

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Teleconference Meeting
Wednesday, July 29, 2015
Harvest 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, Kelly M. Armstrong, Brad Bekkedahl, Bill L. Bowman, John M. Warner; Representatives Dick Anderson, Mike Brandenburg, Chuck Damschen, Ben Hanson, Todd Porter; Representative Corey Mock attended by teleconference

Members absent: Senator Philip M. Murphy

Others present: See [Appendix A](#)

The Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

Chairman Wardner said the Energy Development and Transmission Committee will have a busy schedule this interim as the committee completes its assigned and statutory responsibilities. He said the committee was assigned a study of oil and gas tax allocations, which will focus on allocations to political subdivisions. He said the committee will travel to various cities in western North Dakota to seek input from representatives of various political subdivisions regarding the impact of oil and gas development activity. He said while state resources can be used to alleviate some of the funding challenges of political subdivisions throughout the state, political subdivisions will need to maximize the use of their own local funding resources to address their funding challenges.

Chairman Wardner said the Energy Development and Transmission Committee was assigned a study of Environmental Protection Agency (EPA) regulations of carbon dioxide emissions from power plants. He said the committee will also complete its statutory responsibility to study a comprehensive energy policy. He said the committee will receive reports from various state agencies and organizations during the interim as required by statute and as assigned by Legislative Management.

OIL AND GAS INDUSTRY UPDATES**Oil and Gas Tax Revenue**

Mr. Joe Morrisette, Deputy Tax Commissioner, Tax Department, presented information ([Appendix B](#)) regarding an overview of 2013-15 biennium oil and gas tax revenue collections and 2015-17 biennium oil and gas tax revenue forecasts. He said the 2013-15 biennium oil tax revenue collections exceeded \$6 billion, which was more than the March 2015 revised revenue forecast. He said oil prices ranged from a low of \$35.99 to a high of \$97.18 during the 2013-15 biennium. He said the information presented regarding the 2015-17 biennium oil tax revenue forecast reflects the "large trigger" not being in effect resulting in approximately \$500 million of additional revenue compared to the official legislative forecast.

In response to a question from Representative Brandenburg regarding state school aid funding needs, Mr. Morrisette said the state school aid formula is reflected in ongoing general fund spending. He said the oil tax revenue allocations do not include any specific allocations for state school aid funding in future bienniums.

Representative Porter requested information at a future meeting regarding fund balances and a comparison of statutory and constitutional allocations related to funds that receive oil tax revenue allocations.

Department of Mineral Resources Activities

Ms. Alison Ritter, Public Information Officer, Department of Mineral Resources, presented information ([Appendix C](#)) regarding an update on the activities of the department. She said the department anticipates fracking activity will increase when West Texas Intermediate (WTI) oil prices exceed \$65 per barrel based on input from industry representatives. She said the department anticipates drilling activity will increase when WTI oil prices

exceed \$70 per barrel. She said drilling activity is concentrated in the big four oil-producing counties--McKenzie, Mountrail, Williams, and Dunn.

In response to a question from Chairman Wardner, Ms. Ritter said some drilling rigs are leaving the state but many have placed in storage in North Dakota.

Ms. Ritter said the department does not expect future rig counts to exceed 200 drilling rigs because of operating efficiencies. She said the department anticipates the rig count will increase to approximately 140 rigs when oil prices increase. She said drilling operators have the ability to increase drilling operations relatively quickly if the oil prices increase.

In response to a question from Representative Anderson regarding well density, Ms. Ritter said companies continue to evaluate the optimal number of wells and space between wells. She said the University of North Dakota's Energy and Environmental Research Center (EERC) is in the process of conducting a study regarding the optimization of oil recovery from the Bakken Formation.

Ms. Ritter said the percentage of oil and produced water spills that are classified as contained decreased from 81 percent in 2013 to 76 percent in 2014. She said the primary reason for the decrease in containment was related to pipeline spills.

Ms. Ritter said industry has exceeded the gas capture goals with 82 percent of the gas produced statewide now captured. She said the next target is 85 percent by January 2016. She said the long-term goal is to capture 90 to 95 percent by October 2020.

Ms. Ritter said the Department of Mineral Resources continues to monitor federal regulations that may impact oil and gas development activity. She said areas of potential concern include the Bureau of Land Management's hydraulic fracturing rules and the EPA's clean water rules.

In response to a question from Representative Hanson regarding gathering pipeline regulation and monitoring, Ms. Ritter said North Dakota is one of the first states to regulate and monitor gathering pipelines. She said Colorado may also have regulations for gathering pipelines.

State and Federal Health Regulation Issues Related to Oil and Gas Development

Mr. Dave Glatt, Chief, Environmental Health Section, State Department of Health, presented information ([Appendix D](#)) regarding federal and state issues related to oil and gas development activity. He said the three areas of state and federal regulation that are currently impacting oil and gas development include oilfield waste recycling, technologically enhanced naturally occurring radioactive material (TENORM), and the EPA's clean power plan.

He said 2015 House Bill No. 1390 provides for an oilfield waste recycling facility pilot project. He said the State Department of Health received six proposals for projects. He said the projects are currently in the beginning stages of development and testing. He said the department is required to evaluate the project outcomes by June 2017. He said the department will conduct laboratory and field tests as part of the evaluation. He said the issues affecting oilfield waste recycling projects include liability concerns, the ability to convert the waste into a beneficial use material, and bonding requirements.

In response to a question from Senator Warner regarding bonding, Mr. Glatt said the department will evaluate the appropriate level of bonding along with alternatives to bonding such as a liability pool.

Mr. Glatt said the state limit for TENORM is 5 picocuries (pCi) per gram. He said limits in other states range from 0 pCi per gram to 1,000 pCi per gram. He said the State Department of Health commissioned Argonne National Laboratories to conduct a study to determine a scientifically-based safe disposal limit for TENORM. He said the study recommended a disposal limit of 50 pCi per gram of TENORM for 25,000 tons per year in a special waste landfill. He said the department is reviewing public comment regarding TENORM disposal limits.

In response to a question from Representative Hanson, Mr. Glatt said TENORM monitoring across the state is very limited. He said the department does not have the resources to conduct detailed monitoring and continuous tracking of oilfield waste containing TENORM. He said the department imposes penalties for the illegal disposal of waste containing TENORM.

In response to a question from Representative Porter, Mr. Glatt said the department does not have a memorandum of understanding with the Three Affiliated Tribes of the Fort Berthold Reservation related to TENORM

disposal. He said jurisdictional issues need to be discussed. He said the state and the Three Affiliated Tribes of the Fort Berthold Reservation will need to coordinate their efforts in regulating TENORM disposal to prevent unfair and illegal disposal practices.

In response to a question from Senator Bekkedahl regarding the cost of TENORM detection equipment, Mr. Glatt said the department is researching current technology along with new technology. He said the cost of the equipment would likely be paid by special waste landfill operators.

In response to a question from Senator Warner, Mr. Glatt said the coal industry has some expertise in disposing special solid wastes. He said there is a negative public perception regarding the use of former coal mines to dispose of oilfield waste.

Mr. Glatt said the EPA proposed rules to reduce carbon emissions by 30 percent by 2030 in the clean power plan. He said the proposed rules create concerns regarding state and federal jurisdictional authority as well as grid reliability. He said there may be opportunities for implementing carbon capture technology at power plants to provide a source of carbon dioxide in enhanced oil recovery.

Mr. Glatt said another regulatory issue related to oil and gas activity is produced water. He said a group of land owners in Bottineau County have expressed concerns about the handling of produced water and salt water spills. He said various state agencies are engaged in discussions to find a solution to the problem.

In response to a question from Senator Bekkedahl regarding the status of the oil spill at Muddy Creek, Mr. Glatt said soil remediation and water monitoring efforts are ongoing.

Oil and Gas Pipelines

Mr. Justin J. Kringstad, Director, North Dakota Pipeline Authority, presented information ([Appendix E](#)) regarding recent activities with oil and gas pipelines in the state. He said drilling efficiencies continue to improve allowing each rig to drill approximately 1.5 wells per month compared to 1 well per month three years earlier.

In response to a question from Representative Porter regarding the cost competitiveness of the Bakken Formation, Mr. Kringstad said well costs vary considerably from one well to another. He said the Bakken Formation play is the second most economic oil play in the United States, while Texas is the most economical.

Mr. Kringstad said 52 percent of oil was transported by rail in May 2015 with most transported to east coast refineries. He said 41 percent of oil was transported by pipeline. He said oil transportation by pipeline continues to increase while oil transportation by rail continues to decrease because of the completion of gathering line projects.

In response to a question from Senator Warner regarding the location of oil shipments, Mr. Kringstad said the shipments are based on the type of oil that a particular refinery is designed to handle. He said some refineries process sweet crude and some process sour crude. He said both types of refineries are located throughout the United States. He said some of the east coast refineries decreased their purchase of foreign sweet crude in favor of purchasing sweet crude from the Bakken Formation, benefiting Bakken Formation producers.

In response to a question from Senator Bekkedahl regarding the variance in oil prices, Mr. Kringstad said prices vary because of transportation discounts and market conditions. He said the price sellers receive for North Dakota sweet crude oil is approximately \$8 less than the WTI price.

Mr. Kringstad said flaring is still an issue. He said less gas is being flared as wells are connected to gathering pipelines. He said pipelines are also being added to handle natural gas liquids.

In response to a question from Senator Bekkedahl regarding gas production, Mr. Kringstad said gas production does not decline as quickly as oil production over the life of a well. He said producers have included the slower decline in gas production in their forecasts to determine the economics of their wells.

COMMITTEE STUDIES

At the request of Chairman Wardner, the Legislative Council staff presented a memorandum entitled [Comprehensive Energy Policy Study - Background Memorandum](#). The Legislative Council staff said the memorandum provides an overview of the committee's work in prior bienniums along with information on energy-related legislation. The Legislative Council staff said the committee recommended six bills during the 2013-14 interim, of which three were approved by the 2015 Legislative Assembly.

The Legislative Council staff presented a memorandum entitled [Oil and Gas Tax Allocation Study - Background Memorandum](#). The Legislative Council staff said the memorandum provides a summary of the history of oil tax rates and oil tax revenue allocation formulas. The Legislative Council staff said a flowchart is attached to the memorandum summarizing the 2015-17 biennium estimated oil tax revenue allocations.

The Legislative Council staff presented a memorandum entitled [Environmental Protection Agency Regulation Study - Background Memorandum](#). The Legislative Council staff said although the EPA regulates air, water, land, endangered species, and hazardous waste, the study is limited to the EPA's regulations of carbon dioxide emissions from power plants. The Legislative Council staff said Century Code does not specifically address carbon dioxide emissions but does restrict the State Department of Health from adopting air quality standards that are stricter than federal requirements.

The committee recessed for lunch at 12:00 noon and reconvened at 1:00 p.m.

OTHER PRESENTATIONS AND REPORTS

EmPower North Dakota Commission

Mr. Alan Anderson, Commissioner, Department of Commerce, presented information ([Appendix E](#)) regarding the activities of the EmPower North Dakota Commission. He said three of the bills recommended to the committee by EmPower were approved by the 2015 Legislative Assembly. He said during the 2015-16 interim, EmPower will gather and review information regarding the energy industries in the state. He said EmPower will report to the committee in the summer of 2016. He said the goal of EmPower, when it was established in 2007, was to double the state's energy production by 2025. He said the goal was reached in 2012 because of the growth in oil and gas development activity as well as renewable energy production.

Department of Transportation

Mr. Grant Levi, Director, Department of Transportation, presented information ([Appendix G](#)) regarding the status of major road construction projects in western North Dakota. He said the Legislative Assembly provided approximately \$2.8 billion for the department in the 2015-17 biennium. He said approximately 22 percent of the department's budget includes federal funding. He said the last phase of the United States Highway 85 four-lane project is currently under construction. He said other truck bypass and reliever route projects in western North Dakota are either completed or are under construction. He said approximately \$807 million will be spent on state, county, and city roads during the 2015 construction season.

In response to a question from Senator Bowman, Mr. Levi said the status of federal funding is uncertain. He said long-term planning is a challenge because the availability of federal funds is unknown.

Mr. Levi said overall traffic counts on state highways increased by 26 percent from 2010 to 2014. He said truck traffic was lower between March and June of 2015 compared to the same period in 2014. He said the department will continue to monitor truck traffic trends.

In response to a question from Representative Anderson, Mr. Levi said road construction techniques and materials have improved resulting in better quality roads. He said the department uses polymers and additives to improve the ride quality and the life of the road.

Mr. Levi said the overall construction cost index increased each year between 2010 and 2014. He said the construction cost index for 2015 remained the same as 2014 providing a better return on investment for the state.

In response to a question from Senator Bekkedahl, Mr. Levi said the department anticipates that the Lewis and Clark bridge project will be complete in 2017.

In response to a question from Representative Brandenburg, Mr. Levi said the 2015 Legislative Assembly appropriated \$7 million to expand the department's shortline railroad program. He said shortline railroads help to reduce truck traffic.

In response to a question from Representative Damschen regarding the status of bridges, Mr. Levi said the department continues to monitor the quality of roads and bridges across the state. He said some bridges will need major investments in the near future.

Other Business

The committee discussed future meeting dates, locations, and topics.

Representative Brandenburg suggested the committee consider holding a meeting in Jamestown so that the committee can tour the Spiritwood ethanol plant.

Chairman Wardner said the committee will seek input from representatives of political subdivisions during future meetings regarding funding needs, infrastructure projects, and oil and gas tax allocations. He said the next committee meeting will be in Williston on Wednesday, September 2, 2015, and in Watford City on Thursday, September 3, 2015.

No further business appearing, Chairman Wardner adjourned the meeting at 2:10 p.m.

Adam Mathiak
Fiscal Analyst

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