

## COMPREHENSIVE ENERGY POLICY STUDY - BACKGROUND MEMORANDUM

The Energy Development and Transmission Committee was created in 2007 by House Bill No. 1462 and was codified in North Dakota Century Code Section 54-35-18. The committee replaced the Electric Industry Competition Committee and has a broader scope of study. The committee must study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry, from the obtaining of the raw natural resources to the sale of the final product in this state, other states, and other countries. The study may include the review of and recommendations relating to policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy. In 2011 Senate Bill No. 2186 removed the expiration date of August 1, 2011, and made the committee permanent. In addition, the bill removed the mention of the study of the taxation of shallow gas to reduce energy costs.

### COMMITTEE HISTORY

The Legislative Management has assigned other studies to this committee in the past interims.

During the 2007-08 interim, this committee was assigned one study of the siting and decommissioning of commercial wind farms. The study included the identification of key issues of public and industry concerns; the solicitation of public input from local government officials, electric utilities, the wind industry, landowners, farm organizations, and other concerned interests; the review of the laws and policies of other jurisdictions; the recommendations concerning laws or policies needed in this state to address wind farm siting and reclamation of wind farm sites; and the decommissioning of wind farm sites. The committee did not make any recommendation as a result of this study.

During the 2009-10 interim, this committee was assigned three studies. The committee studied wind resources and other natural resources in the same location. The study was required to include the review of laws relating to the siting and decommissioning of a wind energy conversion facility, the desirability of an environmental assessment as a condition of siting, and the desirability of regulation of wind energy conversion facilities to address the effects on water, soil, cultural resources, and future development of other natural resources. The committee did not make any recommendation as a result of this study.

Second, the committee studied wind easements and wind energy leases, including a consideration of confidentiality clauses, liability for damages and taxes, insurance, and other concerns of property owners and wind developers. The committee did not make any recommendation as a result of this study.

Third, the committee studied wind rights. In particular, the resolution suggested defining wind rights by connecting wind rights to the surface estate and protecting adjacent property rights through setbacks. The committee did not make any recommendation as a result of this study.

During the 2011-12 interim, the committee was assigned one study of eminent domain laws as they relate to pipeline siting. In addition, the study included a review of bonding authority and liability issues for abandoned pipelines. The committee did not make any recommendation as a result of this study.

Although this committee has not made any recommendation as a result of an assigned study, the committee has made recommendations as part of the comprehensive energy policy study. As a result of the 2007-08 interim study, the committee recommended nine bills:

- Senate Bill No. 2031 extended the reduction in taxable value from 3 to 1.5 percent of assessed value for a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of 100 kilowatts or more from January 1, 2011, to January 1, 2015.
- Senate Bill No. 2032, as introduced, made permanent the sales and use tax exemption from materials used in the construction or expansion of a wind-powered facility and, as passed, extended the exemption to 2015.
- Senate Bill No. 2033 extended the 15 percent income tax credit for the installation of geothermal, solar, wind, or biomass energy devices from an end date of January 1, 2011, to an end date of January 1, 2015, and generally, allowed a credit carryover of 10 years.
- Senate Bill No. 2034 extended the oil extraction tax exemption for tertiary recovery projects using carbon dioxide from 10 years from the date of incremental production to an unlimited duration.

- Senate Bill No. 2035 included a powerplant that uses beneficiated coal within the sales and use tax exemption and included a severance tax exemption on coal purchased for coal beneficiation which is used in an agricultural commodity processing facility.
- Senate Bill No. 2036 extended the coal conversion tax exemption for repowering to include electrical generating unit that uses beneficiated coal. The bill limited the repowering extension to units that complete repowering. The previous exemption was applied to electrical generating plants.
- Senate Bill No. 2037 included within the sales and use tax exemption the construction or expansion of a system used to compress, process, gather, or refine gas from an oil well, rather than only a gas well.
- House Bill No. 1032 excluded from the siting jurisdiction of the Public Service Commission construction conducted wholly within land for which a utility previously had obtained a certificate of site compatibility or a route permit from the commission and excluded actions conducted wholly within land on which is located an energy conversion facility or transmission facility that was constructed before April 9, 1975. In addition, the bill excluded from the siting jurisdiction of the Public Service Commission pipelines with an inside diameter of four inches or less or a length of one mile or less or gathering pipelines as defined by federal law.
- House Bill No. 1033 would have reduced the time allowed for the Public Service Commission to designate the route for a transmission facility from six months to three months after receiving the application, but did not pass.

During the 2009-10 interim, the committee recommended five bills relating to the comprehensive energy policy study:

- Senate Bill No. 2030 would have created a biodiesel plant production incentive, but did not pass.
- Senate Bill No. 2031 would have removed the sunset on the sales tax exemption for wind facilities, but did not pass.
- Senate Bill No. 2032 allowed 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 allowed the Industrial Commission, as manager of the Oil and Gas Research Council, to provide financial assistance for processing and activities directly related to the refining industry and the petroleum marketing industry.
- Senate Bill No. 2033 would have allowed oil and gas impact fund grants for long-term planning and engineering studies associated with road infrastructure, water, sewer, housing, local services, and other needs. The bill would have changed the administration of the funds by having the Board of University and School Lands make the grants instead of the director of the Energy Development Impact Office. Although the bill did not pass, similar substance of the bill was adopted in House Bill No. 1013.
- Senate Bill No. 2034 treated green diesel the same as biodiesel.

During the 2011-12 interim, the committee recommended seven bills relating to the comprehensive energy policy study:

- Senate Bill No. 2027 would have taken 5 percent, up to \$3 million per biennium, of the amount credited to the resources trust fund and place it in the renewable energy development fund and provided for a general fund appropriation of \$300,000 for a study for value-added market opportunities for renewable energy resources, but the bill did not pass. The funding for the renewable energy development fund was moved to Section 29 of Senate Bill No. 2014. In addition, Section 12 of Senate Bill No. 2014 provided \$500,000 for a study to evaluate value-added market opportunities for renewable energy and oil and gas.
- Senate Bill No. 2028 would have provided a general fund appropriation of \$100,000 to Job Service North Dakota for the purposes of upgrading the collection and use of employment data to identify transportation employees and other employees who should be included in oil-related and gas-related employment, but the bill did not pass. However, \$120,000 was appropriated to Job Service North Dakota in House Bill No. 1358 for the same purposes.
- Senate Bill No. 2029 would have provided an additional \$6 million per biennium to the oil and gas research fund with intent that \$5 million be used by the Industrial Commission for opportunities related to value-added processing of oil and gas and provided a general fund appropriation of \$300,000 for a study of value-added market opportunities related to oil and gas, but the bill did not pass. However, Section 30 of

Senate Bill No. 2014 provided the same increase with legislative intent that the Industrial Commission give emphasis to value-added procession of oil and gas projects.

- As introduced, House Bill No. 1029 increased the cap on the aggregate amount of tax credits for housing incentive fund contributions from \$15 million to \$20 million per biennium and cap the fund at \$50 million. In addition, the bill allowed the Housing Finance Agency to enter public and private partnerships and reserve a share of the housing for the private partner's workforce and to charge administration fees to project developers, applicants, or grant recipients. As passed, the bill had two major changes--the \$50 million cap was removed and the bill required the annual allocation plan established by the agency for distribution of the housing incentive fund must give first priority to housing for workers employed by a city, county, school district, medical or long-term care facility, the state, or others determined by the agency who fulfill an essential public service. The bill required the second priority of the annual allocation plan must be to provide housing for individuals and families of low or moderate income. The bill required the agency to maintain a register reflecting the number of housing units owned or master leased by cities, counties, school districts, or other employers of essential service workers and to report quarterly to the Budget Section on the progress being made to reduce the overall number of units owned, master leased, or subsidized by those entities.
- House Bill No. 1030 accepted the present use and disposal of coal combustion residues.
- House Bill No. 1031 would have allowed the North Dakota Pipeline Authority to issue evidences of indebtedness for refineries, but the bill did not pass.
- House Bill No. 1032 would have provided an exemption from the oil extraction tax if the oil is sold to and refined by a refinery located in this state, but the bill did not pass.

The review of previous studies and bills is helpful in avoiding duplication in future studies.

## **ENERGY POLICY LEGISLATION**

### **2007 Bills**

In an effort to create a comprehensive energy policy, the Legislative Assembly passed 2007 House Bill No. 1462 creating Title 17. Title 17 was created in part by moving sections of the North Dakota Century Code already in existence into Title 17. Title 17 includes what was formerly Sections 4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, 4-14.1-09, and 4-14.1-10 relating to ethanol plant production incentives from the ethanol production incentive fund; Chapter 6-09.17 relating to the biodiesel partnership in assisting community expansion (PACE) fund being used for interest rate buydowns on loans to biodiesel production facilities; Section 9-01-22 relating to the termination of a wind option agreement; Sections 47-05-14 through 47-05-16 relating to the creation of wind easements and termination for lack of development; Section 47-16-42 relating to the termination of a wind energy lease for lack of development; and Chapter 49-24 relating to the North Dakota Transmission Authority.

In 2007 House Bill No. 1462 created the 25x'25 initiative for inclusion in Section 17-01-01. This initiative adopts the goal of having the agricultural, forestry, and working lands of the United States provide from renewable resources not less than 25 percent of the total energy consumed in the United States by January 1, 2025. The initiative defines renewable energy to include biofuels, solar, wind, hydropower, geothermal, carbon recycling, carbon sequestration, use of waste heat, recycling, low emission technologies that create or use hydrogen, and energy efficiency initiatives.

### **2009 Bills**

In 2009 the Legislative Assembly made a number of changes to provisions in Title 17 and created new provisions in Title 17. Four bills created major new law in Title 17. These bills include Senate Bill Nos. 2350 and 2228 and House Bill Nos. 1509 and 1322.

Senate Bill No. 2350 created the North Dakota Ethanol Council consisting of members appointed by a facility located in this state which produces more than one million gallons of agriculturally derived denatured ethanol. The council is charged with expending money collected through an assessment at the rate of 31 hundredths of 1 percent per gallon imposed upon all ethanol produced and sold in this state for the purpose of funding research, education programs, promotion, and market development efforts, and state, regional, national, and international entities that promote ethanol utilization. In addition, the bill provided for a refund of the assessment, a continuing appropriation for the assessment, and a penalty of a Class B misdemeanor for a person violating calculation and submission provisions of the assessment.

Senate Bill No. 2228 required the Department of Commerce to administer the biofuel blender pump incentive fund. The fund is to be used to provide cost-share grants of up to \$5,000 per pump for the installation of biofuel blender pumps to retailers who qualify and install pumps that dispense at retail a blend of gasoline and ethanol in a ratio selected by the purchaser and have at least four hoses that include a hose that dispenses E-10, a blend of at least E-20, and E-85 fuel.

House Bill No. 1509 required a wind easement and a wind energy lease to contain certain warnings; to allow time for the document to be reviewed and discussed with an attorney or other landowners; to prohibit a property owner from being liable for property taxes associated with a wind energy facility; to prohibit a property owner from being liable for damages caused by the wind energy facility; to prohibit making the property owner liable for a violation of law or regulation; to allow the property owner to terminate the agreement if the wind energy facility has not operated for a period of at least three years; to state circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments; to require the owner of a wind energy facility to carry general liability insurance; and to allow for judicial relief.

The Energy Policy Commission, also known as the EmPower North Dakota Commission, was first created by 2007 House Bill No. 1462. The bill required the Department of Commerce to convene an Energy Policy Commission for developing a comprehensive energy policy as part of the North Dakota energy independence initiative. The purpose for this policy was to:

1. Stimulate the development of renewable and traditional fossil-based energy within the state with the goal of providing secure, diverse, sustainable, and competitive energy supplies to reduce the dependence on foreign energy sources.
2. Promote the development of new technologies to decrease dependence on foreign energy supplies.
3. Address the growth of fossil fuel and renewable energy industries to encourage the state's competitiveness.
4. Address research, development, and marketing of North Dakota-produced energy.
5. Address the expansion of existing energy resources and the diversification of this state's energy resource base.
6. Evaluate existing tax credits and incentives.
7. Modernize and expand this state's energy infrastructure.
8. Examine potential innovations to improve environmental conditions through new technologies and review energy industry workforce and training needs and develop a strategy to maximize the state's market opportunities.

The Energy Policy Commission was codified in Section 17-07-01 through 2009 House Bill No. 1322. Under this bill, the purpose of the commission is to develop a comprehensive energy policy, update that policy, and monitor progress in reaching the goals of the policy. The Energy Policy Commission consists of the Commissioner of Commerce as chairman and members appointed by the Governor to represent the agricultural community, the Lignite Energy Council, the North Dakota Petroleum Council, the biodiesel industry, the biomass industry, the wind industry, the ethanol industry, the North Dakota Petroleum Marketers Association, the North Dakota investor-owned electric utility industry, the generation and transmission electric cooperative industry, the lignite coal-producing industry, the refining or gas-processing industry, and additional nonvoting members. In short, the Energy Policy Commission is studying a comprehensive energy policy, and the same issue is being studied by this committee.

### **2011 Bills**

In 2011 the Legislative Assembly made changes and created provisions to Title 17. In 2011 three bills provided for major change to Title 17--House Bill No. 1218 and Senate Bill Nos. 2034 and 2057.

House Bill No. 1218 made further changes to the law relating to the Energy Policy Commission. The bill clarified that the state comprehensive energy policy is made by the Legislative Assembly, and the Energy Policy Commission makes recommendations for changes in that policy.

Senate Bill No. 2034 treated green diesel, which is drop-in compatible with diesel fuel, at parity with biodiesel, which is vegetable oil. As stated earlier, this bill was introduced at the recommendation of this committee.

Senate Bill No. 2057 created a chapter in Title 17 on a biofuel blender pump incentive program to be administered by the Department of Commerce. The bill provided a cost-share grant of up to \$34,000 per retail location. The bill provided that 5 percent of any appropriated money be used for administration and marketing. The bill continued the same program that was created under 2009 Senate Bill No. 2228 as mentioned before in this memorandum but expired under the provisions of that bill.

### 2013 Bills

In 2013 the Legislative Assembly made the following changes to Title 17:

- House Bill No. 1113 provided ethanol production incentives are available to an eligible facility that is defined as an ethanol production plant constructed after July 31, 2003.
- Senate Bill No. 2018 removed transfers from the amount retained from the refund of tax for fuel used for agricultural purposes to the ethanol production incentive fund.

### Resolutions

In addition to Title 17, the Legislative Assembly has adopted a number of concurrent resolutions relating to energy policy since 2007. In 2009 the Legislative Assembly adopted House Concurrent Resolution Nos. 3030 and 3039. House Concurrent Resolution No. 3030 urged Congress to use commonsense principles for climate change legislation. These principles included federal action should not impede economic growth, new job creation, or lower the standard of living; should be fully transparent so consumers are aware of potential economic impacts; should provide encouragement for research and development; should allow cost recovery; should tie greenhouse gas reduction requirements to scientifically based technology that is available, reliable, and economically feasible; should recognize and protect existing and past investment decisions for generation resources; should allow development of resources in the United States; and should recognize the worldwide scope of the issue. House Concurrent Resolution No. 3039 urged the President and Congress to develop energy resources on the Outer Continental Shelf, promote domestic energy production, and not impose additional taxes on America's energy producers.

In 2009 the Legislative Assembly adopted a constitutional measure. House Concurrent Resolution No. 3054 established a North Dakota legacy fund, provided for deposit of certain oil and gas revenues in the fund, and imposed limitations on use of money in the fund. In particular, 30 percent of revenue from taxes on oil and gas production or extraction is transferred into the legacy fund and the Legislative Assembly may deposit additional funds. The principal and earnings in the legacy fund may not be expended until the fiscal year beginning in 2017, and an expenditure from the principal would require a two-thirds vote of the members elected to each house of the Legislative Assembly. A total cap of 15 percent of the principal would be imposed on expenditures each biennium. Interest accruing after the 2016 fiscal year would be deposited in the state general fund. This measure was submitted to the qualified electors at the general election in 2010 and was approved by the voters.

In 2013 the Legislative Assembly adopted House Concurrent Resolution No. 3026 which urged the Environmental Protection Agency to refrain from enacting regulations that place an unreasonable economic hardship on electric consumers living in the Northern Great Plains.

## 2013 LEGISLATION

There were numerous bills and resolutions introduced during the 2011 legislative session that relate to energy. The following bills are classified by the headings of taxation, governmental entity, and other bills. Some bills are classified in multiple categories and will be noted with an asterisk.

### Taxation

The taxation category is divided income taxes, sales and use taxes, and oil and gas taxes.

#### Income Taxes

House Bill No. 1198\* related primarily to oil extraction taxes and the state-tribal oil tax agreement, but the bill also provided for income tax withholding for oil and gas royalty payments to nonresidents. Any person who distributes royalty payments to oil and gas royalty owners is required to deduct and withhold from the net amount of royalty payment to each nonresident individual or business entity. If the royalty payment to a royalty owner is less than \$600 for the current withholding period or less than \$1,000 per year, the Tax Commissioner may grant a request to forgo withholding and a remitter is exempt from the withholding requirement if the remitter produced less than 350,000 barrels of oil or less than 500 million cubic feet of gas in the preceding calendar year.

Senate Bill No. 2014\* extended the effective period for the housing incentive fund income tax credit through tax year 2014 and increased the maximum amount of tax credits allowed to contributors from \$15 million to \$20 million per biennium.

House Bill No. 1029\* also extended the effective period for the housing incentive fund income tax credit through taxable year 2014 and increased the maximum amount of tax credits allowed from \$15 million to \$20 million, but removed "per biennium" as a measure of total tax credits to provide that \$20 million is the maximum amount of tax credits for all taxable years. The bill provided the annual allocation plan for the housing incentive fund must give first priority to housing for essential service workers and second priority to housing for individuals and families of low or moderate income.

### **Sales and Use Taxes**

House Bill No. 1410\* provided a sales, use, and special fuels tax exemption for liquefied natural gas sold or used for an agricultural, industrial, or railroad purpose. The bill also provided a sales and use tax exemption for materials used to construct a processing facility to produce liquefied natural gas.

House Bill No. 1382 extended by two years the expiration date of the sales tax exemption for materials used in construction of a wind-powered electrical generating facility that has at least one generation unit with a nameplate capacity of 100 kilowatts or more. The exemption was scheduled to expire December 31, 2014, and that expiration is extended to December 31, 2016.

House Bill No. 1413 provided a sales and use tax exemption for property used to construct or expand a facility for use of coal gasification byproducts.

### **Oil and Gas Taxes**

House Bill No. 1358 restructured the allocation of oil and gas gross production tax collections. The bill provided for allocation to hub cities and hub city school districts from the first one percentage point of the five percentage point gross production tax. Hub cities are to receive \$375,000 per fiscal year for each full or partial percentage point of private covered employment in the mining industry, which is estimated to provide for allocations of \$45,750,000 to hub cities for the 2013-15 biennium. Hub city school districts are to receive \$125,000 per fiscal year for each full or partial percentage point of private covered employment in the mining industry, which is estimated to provide \$15,250,000 of allocations to hub city school districts for the 2013-15 biennium. The oil and gas impact grant fund is to receive \$240 million for the 2013-15 biennium from the first one percentage point of the five percentage point gross production tax.

Allocation of the remaining four percentage points of the five percentage point gross production tax is revised to provide the first \$5 million of tax collected from production in each county goes entirely to that county and revenue over \$5 million during a fiscal year goes 25 percent to that county and 75 percent to the state.

For allocation within the county, for a county that received less than \$5 million in gross production tax allocations in the previous fiscal year, the receipts of the county are allocated 45 percent to the county, 20 percent to cities, and 35 percent to school districts and hub cities and hub city school districts are excluded from this allocation. For counties that received \$5 million or more in gross production tax receipts in the previous fiscal year, revenues received by the county are allocated 60 percent to the county, 20 percent to cities, 5 percent to school districts, 3 percent to townships based on proportion of township road miles relative to township road miles in the entire county, 3 percent to townships distributed in equal amounts to each township in the county, and 9 percent for a special allocation to hub cities of which the total amount is allocated 60 percent to Williston, 30 percent to Dickinson, and 10 percent to Minot.

Compared to current law, House Bill No. 1358 is estimated to provide \$140 million more funding for the oil and gas impact grant fund, \$300 million additional allocations directly to political subdivisions, and a reduction of approximately \$440 million in the state share of revenues. Funding to the legacy fund is unchanged, and funding to the oil and gas research fund and the tribal share of oil tax revenues are unaffected by this bill.

The bill also provided an appropriation of \$160 million to the Department of Transportation for allocation for road improvements in oil-producing counties that receive \$5 million or more of gross production tax allocations for fiscal year 2012; \$120 million to the Department of Transportation for allocation among counties that did not receive \$5 million or more of gross production tax allocations in fiscal 2012; \$8,760,000 to the State Treasurer for allocation to counties for the benefit of townships in oil-producing counties; \$2 million to the Department of Commerce for a grant program for nursing homes, basic care facilities, and providers that serve individuals with developmental disabilities in oil-producing counties; \$239,299,174 to the Board of University and School Lands for

oil and gas impact grants; \$9.6 million to the Department of Human Services for a grant program for critical access hospitals in oil-producing counties and counties contiguous to an oil-producing county; \$9.6 million to the Attorney General for grants to law enforcement agencies, crime-related needs of the Attorney General's office, and development of a uniform law enforcement and custody manual; and \$120,000 to Job Service North Dakota to upgrade statistical information on employees in oil and gas-related employment.

House Bill No. 1198\* eliminated stripper well property status for wells drilled and completed or reentered and recompleted after June 30, 2013. For wells drilled and completed or reentered and recompleted after June 30, 2013, wells must be evaluated on an individual basis for stripper well status based on the production from the well and are not eligible for the stripper well exemption unless the individual well produces 30 barrels or less per day outside the Bakken and Three Forks Formations and 35 barrels or less per day for wells in the Bakken or Three Forks Formations. The bill provided for a reduced oil extraction tax rate of 2 percent for the first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations after June 30, 2013.

The bill revised the statutory framework for the state-tribal oil and gas tax agreement. The bill eliminated the five-year exemption for wells drilled on an Indian reservation after June 30, 2013. The bill increased the tribal share of revenue allowable under the agreement for production on nontrust lands from 20 percent of oil and gas gross production taxes to 50 percent of total oil and gas gross production and oil extraction taxes. The bill provided the state-tribal agreement must require that the Three Affiliated Tribes report annually to the Budget Section of the Legislative Management to identify investment of at least 10 percent of tribal oil and gas gross production and oil extraction tax receipts in essential infrastructure and inform the Budget Section of fees, expenses, and charges the tribe imposes on the oil industry.

House Bill No. 1278 established a North Dakota outdoor heritage fund and a North Dakota Outdoor Heritage Advisory Board to advise the Industrial Commission regarding use of the outdoor heritage fund. The bill provided the tax revenue from the first one percentage point of the five percentage point gross production tax, up to 4 percent of the amount available, is to be deposited in the North Dakota outdoor heritage fund, but not in amount exceeding \$15 million in a state fiscal year and not in an amount exceeding \$30 million per biennium.

Senate Bill No. 2014\* provided within the oil extraction tax development fund, the portion to be allocated to the resources trust fund must be reduced by 5 percent and that amount must be transferred no less than quarterly into the renewable energy development fund, but not in an amount exceeding \$3 million per biennium. In addition, one-half of 1 percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund, but not in an amount exceeding \$1.2 million per biennium. The funding for renewable energy source development is to be administered by the Industrial Commission, and the funding for programs for energy conservation development is administered by the Department of Commerce.

House Bill No. 1134\* revised laws on flaring of gas from oil and gas wells. The bill did not change the time limit of one year when flaring is allowed but allows an extension of that time if the well is equipped with an electrical generator that consumes at least 75 percent of the gas from the well; equipped with a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, or separating and collecting over 50 percent of the propane and heavier hydrocarbons; or equipped with value-added processes as approved by the Industrial Commission which reduce the volume or intensity of the flare by more than 60 percent. The bill provided an oil and gas gross production tax exemption for a period of two years and 30 days if the gas is collected under one of the optional methods for which extended duration of flaring is permitted. The bill also provided a sales and use tax exemption for materials used in collecting gas at the well site for one of the methods of collecting gas for which an extended period of flaring is permitted.

House Bill No. 1333\* provided from the first one percentage point of the five percentage point oil and gas gross production tax, 4 percent of the amount is to be transferred to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding \$5 million in a state fiscal year and not in an amount that would bring the balance in the fund to more than \$75 million.

Senate Bill No. 2013 eliminated the requirement the Board of University and School Lands serve as an appeals board to reconsider oil and gas impact grant applications denied by the Director of the Energy Infrastructure and Impact Office.

House Bill No. 1005 amended a portion of the statutory authority governing the state-tribal oil and gas tax agreement to make clear the state's share of oil and gas gross production tax revenue is subject to distribution among political subdivisions as provided in the gross production tax law.

Senate Bill No. 2105 related to reimbursement of coal severance tax allocations to a non-coal-producing county. The bill provided during the first month of each calendar year beginning January 2014 the State Treasurer shall distribute funds to offset 50 percent of the county share of coal severance tax revenue allocated to a non-coal-producing county.

### **Fuels Taxes**

House Bill No. 1410\* provided a special fuels tax exemption for liquefied natural gas sold or used for an agricultural, industrial, or railroad purpose.

Senate Bill No. 2018 eliminated the two cents per gallon withheld from agricultural fuel tax refunds for deposit in the agricultural fuel tax fund and the one cent per gallon withheld from agricultural fuel tax refunds to be withheld and deposited in the ethanol production incentive fund. The bill increased from four cents to seven cents per gallon the amount of the refund of fuel tax for fuel used for agricultural purposes to be deposited in the agricultural research fund. The bill also changed the name of the agricultural fuel tax fund to the agricultural products utilization fund.

### **Governmental Entity**

The governmental entity category is divided into the Industrial Commission, Department of Commerce, Public Service Commission, and State Investment Board.

### **Industrial Commission**

House Bill No. 1079 extended the flex partnership in assisting community expansion (PACE) program to continue through June 30, 2015, and expanded the program to include financing of affordable multifamily housing units both within and outside the areas of the state affected by oil and gas development. The bill provided under the PACE program, the community's contribution of direct cash, loans, equity investments, land, property, or infrastructure may count toward the community's funding of its portion of the interest rate buydown for a PACE loan and increased the maximum amount of the PACE interest rate buydown from \$300,000 to \$500,000.

Senate Bill No. 2014\* is the appropriation to the Industrial Commission and the agencies under the management of the Industrial Commission. The bill removed the requirement that at least 25 percent of the housing incentive fund be used to assist developing communities with a population of not more than 10,000 and removed the requirement that at least 50 percent of the fund be used to benefit households with incomes at not more than 50 percent of the area median income. The bill provided \$15.4 million in one-time funding to the housing incentive fund. The bill removed the President of the Northern Alliance of Independent Producers as a member of the Oil and Gas Research Council. The bill exempted from the state classified service engineering technicians employed by the Director of Mineral Resources. The bill provided for a workforce study. In particular the bill provided funding for dates and refinements to employment models used to track and forecast changes in the oil and gas industry workforce and estimate housing and population in the Williston Basin and as part of that study to make a comprehensive assessment of the demographic makeup of the current and expected oil and gas workforce. The bill provided for lignite research grants and one-time funding for federal agency litigation, an oil-bearing rock study, and a temperature profile study. The bill provided additional funding for the Oil and Gas Research Council with a focus on value-added market opportunities.

House Bill No. 1333\* related to pipeline reclamation by the Industrial Commission. Concerning the disposal of saltwater and oil field waste, the bill required the Industrial Commission to give all affected counties written notice of hearings in such matters at least 15 days before the hearing and allowed the commission to consider, in addition to other authority granted under Section 38-08-04, safety of the location and road access to saltwater disposal wells, treating plants, and all associated facilities. The bill required civil penalties assessed for violation of Chapter 38-08 to be deposited in the abandoned oil and gas well plugging and site reclamation fund and added reclamation of oil and gas-related pipelines and associated facilities as an authorized use of money in the fund. The bill required owners and operators of underground gathering pipelines to file pipeline shape files with the Industrial Commission for creation of a geographic information system database to be made available to real property owners or lessees. The bill authorized the North Dakota Mediation Service to mediate disputes related to easements for oil and gas-related pipelines and associated facilities and allocated 4 percent of the first 1 percent of the gross value at the well of oil and one-fifth of the tax on gas derived from the gross production tax to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding \$5 million in a state fiscal year and not in an amount that would bring the balance in the fund to more than \$75 million. The

bill did not apply to the reclamation of an oil and gas-related pipeline or associated facility put into service before August 1, 1983.

House Bill No. 1134\* provided that in addition to being capped, connected to a gas gathering line, or equipped with an electrical generator that consumes at least 75 percent of the gas from the well, after the one-year flaring exemption period a well must be equipped with a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as a fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over 50 percent of the propane and heavier hydrocarbons, or equipped with other value-added processes as approved by the Industrial Commission which reduce the volume or intensity of the flare by more than 60 percent.

House Bill No. 1198\* authorized the Industrial Commission to recertify stripper wells that are reentered and recompleted as horizontal wells.

House Bill No. 1029\* authorized the Housing Finance Agency to enter private partnerships for housing and reserve a share of the housing for the private partner's workforce. The bill extended the housing incentive fund through June 30, 2015, and authorized the agency to collect administrative fees from project developers, applicants, and grant recipients. The bill required the annual allocation plan established by the agency for distribution of the housing incentive fund must give first priority to housing for workers employed by a city, county, school district, medical or long-term care facility, the state, or others determined by the agency who fulfill an essential public service. The bill required the second priority of the annual allocation plan must be to provide housing for individuals and families of low or moderate income. The bill required the agency to maintain a register reflecting the number of housing units owned or master leased by cities, counties, school districts, or other employers of essential service workers and to report quarterly to the Budget Section on the progress being made to reduce the overall number of units owned, master leased, or subsidized by those entities.

House Bill No. 1278 established a North Dakota outdoor heritage fund into which up to \$30 million per biennium of oil and gas gross production tax revenues must be deposited. The bill provided the fund must be used to provide grants to state agencies, tribal governments, political subdivisions, and nonprofit organizations to provide access to private and public lands for sportsmen, support stewardship practices, develop and conserve wildlife and fish habitat, and conserve natural areas for recreation. The bill required the Industrial Commission to manage the fund and provide staffing for meetings of the North Dakota Outdoor Heritage Advisory Board. The bill provided that the board consists of 12 members appointed by the Governor.

House Bill No. 1017 changed the membership of the North Dakota Outdoor Heritage Advisory Board by removing the member from the North Dakota natural resources trust fund and by providing an additional representative be appointed from the conservation community at large of statewide conservation groups.

### **Department of Commerce**

Senate Bill No. 2014\* created an energy conservation grant fund for the purpose of providing grants to political subdivisions for energy conservation projects in nonfederal public buildings. The bill provided an increase in funding to the Renewable Energy Council. The bill provided funding for a study of value-added market opportunities for renewable energy and oil and gas. In addition, funding was provided for grants for nursing homes in oil-impacted areas, homeless shelters, and child care facilities.

House Bill No. 1113 removed the August 1, 2013, expiration date of the law that authorizes funds in the North Dakota Development Fund, Inc., to be used to provide financing to early childhood facilities.

### **Public Service Commission**

Senate Bill No. 2209 provided in the eminent domain siting of an energy conversion facility or a transmission facility, if a route permit is required under Chapter 49-22, the court may order the taking by eminent domain conditioned on the receipt of the route permit.

House Bill No. 1147 removed the requirement of a letter of intent for siting a transmission facility and allowed an adjustment in a route within a corridor for gas or liquid transmission lines before and during the construction of a line with limited Public Service Commission review. The bill allowed an adjustment without any commission action if the construction is within the corridor, the construction will not affect any exclusion or avoidance areas, and all other commission orders, laws, and rules will be followed. If the adjustment affects an avoidance area, the utility must file information with the commission, including the activities expected to impact the avoidance area and consent of the property owner or good cause. The utility may adjust to outside the corridor if, among other

things, there is no effect on an avoidance or exclusion area, the detour is not longer than 1.5 miles, and there is landowner consent. The utility may adjust to outside the corridor and affect an avoidance area if, among other things, the utility files information, including that the construction will not affect exclusion areas, how the construction affects avoidance areas, good cause to affect the avoidance area, the route outside the corridor is no longer than 1.5 miles, and there is landowner consent.

House Bill No. 1064 increased the maximum penalties for a violation of pipeline safety standards from \$10,000 to \$200,000 for each violation and \$500,000 to \$2,000,000 for any series of related violations.

Senate Bill No. 2139 changed the requirement of an annual 10-year plan by a utility to a biennial plan.

Senate Bill No. 2112 changed the application fees paid by public utilities to \$75,000 if the fee was up to \$125,000 as previously provided by law and to \$100,000 if it was \$50,000 as previously provided by law.

Senate Bill No. 2174 required a public utility to provide a customer notice of the utility's intention to discontinue service and to a designated third party for discontinuing service for payment delinquency.

House Bill No. 1359 created an additional civil penalty of up to \$25,000 for a violation of the one-call notice system. The bill allowed an excavator to notify the notification center of the location by an identifiable roadway or roadway intersection and, if the location is large or complex, required the excavator to provide information by white marking, project staking, geographic information system shape file, detailed drawing, map, or other appropriate means. The bill limited the location to the area to be excavated in 21 days and required the facilities be relocated if 21 days have passed unless other arrangements have been made with the underground facility owner. After three locates in the same area without excavating, the excavator is responsible for further locate costs. The bill required an underground facility owner to make all new facilities locatable. The bill required the excavator to use reasonable efforts to maintain markings during excavation.

### **State Investment Board**

House Bill No. 1167 defines "earnings" for the purposes of the legacy fund as net income in accordance with generally accepted accounting principles, excluding any unrealized gains or losses.

### **Other Bills**

The other bills category is divided into mineral rights, oil and gas, and water.

### **Mineral Rights**

Senate Bill No. 2169 clarified provisions relating to marketable title. The bill provided that the holder of an interest in severed minerals is deemed in possession of the minerals if the person has used the minerals and the use is stated in an affidavit of possession.

House Bill No. 1352\* required a mineral developer to furnish the mineral owner a description of the conflict regarding the mineral owner's ownership interest in a spacing unit and the proposed resolution or with that portion of the title opinion that concerns the disputed interest.

### **Oil and Gas**

House Bill No. 1348 changed the requirement that if the Industrial Commission issues a drilling permit for a location within 500 feet of an occupied dwelling, the commission may impose conditions on the permit as the commission determines reasonably necessary to minimize impact to the owner of the occupied dwelling to a requirement that if the commission issues a drilling permit for a location within 1,000 feet of an occupied dwelling, the commission may impose conditions on the permit for wells permitted on new pads built after July 31, 2013, that, upon request of the owner of the permanently occupied dwelling, require the location of all flares, tanks, and treaters utilized in connection with the permitted well be located at a greater distance from the occupied dwelling than the oil and gas well bore if the location can be accommodated reasonably within the proposed pad location.

House Bill No. 1352\* provided within one year after a compensation offer is made for surface damages is rejected, either the mineral developer or surface owner may involve the North Dakota Mediation Service or other civil mediator to resolve the compensation amount. The bill also provided if the mineral owner and mineral developer disagree over the mineral owner's ownership interest in a spacing unit, the mineral developer must furnish the mineral owner with a description of the conflict and the proposed resolution or with that portion of the title opinion that concerns the disputed interest.

House Bill No. 1350 provided a claim for relief for compensation brought under the oil and gas production damage compensation chapter must be commenced within the limitations period provided in Section 28-01-16--six years.

### **Water**

House Bill No. 1020 required the Bank of North Dakota to provide a loan of \$40 million to the Western Area Water Supply Authority for construction of the Western Area Water Supply Project. The bill expanded the duties of the Water Topics Overview Committee to include preparation of a schedule of priorities with respect to water projects and to study policies regarding the development and financing of municipal projects, including water treatment plants; pipelines, including pipeline expansion, public and industrial use of water, cost analysis of future project development, and ongoing maintenance cost of current and future projects; and technology, including the use of technology for permitting and electronic metering.

House Bill No. 1015 amended Section 5 of House Bill No. 1020 relating to the Western Area Water Supply Authority loan from the Bank of North Dakota to delete the requirement that the terms and conditions of the loan must be negotiated by the Western Area Water Supply Authority and the Bank and any previous loans may be added to and merged into this loan as agreed to by the authority and the Bank and the authority may repay the loan from specific project features to provide that the loan must be added to and merged into previous loans as agreed to by the Industrial Commission and the Bank.

Senate Bill No. 2233 required the Water Topics Overview Committee to work collaboratively with the State Water Commission to develop policies to further define the state's role in major flood control projects and in the prioritization of water projects. The bill established an infrastructure revolving loan fund within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction money deposited in the resources trust fund is to be made available on a continuing basis for making loans from the fund. The bill provided a schedule for how industrial water depot and lateral revenues received by the Western Area Water Supply Authority are to be applied. The bill required the Western Area Water Supply Authority to develop industrial water depot and lateral retail water rates and to present the rates to the Industrial Commission for approval. The bill required the Western Area Water Supply Authority to follow State Water Commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans. The bill changed the Western Area Water Supply Authority default provisions to provide the Industrial Commission may review the ability of water depot and lateral sales to meet expenses of the authority, and if the Industrial Commission is uncertain of that ability, the commission is required to provide written notification to the State Water Commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments.

Senate Bill No. 2053 authorized the State Water Commission to sell property acquired for the Northwest Area Water Supply Project that is no longer necessary for project purposes.

## **REPORTS**

The Legislative Management delegated to the Energy Development and Transmission Committee the responsibility to receive reports from a number of entities during the interim.

### **North Dakota Transmission Authority**

Under Section 17-05-13, the North Dakota Transmission Authority is required to deliver a written report on its activities to the Legislative Council each biennium.

### **North Dakota Pipeline Authority**

Under Section 54-17.7-13, the North Dakota Pipeline Authority is required to deliver a written report on its activities to the Legislative Council each biennium.

### **Energy Policy Commission**

Under Section 17-07-01, the Energy Policy Commission is to make recommendations concerning a comprehensive energy policy. The Energy Policy Commission is required to report biennially to the Legislative Management.

### **Industrial Commission**

As a part of Section 38-22-15, which establishes permit, fee, and title requirements for the geologic storage of carbon dioxide, the Industrial Commission is required to file a report beginning December 2014 and every four consecutive years on the amount of money in the carbon dioxide storage facility trust fund and if fees being paid

into it are sufficient to satisfy the fund's objectives under Section 38-22-15. Under the same section, storage operators of carbon dioxide must pay a fee based on the expense associated with long-term monitoring and management of a closed storage facility. The fees are placed in a carbon dioxide storage facility trust fund.

### **Coal Conversion Facilities**

As a result of 2009 Senate Bill No. 2221 and as codified under Section 57-60-02.1, a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions is entitled to a 20 percent reduction in the state general fund share of the coal conversion tax. In addition, the facility may receive an additional reduction of 1 percent for each two percentage points of capture of carbon dioxide emissions up to 50 percent and for 10 years. A coal conversion facility that receives a credit is required to report to the Legislative Council. The report must include an overview of the project; a status report on past, current, and captured carbon dioxide; any changes to the carbon dioxide capture system; and the status of federal law and any federal benefits to the project. The only project in this state at this time is at the Antelope Valley Station near Beulah. The Antelope Valley Station is part of an energy complex that includes the Great Plains Synfuels Plant and the Freedom Mine.

### **SUGGESTED STUDY APPROACH**

Although the committee may study any particular area of energy, the difficult issue is for any particular area to relate comprehensively to the energy policy of this state. There are a number of entities in state government that carry out this state's energy policy, including the Public Service Commission, the Department of Commerce, and the Industrial Commission. The Department of Commerce is the umbrella organization for the Energy Policy Commission, and the Industrial Commission is the umbrella agency for the North Dakota Transmission Authority; the North Dakota Pipeline Authority; and the Renewable Energy Council, which is chaired by the Commissioner of Commerce. Because energy policy is being administered and in some cases developed by other governmental entities, the committee may wish to receive testimony from these entities on energy policy before coordinating or changing the current policies.