

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### HOUSE BILL NO. 1592

Introduced by

Representatives Novak, D. Anderson, J. Olson, Tveit

Senators Boehm, Kessel

1 A BILL for an Act to amend and reenact sections 54-17.5-01, 54-17.5-02, 54-17.5-03,  
2 54-17.5-04, and 54-17.5-06 of the North Dakota Century Code, relating to the appointments,  
3 operations, and powers of the lignite research council, the powers of the industrial commission,  
4 and public record exemptions.

#### 5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 **SECTION 1. AMENDMENT.** Section 54-17.5-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

#### 8 **54-17.5-01. Declaration of findings and public purpose.**

9 The legislative assembly finds and declares that North Dakota's lignite industry produces  
10 approximately ~~thirty million~~twenty-five million tons of lignite annually, contributing to our state's  
11 and nation's energy independence by generating electricity for more than two million people in  
12 the northern great plains region and by producing synthetic natural gas from coal that heats  
13 three hundred thousand homes and businesses in eastern states, which is equivalent to over  
14 twenty thousand barrels of oil per day. The legislative assembly further finds and declares that  
15 North Dakota's lignite industry generates over ~~twenty-eight thousand~~twelve thousand direct and  
16 indirect jobs for North Dakota, nearly ~~three billion~~six billion dollars in annual business volume,  
17 and over ~~one hundred three million~~one hundred million dollars in annual tax revenue. The  
18 legislative assembly further finds and declares that it is an essential governmental function and  
19 public purpose to assist with the development and wise use of North Dakota's vast lignite  
20 resources by supporting a lignite research, development, and marketing program that promotes

1 economic, efficient, and clean uses of lignite and products derived from lignite in order to  
2 maintain and enhance development of North Dakota lignite and its products; support  
3 educational activities relating to the lignite industry; preserve and create jobs involved in the  
4 production and utilization of North Dakota lignite; ensure economic stability, growth, and  
5 opportunity in the lignite industry; defend through litigation activities the production, use, and  
6 continued development of lignite as a vital state natural resource; and maintain a stable and  
7 competitive tax base for our state's lignite industry for the general welfare of North Dakota. The  
8 legislative assembly further finds and declares that development of North Dakota's lignite  
9 resources must be conducted in an environmentally sound manner that protects our state's air,  
10 water, and soil resources as specified by applicable federal and state law.

11 **SECTION 2. AMENDMENT.** Section 54-17.5-02 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **54-17.5-02. Lignite research council - Compensation - Appointment of members.**

- 14 1. The industrial commission shall ~~consult~~engage in regular and substantive consultation  
15 with the lignite research council ~~established by executive order~~ in matters of policy  
16 affecting the administration of the lignite research fund, including holding regularly  
17 scheduled grant meetings and activities, receiving formal written recommendations  
18 from the lignite research council, and providing opportunities for the lignite research  
19 council to review and provide input on proposed policies. Section 44-03-04 does not  
20 apply to members of the lignite research council appointed by the governor.
- 21 2. The lignite research council is composed of twenty-four members appointed by the  
22 governor from a list provided by the lignite energy council and two members of the  
23 legislative assembly appointed by the chairman of the legislative management. The  
24 governor may reject the list and request the lignite energy council submit a new list  
25 until the appointments are made. The lignite research council consists of:
- 26 a. Six members representing lignite processing;
  - 27 b. Three members representing lignite research;
  - 28 c. Four members representing state agencies involved with lignite activities;
  - 29 d. Four members representing mining;
  - 30 e. One member representing the workforce community;
  - 31 f. One member representing political subdivisions;

- 1           g. Two members representing transmission interests;
- 2           h. One Native American tribal representative; and
- 3           i. Two members representing landowners.
- 4       3. The lignite research council shall elect its chairman and vice chairman from among its  
5       members.
- 6       4. The lignite research council shall elect ~~a vice chairman~~ and five members from among  
7       its members to serve with the chairman and vice chairman as an executive committee,  
8       to act on behalf of the lignite research council between lignite research council  
9       meetings. The executive committee shall meet at the request of the chairman.
- 10      5. The lignite research council shall meet at least twice a year and additional meetings as  
11      the chairman determines necessary at a time and place to be fixed by the chairman. A  
12      special meeting must be called by the chairman on written request of any three  
13      members. A majority of active members constitutes a quorum.
- 14      6. The lignite research council shall recommend to the industrial commission the  
15      approval of grants, loans, or other financial assistance necessary or appropriate for  
16      funding, research, development, marketing, and educational projects, or activities, and  
17      any other matters related to this chapter.
- 18      7. Members of the lignite research council appointed by the governor serve at the  
19      pleasure of the governor.
- 20      8. A member of the lignite research council who is a member of the legislative assembly  
21      is entitled to receive per diem compensation at the rate as provided under section  
22      54-35-10 for each day devoted to attending meetings or performing other duties  
23      relating to the official business of the lignite research council. The legislative council  
24      shall pay the per diem compensation and reimbursement for travel and expenses as  
25      provided by law for any member of the ~~commission~~ lignite research council who is a  
26      member of the legislative assembly.

27       **SECTION 3. AMENDMENT.** Section 54-17.5-03 of the North Dakota Century Code is  
28   amended and reenacted as follows:

29       **54-17.5-03. Priority projects, processes, and activities.**

- 30       1. In evaluating applications for funding from the lignite research fund for North Dakota's  
31       lignite research, development, and marketing program, the industrial commission and

lignite research council shall give priority to those projects, processes, or activities that will preserve existing jobs and production, which will create the greatest number of new jobs and most additional lignite production and economic growth potential in coal-producing counties or those counties with recoverable coal reserves, which will attract matching private industry investment equal to at least fifty percent or more of the total cost, and which will result in development and demonstration of a marketable lignite product or products with a high level of probability of near term commercialization.

2. For marketing applications, priority must be given to those projects, processes, or activities that develop baseline information, implement specific marketing strategies, and otherwise contribute to the effective marketing of lignite and its products.

3. For reclamation applications, priority must be given to those projects, processes, or activities that will reduce unnecessary regulatory costs and assist in effectively reclaiming surface mined land to its original or better productivity as soon as possible.

4. Any projects, activities, or processes selected by the commission for funding must achieve the priorities and purposes of the program, must have undergone technical review and be determined to have technical merit, must have generated matching private industry investment, and must have received a favorable lignite research council recommendation.

5. The industrial commission shall take into consideration, in selecting independent technical reviewers, a reviewer's educational background, government or industry experience, and experience relevant to the subject matter of the proposed project or program.

**SECTION 4. AMENDMENT.** Section 54-17.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.5-04. Industrial commission powers.**

The industrial commission is hereby granted all powers necessary or appropriate to carry out and effectuate the purposes of this chapter, including the power:

1. To make grants or loans, and to provide other forms of financial assistance as necessary or appropriate, to qualified persons for research, development, and

1 marketing projects, processes, or activities directly related to lignite and products  
2 derived from lignite.

3 2. To make and execute contracts and all other instruments necessary or convenient for  
4 the performance of its powers and functions under this chapter, including the authority  
5 to contract for the administration of the lignite research, development, and marketing  
6 program.

7 3. To allocate sufficient funding from the lignite research, development, and marketing  
8 program to retain a technical advisor, as determined necessary by the lignite research  
9 council, to support program operations and provide expert analysis, project evaluation,  
10 research coordination, and industry engagement to advance the objective of the lignite  
11 research program and ensure the effective and strategic use of program funds.

12 4. To issue evidences of indebtedness as authorized in this chapter and to borrow money  
13 in an amount not to exceed six million dollars from the Bank of North Dakota for a  
14 period not to exceed five years on the terms and conditions as the Bank of North  
15 Dakota and the industrial commission may approve without the necessity of  
16 establishing or maintaining any reserve fund as otherwise required by section  
17 54-17.5-05.

18 4.5. To receive and accept aid, grants, or contributions of money or other things of value  
19 from any source to be held, used, and applied to carry out the purposes of this  
20 chapter, subject to the conditions upon which the aid, grants, or contributions are  
21 made, including aid, grants, or contributions from any department, agency, or  
22 instrumentality of the United States for any purpose consistent with the provisions of  
23 this chapter.

24 5.6. To issue and sell evidences of indebtedness in an amount or amounts as the  
25 commission may determine, plus costs of issuance, financing, and any evidences of  
26 indebtedness funded reserve funds required by agreements with or for the benefit of  
27 holders of the evidences of indebtedness for the purpose of funding research,  
28 development, and marketing projects, processes, or activities directly related to lignite  
29 and products derived from lignite.

30 6.7. To refund and refinance its evidences of indebtedness from time to time as often as it  
31 is advantageous and in the public interest to do so, and to pledge any and all income

and revenues derived by the commission under this chapter or from a project, process, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness.

7.8. To keep accurate records of all financial transactions performed under this chapter.

8.9. To adopt and enforce policies, ~~rules, and orders~~ to effectuate the purpose of this chapter.

**SECTION 5. AMENDMENT.** Section 54-17.5-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.5-06. Access to commission records.**

1. Materials and data submitted to, or made or received by, the commission, to the extent that the commission determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the commission or receiving commission services under this chapter, are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota, ~~and are subject to section 44-04-18.4.~~
2. A person or entity must file a request with the commission to have material designated as confidential under subsection 1. A request to have material designated as confidential is exempt as defined in section 44-04-17.1. The request must contain any information required by the commission, and must include at least the following:
  - a. A general description of the nature of the information sought to be protected.
  - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
  - c. An explanation of why the information is not readily ascertainable by proper means by other persons.
  - d. A general description of any person or entity that may obtain economic value from disclosure or use of the information, and how the person or entity may obtain this value.
  - e. A description of the efforts used to maintain the secrecy of the information.
3. Any information submitted under subsection 2 is confidential. The commission shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If

- 1           the commission determines the information is either not relevant or not a trade secret,  
2           the commission shall notify the requester and the requester may ask for the return of  
3           the information and request within ten days of the notice. If no return is sought, the  
4           information and request are a public record.
- 5        4.   The names or identities of independent technical reviewers on any project or program  
6           and the names of individual lignite council members making recommendations are  
7           confidential and may not be disclosed by the commission, and are not public records  
8           subject to section 44-04-18 or section 6 of article XI of the Constitution of North  
9           Dakota.