



North Dakota Legislative Council

Prepared for the Energy Development and Transmission Committee
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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 (2011), 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 made no recommendations 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 made no 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 US 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 made no recommendations 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 recommendations related to this study.

2019-2020 Interim

- No studies were assigned to the committee for this interim.

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 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 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** 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** prohibited 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 prohibited 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** created 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** authorized the Public Service Commission to adopt rules governing the decommissioning of commercial solar energy conversion facilities.
- **Senate Bill No. 2123** authorized the Industrial Commission to enter public and private contracts for the reclamation of saltwater handling facility sites and treating plant sites. The bill authorized 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 authorized 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** provided 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** prohibited 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** provided a framework for the underground storage of carbon dioxide. The bill authorized 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.

2021 Bills and Resolutions

- **House Bill No. 1067** requires an electric utility to submit integrated resource plans to the Public Service Commission and allows the Public Service Commission to assess a fee reasonably necessary for completing an investigation into the integrated resource plans submitted by an electric public utility.
- **House Bill No. 1095** prohibits a wind energy conversion facility that has not been issued a certificate of site compatibility and which exceeds five megawatts of electricity from repowering the wind energy conversion facility without first having obtained a certificate of site compatibility.
- **House Bill No. 1452** replaces the 25x25 initiative with the low-emission technology initiative, allowed the Energy Policy Commission to identify and make recommendations to the sustainable energy authority on technologies related to low-emission advancements, and provides guidelines for what may be included in the Energy Policy Commission's recommendations.

- **House Bill No. 1455** requires a utility owner or operator of an electric energy conversion facility to notify the Public Service Commission and the auditor of the county in which the facility is located if the owner or operator considers removing the electric energy conversion facility.
- **Senate Bill No. 2014** adds the appraised value, or whichever is greater, to the threshold of no more than 30 percent of the total project costs for any single transmission facility project may be financed by bonds issued under Section 17-05-08 which are supported by the debt service reserve fund approved by the Industrial Commission. The bill also changes the factors that determine the amount of the fee a storage operator must pay the Industrial Commission for each ton of carbon dioxide injected for storage to include the contribution of the storage facility and the source of the carbon dioxide to the energy and agriculture production economy of North Dakota.
- **Senate Bill No. 2065** authorizes the Industrial Commission to establish a regulatory structure for the underground storage of natural gas and for the development of underground manufactured cavern spaces. The bill provides the permit requirements for underground storage, provides the notice and hearing requirements, and authorizes the Board of University and School Lands to lease lands under its control for the underground storage of oil and gas.
- **Senate Bill No. 2206** authorizes a public utility with a new or existing facility that uses lignite mined in North Dakota to recover research and development costs to develop carbon dioxide capture and sequestration and provides a financial incentive set at a reasonable rate for power purchase agreements of a dispatchable on-demand generating unit, plant, or facility deemed to protect grid reliability.
- **Senate Bill No. 2237** adds coal-fueled electric generating units to the list of entities the Department of Environmental Quality may not regulate more strictly than the federal government regulates under the federal Clean Air Act.
- **Senate Bill No. 2238** requires the Department of Environmental Quality to develop and implement a state regional haze plan consistent with the federal Clean Air Act and pursuant to the requirements set forth in the bill.
- **House Concurrent Resolution No. 3025** urges the federal government to refrain from enacting regulations that threaten the reliability and affordability of electric power in North Dakota and to increase support for research, development, and deployment for next generation carbon-based energy generation.
- **Senate Concurrent Resolution No. 4012** establishes a state policy to support the reliability and resilience of the electric grid, ensure price transparency to consumers in electric markets, and incentivize carbon capture utilization and storage as an alternative to preserve dispatchable thermal electric generation and its associated benefits.

OTHER ENERGY-RELATED LEGISLATION - 2021 LEGISLATIVE SESSION

- **House Bill No. 1080** reduces the maximum fee for late oil and gas royalty payments to the Board of University and School Lands.
- **House Bill No. 1158** allocates 50 percent of any mitigation payments to the federal environmental law impact review fund reducing the allocation to the environmental impact mitigation fund.
- **House Bill No. 1412** imposes a lignite research tax in lieu of the state's portion of tax imposed on coal conversion facilities. The bill provides a county the option of exempting the county's portion of the coal conversion tax. The lignite research tax imposed in lieu of the state's portion of the coal conversion tax is deposited in the lignite research fund and any coal conversion tax not exempted by a county is allocated to the county. The bill also provides the board of county commissioners the option of exempting up to 70 percent of the coal severance tax. The bill is effective through June 30, 2026.
- **House Bill No. 1452** updates the purchasing exemption for procurements by the Industrial Commission for energy-related programs under the Clean Sustainable Energy Authority.
- **House Bill No. 1455** requires a utility owner or operator of an electric energy conversion facility to notify the Public Service Commission and the auditor of the county in which the facility is located if the owner or operator considers removing the electric energy conversion facility.
- **Senate Bill No. 2091** provides the terms "electric public utility" and "rural electric cooperative" do not include a person that uses an electric vehicle charging station to resell electricity to the public if the reseller has procured electricity from an electric service provider authorized to engage in the retail sale of electricity within the service area in which the electric vehicle charging service is provided, and the resale is for the charging of electric vehicles exclusively.

- **Senate Bill No. 2152** provides a sales and use tax exemption for sales of carbon dioxide used for secure geologic storage.
- **Senate Bill No. 2263** requires an applicant of an electric energy conversion facility or electric transmission project to provide notice of the application to the owner of record of any land located within the site or corridor for the project.
- **Senate Bill No. 2319** provides for the distribution of oil and gas tax revenue from straddle wells. The bill defines a straddle well as a well located outside the exterior boundaries of a reservation, which has one or more laterals penetrating a reservation boundary. The bill requires the Industrial Commission to certify to the Tax Commissioner the spacing unit acreage associated with straddle wells and the Tax Commissioner to certify to the State Treasurer the total oil and gas gross production and oil extraction taxes attributable to production from straddle wells. The State Treasurer provides a monthly distribution of oil and gas tax revenue to tribes with straddle well spacing unit acreage. For wells drilled before July 1, 2019, a tribe receives 50 percent of the straddle well tax revenue multiplied by the associated spacing unit acreage located within the reservation boundaries. For wells drilled on or after July 1, 2019, the tribe receives 80 percent of the straddle well tax revenue multiplied by the associated trust land spacing unit acreage located within the reservation boundaries and 20 percent of the straddle well tax revenue multiplied by the associated nontrust land spacing unit acreage located within the reservation boundaries. The bill applies to oil and gas tax revenue collections allocated by the State Treasurer after September 1, 2021.
- **Senate Bill No. 2328** provides a producer employing a flare mitigation system installed on a qualifying well on or after June 30, 2021, a temporary credit against oil extraction tax. The credit is equal to 75 cents per one million British thermal units of flare mitigation resulting from the onsite flare mitigation system. The credit may be claimed for up to 12 months per well and may not exceed \$6,000 per well per month. The credit does not apply to production from wells located within the exterior boundaries of the Fort Berthold Reservation unless the Chairman of the Tribe submits to the Tax Commissioner a written request for the credit to apply. The credit is effective through June 30, 2023.

2021-22 INTERIM REPORTS AND STUDIES

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 2022.

High-Level Radioactive Waste Advisory Council

Section 38-23-08 requires the High-Level Radioactive Waste Advisory Council to provide a written report to the Legislative Management regarding the council's recommendations and findings.

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.

Clean Sustainable Energy Authority

Section 3 of House Bill No. 1452 requires the Clean Sustainable Energy Authority to provide a written report to the Legislative Management regarding its activities and the program's financial impact on state revenues and the state's economy.

Energy and Environmental Research Center

Section 14 of Senate Bill No. 2014 requires the Energy and Environmental Research Center to provide a written report to the Legislative Management regarding the results and recommendations of the underground energy storage study.

Section 15 of Senate Bill No. 2014 requires the Energy and Environmental Research Center to provide a written report to the Legislative Management regarding the study on development and implementation of hydrogen energy in the state.

Department of Environmental Quality

Section 7 of Senate Bill No. 2024 requires the Department of Environmental Quality to present a report to the Legislative Management by September 1, 2022, regarding carbon reduction initiatives, rules, or policies that will affect North Dakota residents and industries.

Insurance Commissioner

Section 1 of Senate Bill No. 2287 requires the Insurance Commissioner to provide a written report to the Legislative Management regarding the availability, cost, and risks associated with insurance coverage in the lignite coal industry.

Assigned Studies

The Legislative Management assigned three studies to the Energy Development and Transmission Committee.

Natural Gas and Propane Infrastructure Development

House Bill No. 1159 directs a study of natural gas and propane infrastructure development in the state. The study must include consideration of the current infrastructure available for natural gas and propane, challenges related to the development of natural gas and propane infrastructure, community needs for natural gas and propane infrastructure, and a cost-benefit analysis of any state incentives to encourage the development of natural gas and propane infrastructure.

Coal Conversion Facility Bonding and Reclamation

House Bill No. 1455 directs a study of the need, cost, effect, and appropriate process for bonding and ensuring reclamation of coal conversion facilities. The study must include an examination and assessment of the methods and amounts of financial assurance and schedules, the interaction of economics and the statutes, rules, and policies relating to the remaining useful life and early retirement of coal conversion facilities, the role of the Public Service Commission in all electrical generation retirement, and the appropriate involvement of the public and local communities and political subdivisions in the retirement process. The study also must evaluate the effectiveness of government programs and incentives relating to energy production, reliability, and the state's role in that process.

Oil and Gas Lease Postproduction Deductions

Senate Bill No. 2217 directs a study of deductions for postproduction costs under oil and gas leases. The study must include consideration of the methods used to calculate the value of oil and gas, the point of sale used to determine the value, oil and gas sales in the absence of an arm's-length contract, any deductions or incentives applied to the value, and the methods used to report any deductions or incentives on mineral royalty statements; input from representatives from the oil and gas industry, representatives from an organization representing royalty owners, the Department of Mineral Resources, the Department of Trust Lands, and the Attorney General's office; and an analysis and review of state-mandated natural gas capture targets, federal land permitting restrictions, the effectiveness of using onsite flare mitigation technologies and the infrastructure necessary to enhance oil and natural gas value. The study may include consideration of the desirability and feasibility of expanding the use and market access of natural gas, including value-added energy opportunities within the state.

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.