senator Laffen, and carried on a voice vote that the bill draft on the housing incentive fund be amended to coordinate the effective and expiration dates in the bill draft for consistency and clarity.

It was moved by Representative Porter, seconded by Senator Lyson, and carried on a roll call vote that the bill draft, as amended, relating to the housing incentive fund tax credit be approved and recommended to the Legislative Management. Senators Wardner, Laffen, Lyson, and Warner and Representatives Kelsh, Meyer, Porter, Schatz, and Sukut voted "aye." No negative votes were cast.

BILL DRAFT FOR FUNDING TO OIL AND GAS RESEARCH FUND AND STUDY OF VALUE-ADDED MARKET OPPORTUNITIES RELATED TO OIL AND GAS

Committee Counsel presented a bill draft [13.0158.01000] to increase the funding from $4 million to $5 million per biennium into the oil and gas research fund. He said the bill draft also provides for a Department of Commerce study to evaluate value-added market opportunities related to oil and gas. He said the bill draft provides a general fund appropriation of $300,000 for the study. He said the bill draft contains legislative intent that the additional $1 million in funding be used for opportunities related to value-added processing of oil and gas.

Representative Porter said he is concerned as to whether the amount of funding is enough, partly due to the testimony of Mr. John Harju at the Energy and Environmental Research Center. He said Mr. Harju said there has been a loss of federal funding for oil and gas and these funds return great dividends. He said money in the fund should be used to develop public and private partnerships for research similar to the Energy and Environmental Research Center.

Representative Porter said if a project had a cross benefit between coal and oil, he thought the Industrial Commission could use funds for coal and funds for oil to address the study.

Senator Wardner said these funds are focused on in-state projects.

In response to a question from Representative Meyer, Mr. Allen Anderson, Commissioner, Department of Commerce, said the Empower Commission did not discuss increasing the amount to $10 million. He said the previous funding has provided a significant value in increasing recovery and has had tremendous impact on the economy of this state.

It was moved by Representative Porter, seconded by Senator Laffen, and carried on a voice vote that the bill draft be amended on page 1, line 2, to increase the funding to $10 million and on page 2, line 2, to increase the legislative intent for funds to be used for opportunities related to value-added processing of oil and gas to $5 million.

It was moved by Senator Lyson, seconded by Representative Schatz, and carried on a roll call vote that the bill draft, as amended, to increase funding to the oil and gas research fund and to provide a study of value-added market opportunities related to oil and gas be approved and recommended to the Legislative Management. Senators Wardner, Laffen, Lyson, and Warner and Representatives Kelsh, Meyer, Porter, Schatz, and Sukut voted "aye." No negative votes were cast.

In response to a question from Senator Wardner, Mr. A. Anderson said the Oil and Gas Research Council has the authority to address public and private partnerships in research.

BILL DRAFT FOR APPROPRIATION FOR EMPLOYMENT DATA

Committee Counsel presented a bill draft [13.0157.01000] to appropriate $100,000 to Job Service North Dakota to classify better oil-related and gas-related employees who work in transportation or other areas.

It was moved by Senator Lyson, seconded by Representative Schatz, and carried on a roll call vote that the bill draft to provide an appropriation to Job Service North Dakota to better classify oil-related and gas-related employees be recommended to the Legislative Management. Senators Wardner, Laffen, Lyson, and Warner and Representatives Kelsh, Meyer, Porter, Schatz, and Sukut voted "aye." No negative votes were cast.

Senator Wardner said oil tax dollars go back to the cities and counties based upon the number of employees in the drilling for oil sector. He said some cities on the edge of oil development may have enough employees to qualify for the funding. He said these cities may include Bismarck or Mandan.

BILL DRAFT TO PROVIDE FUNDING FOR RENEWABLE ENERGY DEVELOPMENT FUND AND FOR A STUDY OF VALUE-ADDED MARKET OPPORTUNITIES FOR RENEWABLE ENERGY RESOURCES

Committee Counsel presented a bill draft [13.0152.01000] to provide funding for the renewable energy development fund with up to $3 million from 5 percent of the resources trust fund. He said the bill draft provides for a Department of Commerce study of value-added market opportunities for renewable energy resources and appropriates $300,000 from the general fund for the study.

Senator Wardner said the money comes from the resources trust fund which historically has been used for water projects. He said the amount of money being used for the renewable energy fund is quite small in comparison to the whole fund.

Mr. A. Anderson said the Empower Commission looked at the oil and gas research fund and the lignite research fund, and both of these funds have permanent funding. He said the renewable energy development fund should have a permanent source of funding as well.

It was moved by Senator Lyson, seconded by Representative Meyer, and carried on a roll call vote that the bill draft to provide funding for the renewable energy development fund and to provide for a study of value-added market opportunities for renewable energy resources be recommended to the Legislative Management. Senators Wardner, Laffen, Lyson, and Warner and Representatives Kelsh, Meyer, Porter, Schatz, and Sukut voted "aye." No negative votes were cast.

BILL DRAFT ON EXEMPTION FROM OIL EXTRACTION TAX FOR REFINERIES IN THIS STATE

Committee Counsel presented a bill draft [13.0137.01000] to create an exemption to the oil extraction tax for oil that is sold to and refined by a refinery located in this state.

Mr. Mel Falcon, Dakota Oil Processing, provided testimony to the committee. As a basis for his testimony, he provided handouts (Appendix C) on the price of oil and the benefits of having oil refined and value-added in this state. He said the exemption is needed for at least the first five years of a new refinery because that is the most critical time to the economic viability of a refinery. He said this economic development would more than pay for the lost taxation. He said North Dakota consumers pay 73 cents per gallon for oil being refined on the Gulf Coast instead of in this state. He said the same savings would be transferred to any product produced from oil in this state. He said if there is more refining in North Dakota, there will be more manufacturing and lower-priced goods in this state. He said the extraction tax exemption would encourage refining and would add value across the state.

In response to a question from Representative Meyer, Mr. Falcon said the benefit to the refinery of the reduced extraction tax would be the price reduction to the refiner. He said there would be additional value through keeping the money in this state.

Senator Wardner said he was concerned with how this tax exemption would be administered. He said he was concerned about how the reduction would be passed on to the refiner. He said more work needs to be done on the bill draft. He said there will be many oil tax changes next session because of the changes in drilling techniques.

In response to a question from Senator Wardner, Mr. Falcon said the project has a letter of intent for 100 percent of the financing if a backstop guarantor can be found. He said the project is shovel ready.

In response to a question from Representative Sukut, Mr. Falcon said a sunset clause of five years would be acceptable. He said whether the exemption is provided to existing refineries and not just new refineries is an issue for the legislature.

Representative Sukut said he would be more comfortable with the bill draft if it had a sunset clause.

Senator Wardner said he did not support the bill draft in its present form because of too many open issues.

Representative Meyer said a new refinery has been talked about since 2007 and the project needs to go forward.

It was moved by Representative Meyer, seconded by Senator Warner, and carried on a roll call vote that the bill draft to create an exemption from the oil extraction tax for oil used in refineries in this state be recommended to the Legislative Management. Senators Lyson and Warner and Representatives Kelsh, Meyer, and Sukut voted "aye." Senators Wardner and Laffen and Representative Schatz voted "nay."

BILL DRAFT TO ALLOW THE NORTH DAKOTA PIPELINE AUTHORITY TO BOND FOR REFINERIES

Committee Counsel presented a bill draft [13.0136.01000] to allow the North Dakota Pipeline Authority to issue evidences of indebtedness for refineries. He said the Pipeline Authority may bond for pipeline facilities and the bill draft includes refineries within the definition of pipeline facilities for the purposes of issuing evidences of indebtedness.

Mr. Falcon said refineries should have been included within the original legislation and he thought it was the intent at that time to include refineries, but the Attorney General said refineries were not included.

Representative Meyer said the bill draft clarifies what was thought to be true.

It was moved by Representative Meyer, seconded by Senator Lyson, and carried on a roll call vote that the bill draft to allow for the North Dakota Pipeline Authority to bond for refineries be approved and recommended to the Legislative Management. Senators Wardner, Laffen, Lyson, and Warner and Representatives Kelsh, Meyer, Schatz, and Sukut voted "aye." Representative Porter voted "nay."

NATURAL GAS FLARING

Mr. Lynn Helms, Director, Department of Mineral Resources, gave a presentation (Appendix D) on natural gas flaring and the taxation of flared natural gas. He said there is a focus on natural gas flaring because 31 percent of the natural gas is flared. He said in 10 years the pressure in the Bakken will drop and free natural gas will materialize and last for 15 years. He said Bakken wells come strong and decline quickly. He said after 10 years a Bakken well will become a gas well with an associated oil well. He said there will be a lot of gas development for 30 years. He said there has been a $4 billion build out of gas plants and that needs to be doubled in the future. He said there are slim economics for using natural gas at the well site because the facilities would have to be of small scale, easily moved, and issues of liability would need to be addressed. He said an operator of a well will be concerned with having a chemical processing plant on the well pad. He said most processes to treat natural gas are of a large scale and for a long time. He said the facility will need to be moved once a year--the time it takes a pipeline to get to an oil well. He said there are tax and royalty issues because the gas is not being flared. He said statutes provide that the operator of a well may flare the gas, tax and royalty free for one year. He said this is the best time for an onsite processing plant. He said to extend beyond the year, the operator needs to prove the gathering of gas is not economically feasible. He said the tax on natural gas is a flat tax on volume regardless of quality or price. He said the rate is adjusted annually by the Tax Department. He said there are three exemptions to taxation for natural gas. He said these exemptions are for shallow gas, electrical generation at the well site, and sales and use tax exemption for materials used to process the natural gas. He said the processes for using gas at the well site may need to be incentivized, same as for electrical generation onsite.

In response to a question from Senator Wardner, Mr. Helms said 31 percent of the natural gas is 225 million cubic feet per day. He said this state is flaring as much gas as was produced in the 80s and 90s per day.

In response to a question from Senator Laffen, Mr. Helms said he generally likes the market to respond to conditions and the market will capture most of the gas in approximately five years. He said the next build out will be completed in approximately five years. He said after that 10 percent of the gas will be stranded. He said this is approximately 75 million cubic feet to 100 million cubic feet per day. He said there needs to be an incentive for currently flared gas and long-term stranded gas. He said the Industrial Commission imposes production constrictions after one year of flaring to encourage building out of infrastructure for natural gas. He said a major barrier to expanding gas gathering lines is difficulty in securing right of way.

In response to a question from Senator Wardner, Mr. Helms said the second phase of oil development with multipads will encourage the development of infrastructure for natural gas. He said the present system is not large enough to handle the increased gas produced by multipads.

In response to a question from Senator Wardner, Mr. Helms said landowners are exhausted by visits by people wanting to secure right of way.

In response to a question from Senator Wardner, Mr. Helms said there is a complaint of a landowner with seven wells and that the gas from the wells that was being put in a gathering system is now being flared because of being crowded off the system by other wells.

In response to a question from Representative Meyer, Mr. Helms said the determination of royalties after a year of flaring is made by the Industrial Commission based upon a similar well. He said royalty owners are not responsible for the cost of the build out of pipelines, but do have to contribute to the processing.

In response to a question from Representative Meyer, Mr. Helms said there has been some souring of sweet gas. He said he is not sure but the cause is usually bacteria. He said a common cause of souring is through water used in enhanced oil recovery.

In response to a question from Senator Wardner, Mr. Helms said nothing can fix sour gas. He said the gas can be collected and the acid removed, but it is very expensive. He said the souring of gas needs to be prevented at all costs.

In response to a question from Representative Meyer, Mr. Helms said the use of carbon dioxide for enhanced oil recovery does not sour gas.

Mr. Helms said he recommends extending incentives for flared gas for electric generation to small scale projects. He said to obtain the sales tax exemption for materials pre-application must be made to the Tax Department. He said small scale processing falls under the sales tax exemption.

In response to a question from Representative Kelsh, Mr. Helms said shallow gas is produced similar to coal bed methane. He said water is pumped in, the pressure is lowered, and the gas is liberated. He said the gas flows with the water. He said shallow gas would be value-added for agricultural ventures that need water and fuel.

In response to a question from Senator Laffen, Mr. Helms said shallow gas is common and is anyplace there is high carbon shales with glacial melt waters.

BASIN ELECTRIC UPDATE ON GENERATION AND TRANSMISSION PROJECTS

Mr. Dale Niezwaag, Senior Legislative Representative, Basin Electric Power Cooperative, made a presentation (Appendix E) on Basin Electric Bakken generation and transmission projects. He reviewed generation projects using natural gas and transmission lines being built to support the new demand. He said landowner issues have arisen because landowners believe they have too many easements over their land.

In response to a question from Senator Wardner, Mr. Niezwaag said the recent and future generation projects are moving to major source permitting so there is not a limitation on run time. He said there will be six natural gas peaking units in the Williston and Watford City area in the next few years.

In response to a question from Representative Meyer, Mr. Niezwaag said Basin Electric discussed a utility corridor for gas and electric lines with other interested parties. He said federal agencies were open to the idea but oil and gas and other utilities could not agree on the corridor. He said it would be a good idea to have a corridor.

In response to a question from Senator Warner, Mr. Niezwaag said placing utility lines closer together makes it easier for terrorists. He said reliability standards require separation of transmission lines. He said transmission lines on the same corridor makes contingency planning difficult.

In response to a question from Representative Meyer, Mr. Niezwaag said he is not aware of brokers buying exclusive rights to right of way and reselling to pipeline and utility companies.

NATURAL GAS IN THE BAKKEN

Mr. Justin Kringstad, North Dakota Pipeline Authority, gave a presentation (Appendix F) on the BENTEK study of natural gas in the Bakken. He said the data suggests the Bakken could yield higher future gas and natural gas liquid volumes due to a rising gas to oil ratio. He said the United States is becoming less reliant on Canadian gas. He said there are positive economics for gas production in the Bakken with oil prices above $50 per barrel. He said North Dakota gross gas production is expected to grow from approximately .7 billion cubic feet per day to 3.4 billion cubic feet per day. He said open capacity leaving North Dakota is tight.

In response to a question from Senator Warner, Mr. Kringstad said industry is investigating a plastics industry in this state. He said he has not heard of the industry asking for incentives. He said it is three years to five years away before anything will become operational.

In response to a question from Senator Lyson, Mr. Kringstad said there will be a lower rig count but more wells per rig.

In response to a question from Representative Meyer, Mr. Kringstad said competition for space on pipeline depends on price. He said price is determined on a daily basis.

In response to a question from Representative Porter, Mr. Kringstad said the interconnections of pipelines underneath or through Lake Sakakawea are still in the regulatory phase.

In response to a question from Representative Porter, Mr. Kringstad said gas is sequestered underground in reserves for all pipelines. He said the gas generally is held in the summer when the price and the demand is low. He said storage costs money and is not done for a long-term period.

In response to a question from Representative Porter, Mr. Kringstad said gas gathering is the solution to flaring. He said the short-term solution is trucks and onsite use. He said another well would be required for gas sequestration and that is not feasible.

It was moved by Representative Porter, seconded by Senator Warner, and carried on a voice vote that the Chairman and 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.

It was moved by Representative Porter, seconded by Senator Laffen, and carried on a voice vote that the committee be adjourned sine die. No further business appearing, Chairman Wardner adjourned the meeting sine die at 1:30 p.m.

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Timothy J. Dawson
Committee Counsel

ATTACH:6