

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Wednesday, August 18, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Rich Wardner, John M. Andrist, Jim Dotzenrod, Robert M. Horne, Joe Miller, George Nodland; Representatives Mike Brandenburg, Lee Kaldor, Matthew M. Klein, Todd Porter, Dave Weiler

Member absent: Representative Tracy Boe

Others present: See [Appendix A](#) for additional persons present.

It was moved by Representative Klein, seconded by Senator Horne, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

At the request of Chairman Wardner, committee counsel provided a handout ([Appendix B](#)) on the discount for oil in this state.

REMOVAL OF SUNSET FOR SALES TAX EXEMPTION FOR WIND FACILITIES BILL DRAFT

At the request of Chairman Wardner, committee counsel presented a bill draft [\[10153.0100\]](#) that removes the expiration date on the sales and use tax exemption for production equipment and other property used for the building, expanding, or upgrading of a wind facility.

Mr. Shane C. Goettle, Commissioner, Department of Commerce, presented testimony in favor of the bill draft. He said every other industry that has a sales and use tax exemption has a permanent exemption. He said the income tax and property tax incentives for wind facility development expire in 2015.

Representative Klein said extending the sales tax exemption may be better than making it permanent because a permanent exemption is more likely to provide an incentive for an industry that may not need an incentive.

Representative Brandenburg said the bill draft provides fairness by treating everyone the same.

OIL AND GAS RESEARCH COUNCIL PURPOSES AND RELATED POWERS BILL DRAFT

At the request of Chairman Wardner, committee counsel presented a bill draft [\[10154.0100\]](#) on allowing the Oil and Gas Research Council to promote innovation and safety, enhancement of environment,

and increase in education concerning the distribution of petroleum products and allowing the Industrial Commission, as manager of the Oil and Gas Research Council, to provide financial assistance for processes and activities directly related to the refining industry and the petroleum marketing industry.

Mr. Goettle provided testimony in favor of the bill draft. He said the expansion of purposes for the council expands the mission of the council to include everything from the wellhead to the pump. He said the changes in powers of the Industrial Commission allow refineries and petroleum marketers to apply for funds.

Ms. Karlene Fine, Executive Director and Secretary, Industrial Commission, answered questions for the committee. In response to a question from Senator Horne, Ms. Fine said the Oil and Gas Research Council has 10 members mainly representing industry and the counties. She said there are two members from the state--the director of the Oil and Gas Division and the State Geologist--who do not vote. She said the oil tax is the source of \$4 million per biennium funding of the council. She said the Oil and Gas Research Council is patterned after the Lignite Research Council. She said these councils make recommendations to the Industrial Commission for final approval. She said the Oil and Gas Research Council has provided funding for the study of the identification of the Three Forks Formation as a separate formation from the Bakken Formation, the *Oil Can!* publication, and a fracture stimulation study. She said generally corporations and associations apply for the funding, but there have been applications from counties.

In response to a question from Representative Weiler, Mr. Goettle said the term "enhancement of environment" could include the capture of flare gas off the wellhead, which has been studied in the past. He said there might be other items that need to be addressed in response to federal environmental regulation.

Senator Wardner said anytime there is research to enhance the environment it is good for industry.

BIODIESEL PLANT PRODUCTION INCENTIVE BILL DRAFT

At the request of Chairman Wardner, committee counsel presented a bill draft [\[10152.0100\]](#) that creates a biodiesel plant production incentive. He

said the language was based on the language for ethanol production incentives, but does not include the countercyclical program. He said the bill draft does not identify a funding source. He said the funding source for the ethanol production incentive is up to 40 percent of farm vehicle registrations, subject to a maximum of \$7.75 million.

Mr. Goettle provided testimony in favor of the bill draft. He said the EmPower North Dakota Commission struggled with production and consumer incentives for biodiesel. He said the ethanol production incentive is now a countercyclical program and is easier to administer because of one feedstock--corn. He said the countercyclical program was only for new facilities, and old plants under the old incentive were not allowed to take part in the program. He said biodiesel uses more than one crop. He said potential funding sources include registrations from farm vehicles or profits from the Mill and Elevator.

In response to a question from Senator Miller, Mr. Goettle said 85 million gallons of biodiesel are produced at the Archer Daniels Midland plant each year. He said this is basically the capacity of the state.

In response to a question from Senator Wardner, Mr. Goettle said the funding source for the biodiesel plant production incentive should not take away from the funding for the ethanol production incentive.

In response to a question from Senator Dotzenrod, Mr. Goettle said the Archer Daniels Midland plant has an incentive in the bill draft to increase capacity. He said the incentive for new production was created with the reality that existing production is already in place without the incentive. He said the incentive is for new production and expansion.

Representative Brandenburg said the ethanol incentives worked well, and biodiesel is in the same place as ethanol was 10 years ago.

In response to a question from Senator Horne, Mr. Goettle said the Office of Renewable Energy and Energy Efficiency is within the Department of Commerce and administers the countercyclical ethanol incentive.

Representative Weiler said without a countercyclical program a subsidy is given to an industry regardless of profit. He said a countercyclical program turns off when the market works. He said if price goes up then the plant can make money from the market. He said government incentives should not be open-ended, and the market has to come into play at some time.

Mr. Scott Rising, Legislative Director, North Dakota Soybean Growers Association, testified in favor of the bill draft. He said although soybean growers have an economic interest in the bill draft, the bill draft would lessen dependence on foreign oil and make the United States more self-sufficient. He said this would create less conflict with other nations.

In response to a question from Senator Wardner, Mr. Rising said canola is tailor-made for biodiesel, but soybeans may be used to make biodiesel.

In response to a question from Senator Miller, Mr. Rising said agriculture production is available to support an increase in demand due to more biodiesel plants.

LEGISLATIVE PROPOSALS OF THE EMPOWER NORTH DAKOTA COMMISSION

Mr. Goettle provided testimony on other legislative proposals of the EmPower North Dakota Commission. He said the commission is working on a consumption incentive for biodiesel. He said the commission is working with the Public Service Commission on expanding jurisdiction over wind farms for wind farms created near each other which are under the threshold for Public Service Commission jurisdiction. He said the commission is working with the Public Service Commission to address the issue of wind towers compromising radar for the operation of unmanned aerial vehicles.

Senator Wardner said the wind industry in this state is firmly present and mature, and the committee should consider giving the Public Service Commission more siting jurisdiction.

Green Diesel Legislative Proposal

Mr. Goettle provided a legislative proposal ([Appendix C](#)) to treat green diesel the same as biodiesel. He said green diesel is made by the Energy and Environmental Research Center (EERC) and is the same as diesel fuel and is drop-in compatible.

Mr. Ron Day, Tesoro Refinery, Mandan, provided testimony on the legislative proposal. He said green diesel may be blended at any temperature. He said green diesel is derived from crambe, a crop related to canola. He said green diesel is a hydrocarbon chain, not an ester chain. He said the Tesoro Refinery is working with the EERC to integrate a pilot program for the creation of green diesel at the refinery.

In response to a question from Representative Klein, Mr. Goettle said the definition of green diesel was copied from the Commonwealth of Virginia.

In response to a question from Representative Weiler, Mr. Day said Tesoro is working in the state of Washington with airlines to create green diesel jet fuel.

In response to a question from Senator Wardner, Mr. Day said the Tesoro Refinery is not configured for a crushing plant, but there is room nearby for a crushing plant. He said the oil could be brought in by rail or pipe. He said pipe is best as a means of transportation. He said Tesoro has real estate to the west that may be able to site a crushing plant.

In response to a question from Senator Horne, Mr. Day said the refinery will buy a raw product from

oilfields or farmers' fields based upon what is priced more competitively.

In response to a question from Representative Brandenburg, Mr. Day said green diesel is created through a Fischer-Tropsch process using high heat and pressure to break down the oil and rebuild it into a hydrocarbon chain.

In response to a question from Senator Miller, Mr. Goettle said the legislative proposal's intent is to treat green diesel identically as biodiesel is treated under the law.

Oil and Gas Impact Fund Legislative Proposal

Mr. Goettle presented information on a legislative proposal ([Appendix D](#)) to increase oil impact grant funding and allow grants for long-term planning and engineering studies associated with road infrastructure, water, sewer, housing, local services, and other needs. He said the legislative proposal would change 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. He said a specific amount for the increase was not included in the proposal; however, the Governor recommended \$20 million last legislative session.

Senator Nodland said he was in support of the proposal.

Senator Andrist said the impacts are not just a question of money, and all the construction that needs to be done takes planning.

In response to a question from Senator Andrist, Mr. Goettle said the Department of Commerce has provided for a cost-share program for planning, but a permanent funding source is appropriate.

Senator Horne said he supports the legislative proposal, which should have been done last biennium.

Senator Wardner suggested the inclusion of local political subdivisions in the process of awarding grants.

Representative Brandenburg said the Agriculture Commissioner should be part of the process as well.

Mr. Goettle said other councils act as screening committees for the Industrial Commission. He said using this as a template, the Land Commissioner could have a screening committee with the Board of University and School Lands as the final arbiter.

Senator Andrist said the preliminary determination should be made by people with firsthand knowledge.

Senator Wardner said if more money is going to be provided for impact grants, there needs to be more than one person making the decision about the grants.

Senator Andrist said he is cautious as to having a committee do what one person has done in the past.

Senator Miller said one person has worked well. He suggests a one-person screening committee with input from locals at the next level.

ENERGY CONSERVATION AND EFFICIENCY STANDARDS FOR PUBLIC BUILDINGS BILL DRAFT

At the request of Chairman Wardner, committee counsel presented a bill draft [[10067.0100](#)] for the second time which would require the Division of Community Services, Department of Commerce, to adopt construction standards that are consistent with the silver building rating in the leadership in energy and environmental design (LEED) rating system. He provided handouts ([Appendix E](#)) on the LEED standards.

It was moved by Representative Klein, seconded by Senator Nodland, and carried on a roll call vote that the bill draft address new building construction and not the modification of an existing structure. Senators Wardner, Andrist, Dotzenrod, Horne, Miller, and Nodland and Representatives Kaldor and Klein voted "aye." Representatives Brandenburg, Porter, and Weiler voted "nay."

Representative Klein said there were a lot of questions relating to modifications, and including modifications made the bill draft more complex.

Representative Kaldor said raising the dollar threshold on modifications would address the same issue.

Representative Klein said this bill draft is similar to a bill draft last legislative session, and school boards had concerns with the technical ability of schools to comply with the requirements. He said many other states have a similar system.

Senator Dotzenrod said with standards come expense. He said the committee should know the actual standards before voting on the bill draft.

Mr. Richard Crawford provided testimony in the form of a letter ([Appendix F](#)) from Mr. Richard Bohrer, LEED Accredited Architect, Architectural Concepts, Inc. He said silver certification includes sustainable sites, water efficiency, energy performance, material selection, indoor environmental quality, and innovation in design. He said these requirements make it mandatory to incorporate construction activity pollution prevention; storage and collection for recyclables; and a sustainable purchasing policy amount, for example, the use of green building cleaners. He provided information on the hard and soft costs for the construction of a \$2 million building with 1,500 square feet. He said the increased costs of construction are 1 percent to 4 percent. He said the exemption provisions need to be defined better. He said the silver standard was recently updated and increased from 33 points to 38 points needed to 50 points to 59 points needed.

Mr. Mark Dougherty, Membership Services Director, Associated General Contractors of North Dakota, provided testimony on the bill draft. He said the State Building Code Advisory Committee is adopting energy efficiency standards as part of the State Building Code.

Ms. Doreen Riedman, North Dakota Association of Builders, provided testimony on the bill draft. She said the State Building Code will include portions of the International Energy Efficiency Code by January 1.

Representative Porter said after hearing testimony, he has more concerns with the bill draft. He said the bill draft places a nongovernmental agency in charge of setting a standard in the North Dakota Century Code. He said this raises issues with what happens if the standard changes. He said he needs to know the difference in costs between the LEED standard and without the LEED standard.

CARBON CAPTURE PROJECT REPORT

Mr. Curtis Jabs, Basin Electric Power Cooperative, made a presentation ([Appendix G](#)) on a carbon dioxide capture project at the Antelope Valley Station.

Senator Wardner said the Bakken Formation laid idle for years until there was the technology for fracture jobs. He said the same may hold true for the use of carbon dioxide for tertiary recovery.

In response to a question from Senator Andrist, Mr. Jabs said carbon dioxide has not been used for tertiary oil recovery in the Bakken Formation. He said the Bakken is a tight formation, and a new technique will have to be developed for the use of carbon dioxide in the Bakken.

In response to a question from Senator Nodland, Mr. Jabs said the cost for carbon dioxide capture will have to be passed on to cooperative members. He said for carbon dioxide capture to be profitable, there will need to be an offset, such as enhanced oil recovery. He said Basin Electric Power Cooperative is interested in carbon dioxide capture even at a break-even position so as to advance technology.

In response to a question from Senator Dotzenrod, Mr. Jabs said the process for carbon dioxide capture uses steam to break the bonds and then the water is cooled down. He said the flue gas will need to be cooled as well.

In response to a question from Representative Brandenburg, Mr. Jabs said the turbine may be able to be upgraded to reduce the amount of energy needed for the 100,000-plus megawatt plant to remove 99 percent of carbon dioxide to 20 megawatts to 21 megawatts. He said that is approximately 20 percent of the power used to get 99 percent removal.

In response to a question from Senator Miller, Mr. Jabs said the reduced power available to consumers will have to be made up from wind power, gas generators, or the open market.

In response to a question from Senator Horne, Mr. Jabs said the technology used in the carbon capture program will be sold by the partners developing the technology. He said the development of the technology allows for performance guarantees, which are required by the purchasers of the technology. He said this technology will be offered for sale.

Mr. Justin J. Kringstad, Director, North Dakota Pipeline Authority, made a presentation ([Appendix H](#)) on recent activities relating to crude oil pipelines and natural gas pipelines. In addition, he provided the July 1, 2008, to June 30, 2009, annual report of the North Dakota Pipeline Authority ([Appendix I](#)) and *An Update to the May 2010 Pipeline Authority Natural Gas Report* ([Appendix J](#)).

WATER FOR EACH SECTOR OF THE ENERGY INDUSTRY REPORT

Mr. Bill Schuh, State Water Commission, made a presentation ([Appendix K](#)) on the study of water resources for each sector of energy production. In addition, he provided a list of permits and applications for water for industrial purposes from surface water upstream of Garrison Dam ([Appendix L](#)) and the final report, which may be found at swc.nd.gov (click on Reports and Publications, then click on Water Resource Investigations, and scroll down to WRI No. 49).

In response to a question from Senator Nodland, Mr. Schuh said each permit is considered on its own merits and on a case-by-case basis. A person with a permit that has been fulfilled may have a person nearby being granted a permit that is small and does not take away from other users. He said the permit may be fulfilled because the person did not ask for enough water. He said the new permit may be far enough away so there is no impact on other permits.

In response to a question from Senator Andrist, Mr. Schuh said permits are issued on a first-come, first-served basis. He said the State Water Commission needs to do due diligence, and this may take six months to two years. He said this due diligence is required because people are more litigious, and the reason for the decision needs to be based on a complete investigation and a good plan.

In response to a question from Senator Andrist, Mr. Schuh said temporary permits are easier to obtain.

In response to a question from Senator Horne, Mr. Schuh said the study areas in the report as they relate to aquifers only included aquifers that might be able to provide water for the oil industry. He said if the aquifer is a good aquifer, but is already being used, it may not have been included in the study area.

In response to a question from Representative Brandenburg, Mr. Schuh said the Army Corps of Engineers does not seem to want many points of diversion, wants storage fees, and is concerned with the amount of water removed from Lake Sakakawea.

COMMITTEE DISCUSSION

Representative Brandenburg said the Public Service Commission should have more oversight, and he would support Public Service Commission jurisdiction over all wind development.

Representative Porter said the language on the green diesel legislative proposal places restrictions on

the biofuels PACE program of having agricultural producers hold at least 10 percent of the facility or have residents of this state own at least 50 percent of the facility. He said this language should be struck or there should be a clawback provision if there is a later sale to a nonqualifying entity. He requested two bill drafts be prepared--one removing the language and one providing for a clawback provision for five years.

Chairman Wardner said the next meeting of the Energy Development and Transmission Committee would be on Thursday, September 16, 2010, in the Roughrider Room of the State Capitol.

No further business appearing, Chairman Wardner adjourned the meeting at 2:05 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:12