

COMPREHENSIVE ENERGY POLICY STUDY - BACKGROUND MEMORANDUM

The Legislative Assembly created the Energy Development and Transmission Committee in House Bill No. 1462 (2007). The committee, which is codified in North Dakota Century Code Section 54-35-18, replaced the Electric Industry Competition Committee and has a broader scope of study. The committee is required to 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. Senate Bill No. 2186 (2011) removed the expiration date of August 1, 2011, and made the committee permanent. In addition, the 2011 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** - Pursuant to House Concurrent Resolution No. 3007 (2013), the committee conducted a study of eminent domain laws related to pipeline siting. 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 (2013), 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 (2013), 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 (2015), 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 the 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 (2015) 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 6 months of the 2015-17 biennium. The Legislative Assembly approved House Bill No. 1032 as amended.

2015-16 Interim

- **Oil and gas tax allocation formulas** - Pursuant to Section 6 of House Bill No. 1176 (2015), 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** - Pursuant to Section 1 of Senate Bill No. 2372 (2015), 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.

2017-18 Interim

- **Hub city and hub city school district allocation** - Pursuant to Section 22 of Senate Bill No. 2013 (2017), the committee studied the oil and gas tax revenue allocations to hub cities and hub city school districts, including current and historical oil and gas tax revenue allocations and the appropriate level of oil and gas tax allocations. The committee recommended continuing the concept of hub cities in the oil and gas tax allocation formulas.
- **Wind energy taxation and revenue distribution** - Pursuant to Section 34 of House Bill No. 1015 (2017), the committee studied the taxation of wind energy and the distribution of tax collections related to wind energy, including the various methods of taxing wind energy and the appropriate level of distributions to the

taxing districts and the state. The committee recommended changing the allocation of wind generation tax collections to distribute a portion of the revenue collections to the state.

- **Oil well refracturing** - Pursuant to House Concurrent Resolution No. 3027 (2017), the committee studied 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. The committee made no recommendation related to this study.

ENERGY POLICY LEGISLATION

North Dakota Century Code 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 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 Energy Development and Transmission 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 Chapter 17-09 to provide for a biofuel blender pump incentive program to be administered by the Department of Commerce. The bill, which provided for a cost-share grant of up to \$34,000 per retail location, provided 5 percent of any appropriated money was to be used for administration and marketing. The bill continued the same program created under Senate Bill No. 2228 (2009).

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 EPA 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** separated 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** authorized an owner of wind energy rights to terminate wind option agreements if certain conditions are not met. The bill also clarified 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** extended 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** requested the federal government to enact legislation to expand and extend the current federal tax credit for carbon capture, utilization, and storage; to appropriate 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** urged Congress to refrain from enacting regulations that threaten the reliability and affordability of electric power in North Dakota and to increase its support for research, development, and deployment of next generation carbon-based energy generation.

2019 Bills and Resolutions

- **House Bill No. 1383** prohibits the Public Service Commission from identifying prime farmland, unique farmland, or irrigated land as exclusion or avoidance areas when evaluating and designating geographical areas for site, corridor, or route suitability. The bill prohibits the Public Service Commission from conditioning the issuance of a certificate or permit on an applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.
- **Senate Bill No. 2037** creates Chapters 38-23 and 38-24 to provide for the regulation of high-level radioactive waste and high-level radioactive waste disposal.
- **Senate Bill No. 2100** authorizes the Public Service Commission to adopt rules governing the decommissioning of commercial solar energy conversion facilities.
- **Senate Bill No. 2123** authorizes the Industrial Commission to enter public and private contracts for the reclamation of saltwater handling facility sites and treating plant sites. The bill authorizes money in the abandoned oil and gas well plugging and site reclamation fund to be used for the reclamation of saltwater handling facilities and treating plants, and authorizes the Industrial Commission to seek reimbursement from the operator of a pipeline facility, production facility, saltwater handling facility, and treating plant, for the cost of plugging, replugging, and reclamation.
- **Senate Bill No. 2254** provides wind turbines and associated facilities that are part of certain electric energy conversion facilities may not be considered improvements for purposes of construction liens.
- **Senate Bill No. 2261** prohibits the Public Service Commission from conditioning the issuance of a certificate or permit for an electric energy conversion facility or an electric transmission facility on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.
- **Senate Bill No. 2344** provides a framework for the underground storage of carbon dioxide. The bill authorizes a person conducting unit operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation authorized by the Industrial Commission under Chapter 38-08 to utilize subsurface geologic formations in the state for such operations or any other permissible purpose under Chapter 38-08.

OTHER ENERGY-RELATED LEGISLATION - 2019 LEGISLATIVE SESSION

- **House Bill No. 1013** repeals the energy impact fund, which is funded by gross production tax revenue, effective as of June 30, 2021.
- **House Bill No. 1066** modifies the oil and gas gross production tax distribution formula by moving allocations to political subdivisions which were previously under the one-fifth side of the revenue allocation formula to the four-fifths side of the revenue allocation formula.
- **House Bill No. 1439** expands the oil extraction tax exemption for incremental production from a tertiary recovery project from 5 to 10 years from the date incremental production begins from a tertiary recovery project drilled within the Bakken and Three Forks Formations and from 10 to 20 years from the date incremental production begins for a project drilled outside the Bakken and Three Forks Formations if the project injects more than 50 percent carbon dioxide produced from coal.
- **Senate Bill No. 2249** creates the State Energy Research Center fund and requires 1 percent of oil and gas gross production tax and oil extraction tax revenues designated for deposit in the general fund, up to \$5 million per biennium, be deposited in the state energy research center fund each month. Money deposited in the fund is appropriated to the Industrial Commission for distribution to the State Energy Research Center.

2019-20 INTERIM REPORTS State Energy Research Center

Section 15-11-40 requires the State Energy Research Center to deliver a report annually on all research activities and accomplishments.

North Dakota Transmission Authority

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

Energy Policy Commission

Section 17-07-01 directs the Energy Policy Commission 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, which establishes permit, fee, and title requirements for the geologic storage of carbon dioxide, requires the Industrial Commission to file a report with the director of the Legislative Council beginning December 2014 and every 4 years thereafter 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 file the next report in December 2022.

The Industrial Commission, through its study contractor, is required to report the status of the Industrial Commission's study on recycling produced water in oil and gas operations (House Bill No. 1014 (2019)). The contractor is required to provide the report to the Legislative Management by October 1, 2020.

North Dakota Pipeline Authority

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

Coal Conversion Facilities

Section 57-60-02.1 provides 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. There are currently no eligible coal conversion facilities receiving a credit; therefore, no report is required.

Energy and Environmental Research Center

Section 25 of House Bill No. 1014 (2019) requires the Energy and Environmental Research Center to provide a written report to the Legislative Management on the results and recommendations of the underground gas storage pilot project.

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. A number of entities in state government 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 the Department 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.