COMPREHENSIVE ENERGY POLICY STUDY - BACKGROUND MEMORANDUM

The 2007 Legislative Assembly created the Energy Development and Transmission Committee in House Bill No. 1462. The committee is 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

Assigned Studies

2011-12 Interim

- **Pipeline siting** - The committee conducted a study of eminent domain laws related to pipeline siting, as assigned by the Legislative Management. The study included a review of bonding authority and liability issues for abandoned pipelines. The committee did not make any recommendation related to this study.

2013-14 Interim

- **Oil industry practices** - Pursuant to Section 8 of House Bill No. 1198, the committee contracted with an independent consultant to study the likely changes to oil industry practices, production, impacts, and tax policy in the foreseeable future. The committee did not make any recommendations related to this study.
- **Energy corridor** - Pursuant to Section 41 of Senate Bill No. 2018, the committee studied the feasibility and desirability of the establishment of an energy corridor in the western portion of the state. The committee recommended House Bill No. 1031, which provided for an allocation of $75 million per biennium from the oil and gas gross production tax to the state highway fund for major improvements and construction of highway corridors impacted by energy development, with a priority of enhancement to United States Highway 85. House Bill No. 1031 was not approved by the 2015 Legislative Assembly.
- **Oilfield waste** - The Chairman of Legislative Management directed the committee to study the permitting, regulation, and siting of oilfield waste landfills and the disposal of waste related to oil and gas development. The committee recommended House Bill No. 1032 to provide an allocation of up to $10 million per year from the oil and gas gross production tax to the abandoned oil and gas well plugging and site reclamation fund but not in an amount that would bring the balance of the fund to more than $100 million. The bill was amended to provide for an allocation of up to $7.5 million per year and to make the provisions of the bill contingent upon the "large trigger" not being in effect for the first six months of the 2015-17 biennium. The 2015 Legislative Assembly approved House Bill No. 1032 as amended.

2015-16 Interim

- **Oil and gas tax allocation formulas** - The committee conducted a study of the oil and gas tax revenue allocation formulas, including the allocations to political subdivisions. The committee did not make any recommendation related to this study.
- **Environmental Protection Agency (EPA) regulations** - The committee studied the impacts of the EPA regulations of carbon dioxide emissions from new and existing electrical generation units and made no recommendations related to this study.

Comprehensive Energy Policy Study - Committee Recommended Legislation

2011-12 Interim

- **Renewable energy** - Senate Bill No. 2027 transferred 5 percent of the oil extraction tax allocations to the resources trust fund, up to $3 million per biennium, from the resources trust fund to the renewable energy development fund. The bill also appropriated $300,000 from the general fund for a study of value-added market opportunities associated with renewable energy resources. The bill did not pass, but Senate Bill No. 2014 included the transfer of oil extraction tax allocations and provided $500,000 for a study to evaluate value-added market opportunities for renewable energy and oil and gas.
- **Oil- and gas-related employment** - Senate Bill No. 2028 appropriated $100,000 to Job Service North Dakota for the purposes of upgrading the collection of employment data to identify oil- and gas-related

employment, but the bill did not pass. House Bill No. 1358 appropriated $120,000 to Job Service North Dakota for the same purpose.

- **Value-added oil and gas processing** - Senate Bill No. 2029 increased the oil and gas tax allocations to the oil and gas research fund by $6 million per biennium, from $4 million to $10 million, with legislative intent that the Industrial Commission use $5 million for value-added oil and gas processing opportunities. The bill also appropriated $300,000 from the general fund for a study of value-added oil and gas market opportunities, but the bill did not pass. However, Senate Bill No. 2014 provided the same allocation increase with legislative intent that the Industrial Commission give emphasis to value-added oil and gas processing projects. Senate Bill No. 2014 also included funding to evaluate value-added oil and gas processing opportunities.
- **Housing incentive fund** - As introduced, House Bill No. 1029 increased the limit on the aggregate amount of tax credits for housing incentive fund contributions from $15 million to $20 million per biennium and limited the fund balance to $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 required an annual allocation plan to give priority to essential public service workers and to individuals and families of low or moderate income and required quarterly reports to the Budget Section on the progress to reduce the overall number of units owned, master leased, or subsidized by political subdivisions.
- **Coal combustion residues** - House Bill No. 1030, which was approved by the 2013 Legislative Assembly, accepted the present use and disposal of coal combustion residues.
- **Refinery financing** - House Bill No. 1031 allowed the North Dakota Pipeline Authority to issue evidences of indebtedness for refineries, but the bill did not pass.
- **Oil extraction tax exemption** - House Bill No. 1032 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.

2013-14 Interim

- **Oil and gas development strategic planning authority** - Senate Bill No. 2032 created an oil and gas development strategic planning authority, but the 2015 Legislative Assembly did not approve the bill. Under the provisions of the bill, the authority would be governed by the Industrial Commission and would serve in an advisory capacity to the commission. The authority would develop a comprehensive strategic plan to address oil- and gas-affected communities' needs.
- **Special distributions to political subdivisions** - Senate Bill No. 2033 appropriated $200 million from the strategic investment and improvements fund to the State Treasurer for distributions to political subdivisions if oil tax revenues exceeded the forecast by 20 percent or more in the first six months of the biennium. The 2015 Legislative Assembly did not approve Senate Bill No. 2033.
- **Sales tax exemption for oil pipeline materials** - Senate Bill No. 2034 to created a sales and use tax exemption for materials used for oil gathering pipelines, but the 2015 Legislative Assembly did not approve the bill.
- **Sales tax exemption for a chemical processing facility** - The committee recommended Senate Bill No. 2035 to create a sales and use tax exemption for tangible personal property used for a fertilizer or chemical processing facility producing fertilizer from natural gas or crude oil components. The bill was amended to add the requirement that political subdivisions consult with the Department of Commerce before granting property tax exemptions for projects with an estimated cost of $1 billion or more. The 2015 Legislative Assembly approved Senate Bill No. 2035 as amended.
- **Coal conversion tax exemption** - The Legislative Assembly approved Senate Bill No. 2036 to provide an exemption from the coal conversion facilities privilege tax for beneficiated coal used within a coal conversion facility. The bill also removed the expiration dates on the sales and use tax exemptions for beneficiated coal and the severance tax exemption for coal used in certain plants.
- **Wind turbine taxation** - The committee recommended Senate Bill No. 2037 to increase the factor used to determine taxable valuation on certain wind generation units from 1.5 to 3 percent for property tax purposes; to remove the expiration date on the sales tax exemption for wind-powered electrical generation facilities; and to remove the $5 million limit on the sales and use tax exemption for new coal mines. The bill was amended to provide payments in lieu of property taxes for certain wind turbines; to provide an income tax credit equal to 3 percent of installation costs each year for five years for qualifying wind energy devices;

and to provide a sales tax exemption for equipment used in coal mining, retroactive to January 1, 2011. The 2015 Legislative Assembly approved the bill as amended.

2015-16 Interim

- **Wind turbine sales tax exemption** - House Bill No. 1028 removed expiration dates to continue the sales and use tax exemptions for materials used in the construction of wind turbines. The bill was not approved.
- **Coal conversion tax revenue allocation** - Senate Bill No. 2031 removed an expiration date to continue the 5 percent allocation of the general fund share of coal conversion tax revenue collections to the lignite research fund. The 2017 Legislative Assembly approved the bill.

ENERGY POLICY LEGISLATION

Title 17, relating to energy policy, establishes the Transmission Authority, the Ethanol Council, and the Energy Policy Commission and includes provisions for energy incentives relating to ethanol and biodiesel. The Legislative Assembly approved the following bills and concurrent resolutions relating to energy policy.

2011 Bills and Resolutions

- **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**, which was recommended by the committee, treated green diesel, which is drop-in compatible with diesel fuel, at parity with biodiesel, which is vegetable oil.
- **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.

2013 Bills and Resolutions

- **House Bill No. 1113** provided ethanol production incentives are available to an eligible facility 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.
- **House Concurrent Resolution No. 3026** urged the federal Environmental Protection Agency to refrain from enacting regulations that place an unreasonable economic hardship on electric consumers living in the Northern Great Plains.

2015 Bills and Resolutions

- **House Concurrent Resolution No. 3008** urged Congress to lift the prohibition on the export of crude oil.
- **House Concurrent Resolution No. 3009** urged Congress to address concerns related to the federal Clean Water Act.
- **House Concurrent Resolution No. 3024** urged the federal government to refrain from continuing to impose regulations on utilities using lignite-based electric generation.

2017 Bills and Resolutions

- **House Bill No. 1144** separates the siting laws for gas and liquid energy conversion and transmission facilities from the siting laws for electric energy conversion and transmission facilities.
- **House Bill No. 1181** authorizes an owner of wind energy rights to terminate wind option agreements if certain conditions are not met. The bill also clarified that a wind easement or lease is presumed abandoned if a wind farm facility has no construction or operations for 36 consecutive months.
- **House Concurrent Resolution No. 3011** extends appreciation to the President of the United States for expediting the approval of the easement required for the completion of the Dakota Access Pipeline.
- **House Concurrent Resolution No. 3037** requests the federal government enact legislation to expand and extend the current federal tax credit for carbon capture, utilization, and storage; to appropriated sufficient funding to the United States Department of Energy; and to support the preservation of a fuel-diverse electric generation portfolio.

- **Senate Concurrent Resolution No. 4008** urges Congress to refrain from enacting regulations that threaten the reliability and affordability or electric power in North Dakota and to increase its support for research, development, and deployment of next generation carbon-based energy generation.

OTHER ENERGY-RELATED LEGISLATION - 2017 LEGISLATIVE SESSION

Taxation

Coal taxes

- **House Bill No. 1005** adjusts the allocation of coal severance tax revenue by reducing the coal production limitation from 3.4 million tons to 3 million tons, and by reducing the reimbursement percentage for the coal severance shortfall payments, from 50 to 30 percent. The coal severance tax revenue from the first 3 million tons is distributed to Oliver County and Morton County, after which the remaining revenue is distributed to Oliver County. Oliver County is reimbursed for 30 percent of the amount distributed to Morton County. As a result of the change, the funding provided to each county is anticipated to decrease by approximately $25,000 per year, and the 2017-19 biennium general fund appropriations decreased by approximately $50,000.
- **Senate Bill No. 2031**, which was recommended by the committee, removes an expiration date to continue the 5 percent allocation of the general fund share of coal conversion tax revenue collections to the lignite research fund. The lignite research fund will continue receiving the allocation of approximately $1.2 million per biennium due to the passage of the bill.
- **Senate Bill No. 2133** changes the definition of a coal conversion facility's taxable revenue and changes the tax rate from 4.1 percent to 2 percent. The bill also removes the ability of a coal conversion facility to claim the carbon dioxide capture tax credit. The estimated fiscal impact of the bill for the 2017-19 biennium includes an increase of $1.06 million in general fund revenues and a decrease of $680,000 in revenue allocations to counties.

Oil and Gas Taxes

- **House Bill No. 1020** decreases the percentage transferred from the resources trust fund to the renewable energy development fund from 5 to 3 percent and limits the allocations to the energy conservation fund to $200,000 only for the 2017-19 biennium. The bill also limits the total amount deposited in the infrastructure revolving loan fund to $26 million.
- **House Bill No. 1152** changes the state's share of oil and gas tax allocations to increase the allocation to the general fund from $300 million to $400 million (only for the 2017-19 biennium); to provide an allocation of $75 million to the budget stabilization fund; to provide an allocation of up to $3 million to the lignite research fund; and to decrease the allocation to the state disaster relief fund rom up to $22 million to up to $20 million.
- **Senate Bill No. 2013** changes the allocations to hub cities by excluding the first 2 percentage points of mining employment, changes the supplemental school district allocation to provide specific allocations at varying levels, and changes the basis for the distributions to political subdivisions to reflect the most recently completed even-numbered fiscal year. The bill also crease an energy impact fund and, only for the 2017-19 biennium, designates $2 million per fiscal year of the allocations to counties that received more than $5 million to the energy impact fund.

Governmental Entities

Industrial Commission

- **Senate Bill No. 2014** is the appropriation bill for the Industrial Commission and agencies under the management of the Industrial Commission. The bill expands funding for lignite research, including advanced energy technology research and development. The bill decreases the coal severance tax allocations to the lignite research fund passed through the coal development trust fund and increases the direct allocation of coal severance tax allocations to the lignite research fund resulting in an estimated net increase of $1 million. The bill also includes a transfer of $3 million from the strategic investment and improvements fund to the lignite research fund for the 2017-19 biennium.
- **House Bill No. 1020** appropriates funding from the resources trust fund to the Industrial Commission to conduct an independent study of the feasibility and desirability of the sale or lease of the industrial water supply assets of the Western Area Water Supply Authority.
- **House Bill No. 1151** clarifies that operators are not required to provide reports to the Industrial Commission related to fluid spills of 10 barrels or less when the spills are contained on the well pad.

- **House Bill No. 1347** authorizes funding from the abandoned oil and gas well plugging site and reclamation fund for restoration projects related to pipelines and facilities that were abandoned or inadequately reclaimed before August 1, 1983, and for demonstration projects related to reclamation. The bill also includes funding for brine pond and soil remediation studies as well as funding to continue a study of pipeline leak detection technology.
- **Senate Bill No. 2333** requires any land disturbed by oil and gas activity to be reclaimed as close as possible to its original condition and allows the Industrial Commission to waive the requirement.

Department of Commerce

- **Senate Bill No. 2018** is the appropriation bill for the Department of Commerce. The department administers the ethanol production incentive fund. The fund's estimated revenues are $4.7 million for the 2017-19 biennium.

Public Service Commission

- **House Bill No. 1008** is the appropriation bill for the Public Service Commission. The bill includes funding to continue a railroad safety pilot program, which was created by the 2015 Legislative Assembly.
- **Senate Bill No. 2286** requires the Public Service Commission to cooperate with political subdivisions that may be impacted by energy conversion and transmission facility siting.
- **Senate Bill No. 2313** establishes a wind energy restoration and reclamation oversight program and expands the exclusion and avoidance areas for wind turbines. The bill allows the Public Service Commission to grant a variance to reduce the setback requirements for wind turbines.

State Water Commission

- **House Bill No. 1020** is the appropriation bill for the State Water Commission. The bill includes funding for various water projects including rural water supply. The bill provides for debt refinancing of the Western Area Water Supply Authority and includes studies related to industrial water rates and water sales.

Department of Transportation

- **Senate Bill No. 2012** is the appropriation bill for the Department of Transportation, which includes funding for various road projects. The bill includes studies related to the consolidation of operations and snow and ice control services.

Other Regulatory Bills

Mineral Rights

- **House Bill No. 1257** reduces the percentage of royalty interest owners required to ratify or dissolve an oil and gas spacing unit.
- **Senate Bill No. 2134** defines the ordinary highwater mark used to determine sovereign minerals within Missouri River reservoirs. The bill also provides for the Department of Trust Lands to repay mineral revenues through a $100 million appropriation from the strategic investment and improvements fund and a loan of $87 million from the Bank of North Dakota.

Miscellaneous Regulations

- **House Bill No. 1026** clarifies the period for locating underground facilities and increases the membership of the One-Call Notification Center Board from eight to nine members. The bill also identifies the size of a locate area, clarifies the liability provisions relating to damage of underground facilities, and addresses the assignment of costs of locating underground facilities.
- **House Bill No. 1409** requires mineral developers to report the results of certain water quality tests to the State Department of Health and requires the State Department of Health to maintain a database of the results.

2017-18 INTERIM REPORTS AND STUDIES

Reports

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

Section 38-22-15 establishes permit, fee, and title requirements for the geologic storage of carbon dioxide and requires the Industrial Commission 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.

The Industrial Commission is required to report by September 30, 2018 regarding brine pond and soil remediation studies conducted under Section 2 of 2017 House Bill No. 1347.

Coal Conversion Facilities

Pursuant to Section 57-60-02.1, a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions and receives a credit is required to report to the Legislative Council. The Antelope Valley Station, which is part of an energy complex that includes the Great Plains Synfuels Plant and the Freedom Mine, is the only project receiving a credit.

Tax Department

The Tax Department is required to report by September 30, 2018, regarding its study of the valuation of oil and gas as used to determine mineral royalty payments and tax liability (2017 Senate Bill No. 2013 and 2017 House Bill No. 1015).

Assigned Studies

Wind Energy Taxation and Revenue Distributions

House Bill No. 1015 provides for a study of the taxation of wind energy and the distribution of tax collections related to wind energy. The study must include consideration of the various methods of taxing wind energy, the parity of wind energy taxation in comparison to the taxation of other energy sources, and the current and historical distribution formulas related to wind energy taxes. The study must also include consideration of the appropriate level of distributions to the taxing districts and the state, the estimated fiscal impact of any proposed changes to the distributions, and other local revenue sources, including tax revenue and state funding provided to the local taxing districts.

Oil and Gas Tax Revenue Allocations to Hub Cities

Senate Bill No. 2013 provides for a study of the oil and gas tax revenue allocations to hub cities and hub city school districts. The study must include consideration of current and historical oil and gas tax revenue allocations, other state funding provided, local taxing and revenue levels, the appropriate level of oil and gas tax allocations, the estimated fiscal impact if the allocation formulas were changed, and the estimated fiscal impact if a portion of the allocations were discontinued.

Refracturing of Existing Oil Wells

House Concurrent Resolution No. 3027 provides for a study the estimated fiscal impact of refracturing existing oil wells, including the estimated costs and benefits related to tax collections and any potential tax incentives for refracturing existing oil wells.

SUGGESTED STUDY APPROACH - COMPREHENSIVE ENERGY POLICY

Although the committee may study any particular area of energy, the area of study must 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, Department of Commerce, and Industrial Commission. The Department of Commerce is the umbrella organization for the Energy Policy Commission. The Industrial Commission is the umbrella agency for the North Dakota Transmission Authority, the North Dakota Pipeline Authority, and the Renewable Energy Council. However, the Renewable Energy Council 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.