

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Thursday, August 14, 2014
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, John Andrist, Kelly M. Armstrong, David Hogue, Philip M. Murphy, Connie Triplett; Representatives Tracy Boe, Chuck Damschen, Ben W. Hanson, Todd Porter, Mike Schatz, Peter F. Silbernagel

Others present: John Walstad, Legislative Council, Bismarck
Jessica K. Unruh, State Representative, Beulah
See [Appendix A](#) for additional persons present.

It was moved by Senator Armstrong, seconded by Representative Hanson, and carried on a voice vote that the minutes of the July 8, 2014, meeting be approved as distributed.

**STUDY TO EVALUATE VALUE-ADDED MARKET OPPORTUNITIES
FOR NATURAL GAS LIQUIDS AND ETHANOL**

Mr. Don Bari, Vice President, Consulting, IHS Chemical, and Mr. Ed Glatzer, Managing Director, Global Technology, IHS Chemical, gave a presentation ([Appendix B](#)) on the *Study to Evaluate Value-Added Market Opportunities for Natural Gas Liquids (NGLs) Produced in North Dakota* and a presentation ([Appendix C](#)) on the *Study to Evaluate Value-Added Market Opportunities for Ethanol Produced in North Dakota*. Mr. Bari said there is enough feedstock available and competitive prices for there to be a petrochemical company in this state.

In response to a question from Senator Triplett, Mr. Bari said the products created by petrochemical companies are fungible and do not create issues for transportation and can be transported safely by rail.

In response to a question from Representative Porter, Mr. Bari said the availability of feedstock and the price in North Dakota are the drivers for value-added petrochemical companies in this state. He said the way the state could incentivize a plant is to derisk the building of the plant by providing easy permitting, labor resources, and support of general infrastructure surrounding the plant. He said good infrastructure and labor give companies the confidence to build a plant.

In response to a question from Representative Silbernagel, Mr. Bari said the plastics made by a petrochemical plant could provide water pipes that could be manufactured in this state.

Mr. Glatzer said the difference between NGLs and ethanol is that there is not a feedstock advantage in North Dakota for ethanol. He said ethanol plants are small in relation to petrochemical plants. He said the drivers are different as well. He said the driver for ethanol chemical plants is the demand for environmentally friendly products. He said the price premiums for environmentally friendly products are expected to go away within five years. He said the premiums are not reliable and are not included within the analysis.

In response to a question from Representative Porter, Mr. Glatzer said it takes approximately \$25 million to convert an ethanol plant to make chemicals. He said it would take around 18 months to complete. He said it would take two to three years for new construction at a cost of \$100 million to \$500 million. He said other states have incentives which provide low-cost capital, tax credits for job creation, and job training.

In response to a question from Senator Murphy, Mr. Glatzer said the figures provided for plant outputs are on an annual basis. He said ethanol chemical plants are competing against much larger conventional plants for the creation of complex carbon chains.

In response to a question from Chairman Wardner, Mr. Glatzer said the plants provide jobs in product development and tax services as well as the jobs one would expect. He said these jobs are high paying.

Chairman Wardner said the opportunities brought to light by the reports provide wonderful opportunities for students.

EMPOWER NORTH DAKOTA COMMISSION.

Mr. Alan Anderson, Commissioner, Department of Commerce, gave a presentation ([Appendix D](#)) on the EmPower North Dakota Commission and the commission's recommendations.

Infrastructure

Mr. Ron Ness, President, North Dakota Petroleum Council, provided information ([Appendix E](#)) on the portion of the EmPower North Dakota 2014 policy updates and recommendations that relates to infrastructure. He said the commission recommends:

- Support of the passage of legislation within the first 30 days of the 2015 legislative session providing infrastructure funding to oil and gas-impacted areas.
- Support of changes to the gross production tax distribution formula to provide additional funding to assist with local infrastructure needs.
- Support of the funding level that meets the needs identified in the Upper Great Plains Transportation Institute roads study.
- Creating a regional infrastructure authority.
- Creating a trigger mechanism that will make additional funds available to oil-impacted communities from the state share of oil tax revenue when revenue exceeds forecasted revenue by a certain amount.
- Support of the expansion of existing water systems.
- Support of increased access to Lake Sakakawea water.
- Monitoring of the railroad infrastructure upgrade plan.

Workforce

Mr. John Weeda, Great River Energy, provided the workforce portion of the EmPower North Dakota report. He said the commission recommends:

- Continued support of the housing incentive fund and consideration of a trigger on an annual basis for additional funds.
- Increased efforts to educate youth on energy careers.
- Collaboration between the energy industry and the North Dakota University System, Governor's Work Force Development Council, Job Service North Dakota, and other agencies to encourage agency interaction with teachers and guidance counselors, to provide greater accessibility to career and technical education programs, and to increase funding for workplace safety and training.
- Support of legislation that recognizes the role of distance learning.

Senator Murphy said schools cannot find teachers to teach technical education classes. He said day care is a critical issue as well.

In response to a question from Senator Murphy, Mr. Weeda said both availability of teachers and day care were concerns that were discussed by the commission. He said there was a focus on distance learning so critical areas could be taught throughout the state by one teacher. He said distance learning leverages the ability of those that can teach. He said any idea that can promote day care is important.

In response to a question from Senator Triplett, Mr. Weeda said higher pay for teachers would make teaching more competitive with jobs in the energy industry. He said the commission discussed creating a liaison between industry and the University System to help fill gaps in universities.

In response to a question from Senator Triplett, Mr. Anderson said the Department of Commerce is addressing childcare and externship programs. He said more money will be requested for childcare in the budget. He said industry can create externship programs for educators. He said the externship programs would provide a two-week stint to educators to understand the needs of industry for knowledge and would augment the salaries of teachers.

Senator Andrist said it is the nature of any economic boom to run a little behind; however, there has been a lot done with salaries for teachers in this state, and we are still behind.

Chairman Wardner said some teachers are in demand more than others. He said school boards need flexibility to take certain instructors off the salary schedule.

Research and Development

Mr. Randy Schneider, President, North Dakota Ethanol Producers Association, gave a presentation on the portion of the EmPower North Dakota report on research and development. He said the commission supports:

- Existing research and development programs and increased funding for lignite research and oil and gas research programs.
- The additional appropriation of research dollars to be used by the lignite and oil and gas research councils to resolve technical problems associated with commercial deployment of carbon capture technologies, improve recovery of oil through enhanced oil recovery using CO₂ and other gases, and the development and funding of a front-end engineering and design study to identify commercial opportunities associated with the capture and use of CO₂.
- Creating and implementing a strategy to assist the development of viable petrochemical and biochemical industries.

In response to a question from Representative Silbernagel, Mr. Schneider said there is emerging technology that turns otherwise flared gas into electricity. He said there is a lot of research development done in North Dakota and there is a lot of research and development that can be done in North Dakota.

Regulatory Environment

Ms. Sandi Tabor, KLJ, gave a presentation on the regulatory environment section of the EmPower North Dakota report. She said the commission urges:

- Federal agencies to recognize environmental issues unique to North Dakota and to work with state agencies, state agencies to work with the commission, and the establishment of new venues for state and federal regulatory agencies to collaborate on federal rulemaking.
- The use of the commission to better-understand the economic impact of federal regulatory proposals and comment on regulations with significant potential impact to this state.
- The recognition of additional burdens new energy development and regulations are placing on state regulatory agencies and the provision of adequate funding and staffing for these agencies through competitive compensation and benefit packages.
- The identification of North Dakota-based solutions to manage waste generated from energy production.

Ms. Tabor said none of the recommendations relating to regulatory environment are legislative. She said adequate staffing and funding has an effect on the retention of state primacy in areas of regulation.

Chairman Wardner said North Dakota needs to take care of its waste and the problems that go with it will be resolved.

In response to a question from Representative Hanson, Ms. Tabor said the idea of having reports from state agencies is to create more dialogue between the state and industry on a regular basis.

In response to a question from Representative Hanson, Ms. Tabor said the commission will start to invite the state agencies to its meetings and put them on the agenda. She said the commission has focused on each energy resource in the past and now is moving more to a state perspective.

Energy Growth Incentives

Mr. Anderson reviewed the portion of the EmPower North Dakota report on energy growth incentives. He said the commission urges the support of incentives to expand value-added energy opportunities by:

- Providing a sales tax exemption for value-added energy facilities, including both equipment and building materials.
- Supporting incentives to enhance CO₂ capture, storage, and enhanced oil recovery.
- Supporting an extraction tax credit on oil extraction for the development of technologies for the beneficial use of drill cuttings.
- Supporting enhanced remote natural gas capture technology to minimize flaring.

- Supporting an incentive to expand natural gas or liquid natural gas markets.
- Ensuring tax certainty for wind.
- Supporting incentives for the collocation of energy-related infrastructure in the same right of way.
- Supporting the removal of the beneficiation tax for coal conversion facilities that are subject to coal conversion tax.
- Supporting the removal of the sunset on the severance tax exemption for beneficiated coal used in agriculture commodity processing facilities.
- Removing the sunset on sales tax exemption for beneficiated coal when used in agricultural commodity processing facilities.
- Supporting a sales tax exemption for oil gathering lines.

Mr. Anderson said that present programs are not structured for a project that is a billion dollar investment. He said the commission focused on incentives, but not providing large grants. He said there needs to be a focus on oilfield waste and reduced flaring. He said there are no significant changes in the bill drafts. He said the bill drafts produce minor changes and create parity.

In response to a question from Representative Porter, Mr. Anderson said the state has worked to be competitive with other states. He said there had been no refinery built since 1976, and one was built in North Dakota and permitted in six months. He said this could not have been done in any other state. He said the commission supported the extraction tax credit for beneficial use of drill cuttings because it helps out the landowner by not having the drill cuttings on the landowner's property. He said the tax credit is to offset the investment of the company that handles the cuttings. He said the wind tax changes provide certainty and a grace period for those projects already being built. He said beneficiated coal is already taxed two times and does not need to be taxed a third time. He said the sales tax exemption for oil gathering lines reduces truck traffic and puts oil in the safest and most-efficient means of transport.

CREATION OF AN OIL AND GAS STRATEGIC PLANNING AUTHORITY BILL DRAFT

Mr. Justin Dever, Manager, Office of Innovation and Strategic Initiatives, Department of Commerce, presented a bill draft [[15.0220.02000](#)] on the creation of an oil and gas development strategic planning authority. He said the authority would be governed by the Industrial Commission. He said the authority would develop a comprehensive strategic plan to address oil and gas-affected communities needs. He said the director of the authority carries out the duties, and the duties are to collect information and create a plan. He said the director would analyze funding, programs, and incentives as they relate to the plan, and any changes in funding, programs, and incentives. He said the director would make recommendations to the Industrial Commission. He said the main funding would come from the Oil and Gas Research Council administrative budget. He said the authority would provide a report to the Legislative Council and the Industrial Commission.

In response to a question from Senator Triplett, Mr. Dever said the Pipeline Authority statute was used as a model.

In response to a question from Senator Triplett, Mr. Anderson said the commission talked about numerous places to place the authority and thought the pipeline authority model worked well, so that model was followed. He said the Industrial Commission has purview over the area of the authority. He said the authority would provide a single point of contact.

Senator Triplett said there is a distinction between the pipeline and transmission authorities which are for a specific industry, and this authority would have a broad review of the entire industry. She said she was concerned with one person reporting to the Legislative Assembly one time in a biennium.

In response to a question from Representative Hanson, Mr. Dever said the authority would advise the Industrial Commission. He said the Industrial Commission would set the budget and make any recommendations. He said the main expenses would be for staffing.

In response to a question from Chairman Wardner, Mr. Ness said this interim, there have been numerous studies, including a study by the Upper Great Plains Transportation Institute on roads, a workforce study, IHS chemical study, and other studies, and someone needs to follow through with these studies. He said a master planner could be a liaison, clearinghouse, and updater of studies. He said the authority would focus on infrastructure.

In response to a question from Chairman Wardner, Mr. Dale Niezwaag, Senior Legislative Representative, Basin Electric Power Cooperative, said the authority would be an information gatherer and organizer. He said it would provide a one-stop shop.

Senator Triplett said the Director of the Department of Transportation should be following the Upper Great Plains Transportation Institute study and the workforce study should be followed by Department of Commerce. She said it appears that the authority would be usurping the Governor's cabinet. She said the Governor or the Industrial Commission could do this as part of their budget without any changes to the law. She said this may be usurping local government as well. She said this may create a barrier between the public and elected officials.

Ms. Tabor said last interim, there were 15 studies and there was no coordination between the studies, and there was overlap between the studies. She said if the overlap can be removed, it saves the state money. She said no one has the responsibility to look at all the studies to make sure that the money is being spent wisely. She said a person is needed to provide communication and coordination of all the studies being done.

In response to a question from Representative Boe, Ms. Tabor said the studies that need to be followed are not just Legislative Assembly studies. She said some studies are not legislatively funded or particularly funded by the legislature.

In response to a question from Representative Silbernagel, Mr. Dever said the studies of infrastructure would include community infrastructure, such as hospitals.

In response to a question from Chairman Wardner, Mr. Dever said the director of the authority would act as a liaison between the Industrial Commission and Legislative Assembly and local governments.

In response to a question from Senator Triplett, Ms. Tabor said there has not been any official approval by the Governor or the Industrial Commission.

Senator Andrist said the committee should not be focusing on so much detail and should focus on the overall concept.

SUPPLEMENTAL FUNDING FOR POLITICAL SUBDIVISIONS IF OIL AND GAS TAX REVENUES EXCEED LEGISLATIVE FORECAST BILL DRAFT

Mr. Dever 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. He said the funding would not be counted against the formula caps.

In response to a question from Senator Wardner, Mr. Dever said the trigger is automatic. He said the funding would come from the strategic investment and improvements fund and from the existing balance in that fund.

In response to a question from Senator Triplett, Mr. Ness said last biennium the forecast was 30 percent off. He said everyone underestimated the price of oil and the growth last biennium. He said last year, the growth was 9 percent. He said growth seems to be tapering off, but it is impossible to predict crude oil prices. He said over-predicting creates overspending, and this would be a big problem. He said the forecast is necessarily conservative. He said the communities are in need of funds in the instances in which the forecast is that far off.

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

Mr. Dever presented a bill draft [[15.0233.01000](#)] that creates a license for commercial drill cuttings recyclers that is issued by the State Department of Health. He said the goal of the bill draft is to provide beneficial uses for drill cuttings. He said the State Department of Health would make rules and monitor recyclers. He said the facility owner is responsible for costs of inspection and compliance. He said the well owner is not liable for the cuttings after the cuttings are accepted by the recycler. He said the bill draft defines drill cuttings as earth and rock extracted from the well board during oil and gas drilling operations. He said because of the additional cost to well operators, there is a reduction in the extraction tax. He said if the well operator causes 75 percent or more of the drill cuttings to go to a recycler, the first 50,000 barrels of oil produced during the first 18 months after completion have a reduced tax rate of 5 percent, instead of 6.5 percent. He said if the well operator also does not place drill cuttings in a reserve pit near the well site, the rate is reduced to 4 percent, instead of 6.5 percent.

In response to a question from Representative Porter, Mr. Dever said there is an exception in the open records law to records that contain proprietary information.

In response to a question from Senator Triplett, Mr. Ness said recycling cuttings is a new technology, but there is one North Dakota company that can do it. He said there is approximately \$130,000 to \$150,000 of additional cost to the operator to remove the cuttings. He said this bill draft would provide a \$60,000 incentive. He said this incentive sunsets in two bienniums. He said the reason for the incentive is to get the technology going.

In response to a question from Senator Triplett, Mr. Ness said the recycling takes pressure off of landfills. He said the clay can be taken out of cuttings for use in gravel roads. He said it helps the landowner because there are no cuttings on the land.

In response to a question from Senator Triplett, Mr. Ness said 25 percent of the cuttings are from the surface casing through the freshwater zone and 75 percent are down hole. He said this is where the 75 percent of drill cuttings threshold came from.

Mr. John Harju, Associate Director for Research, Energy and Environmental Research Center, answered questions for the committee. In response to a question from Representative Porter, Mr. Harju said the character and makeup of cuttings is different for the first 25 percent than it is for the last 75 percent. He said there is beneficial use for almost 100 percent of the 75 percent. He said technology can remove the hydrocarbon for reuse.

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

Mr. Dever presented a bill draft [[15.0187.01000](#)] to create a sales and use tax exemption for materials used for oil gathering pipelines. He said the sales and use tax exemption is similar to other sales and use tax exemptions. He said the exemption can be used through an exemption certificate or a refund.

In response to a question from Senator Wardner, Mr. Dever said the sales and use tax exemption is 100 percent.

Representative Porter said there is difficulty in securing easements for gathering lines and saltwater lines. He said incentives for landowners should be investigated. He said the more gathering pipelines, the less flaring and the more moving of product. He said the bottleneck for gathering pipelines is the landowner.

Mr. Anderson said the commission had discussions on the landowner bottleneck and did not identify a mechanism to address it.

Representative Porter said all the incentives to companies do not help if the landowner will not give the companies an easement.

In response to a question from Senator Triplett, Mr. Ness said midstream pipeline companies are risk averse and wait until the wells are drilled before putting in gathering pipelines. He said in terms of gas, there is incentive to put in a gathering pipeline because a gas capture plan is needed. He said the challenge of easements is a larger challenge. He said the commission looked at a property tax incentive for landowners but it was too complicated. He said other states have different eminent domain laws, and most oil and gas development in other states is in federal land. He said the cost of an easement is very high. He said it costs \$150,000 to \$170,000 per mile to install a pipeline. He said the sales tax exemption is approximately \$22,500 per mile.

SALES AND USE TAX EXEMPTION FOR TANGIBLE PERSONAL PROPERTY FOR FERTILIZER OR CHEMICAL PROCESSING FACILITY LEGISLATIVE PROPOSAL

Mr. Dever presented a legislative proposal ([Appendix F](#)) to create a sales and use tax exemption for the tangible personal property used for a fertilizer or chemical processing facility. He said the bill draft would encourage projects that were discussed in the IHS chemical report.

COAL BENEFICIATION INCENTIVES LEGISLATIVE PROPOSAL

Mr. Dever presented a legislative proposal ([Appendix G](#)) to remove the coal conversion facilities privilege tax on beneficiated coal that is used within a coal conversion facility, to remove the sunset for the severance tax exemption for the use of beneficiated coal by an agricultural processing facility, and to remove the sunset on the sales and use tax exemption for beneficiated coal.

WIND TAX LEGISLATIVE PROPOSAL

Mr. Dever presented a legislative proposal ([Appendix H](#)) that would increase the property tax valuation for wind towers not completed by December 31, 2014, from 1.5 to 3 percent if construction was begun before January 1, 2015, and the wind turbine was in service before January 1, 2017, and for which an executory purchase power agreement was entered into before January 1, 2015. He said after that, all wind towers will be taxed on capacity and generation not on property values. He said Section 4 of the bill draft provides for a grace period for the income tax credit. He said Section 5 removes the sunset on the sales tax exemption for wind. He said this creates parity with other sales and use tax exemptions. He said the bill draft provides for the removal of the \$5 million cap on sales and use tax paid by a new coal mine located in this state.

In response to a question from Representative Porter, Mr. Mark Nisbet, Xcel Energy Inc., said the property tax reduction on wind power has been extended three times and is being extended at this time because some projects were not able to meet the deadline because of federal actions. He said the rate will raise from 1.5 to 3 percent and then to a 4.5 percent equivalent rate. He said the industry is maturing. He said the bill draft provides tax certainty for wind and takes steps toward parity.

Mr. Niezwaag said many of these wind projects were intended to be completed by the deadline but were not. He said after the deadline, wind will be taxed equivalent with other energy producers. He said the tax will be based on a production capacity rate.

COMMENTS

Mr. Scott Rising, Legislative Director, North Dakota Soybean Growers Association, provided testimony to the committee. He said infrastructure work should be done early in the season because of the short construction season in this state. He said this applies to construction required for agriculture as well as for energy.

Mr. John Walstad, Legal Division Director, Legislative Council, said the recycler bill draft has the requirement that the State Department of Health makes rules by October 1, 2015. He said it would be impossible for them to make rules by this date if the department waits until next summer to begin the process.

INCREASED FUNDING TO THE 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. He said the amount per year was raised from \$5 million to \$10 million and the overall cap was raised from \$75 million to \$100 million.

BILL DRAFT TO PROVIDE FUNDING FROM THE OIL AND GAS PRODUCTION TAX TO FUND CERTAIN HIGHWAY PROJECTS

Committee Counsel presented a bill draft [[15.0114.01000](#)] to transfer revenue from the oil and gas production tax to the state highway fund, for the money to be accounted for separately in the state highway fund, and for the money to be used for major improvements and construction of highway corridors impacted by energy development. He said the money would come from the first percentage point of the 5 percent gross production tax in an amount not exceeding \$75 million per biennium.

Mr. Cal Klewin, Executive Director, Theodore Roosevelt Expressway Association, provided written testimony ([Appendix I](#)) in support of the bill draft.

In response to a question from Senator Triplett, Mr. Klewin said the Theodore Roosevelt Expressway Association supports a five-year to six-year federal plan to fund highways. He said the association supports a gas tax.

In response to a question from Senator Andrist, Mr. Klewin said he would bring to his association the option of having the Theodore Roosevelt Expressway take the most direct route to the Trans-Canada Highway through the Weyburn port.

Senator Andrist said truckers would like to use the Weyburn port because it is shorter travel distance. He said if the road was built and Weyburn was used more, the federal government might make Weyburn a 24-hour-a-day port.

Chairman Wardner said the next meeting is Wednesday, September 17, 2014, and the committee will receive the final report from KLJ Solutions and will act on bill drafts.

No further business appearing, Chairman Wardner adjourned the meeting at 2:35 p.m.

Timothy J. Dawson
Counsel

ATTACH:9