

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
21 economic, efficient, and clean uses of lignite and products derived from lignite in order to
22 maintain and enhance development of North Dakota lignite and its products; support
23 educational activities relating to the lignite industry; preserve and create jobs involved in the
24 production and utilization of North Dakota lignite; ensure economic stability, growth, and

1 opportunity in the lignite industry; defend through litigation activities the production, use, and
2 continued development of lignite as a vital state natural resource; and maintain a stable and
3 competitive tax base for our state's lignite industry for the general welfare of North Dakota. The
4 legislative assembly further finds and declares that development of North Dakota's lignite
5 resources must be conducted in an environmentally sound manner that protects our state's air,
6 water, and soil resources as specified by applicable federal and state law.

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

9 **54-17.5-02. Lignite research council - Compensation - Appointment of members.**

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

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

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

22 **54-17.5-03. Priority projects, processes, and activities.**

- 23 1. In evaluating applications for funding from the lignite research fund for North Dakota's
24 lignite research, development, and marketing program, the industrial commission and
25 lignite research council shall give priority to those projects, processes, or activities that
26 will preserve existing jobs and production, which will create the greatest number of
27 new jobs and most additional lignite production and economic growth potential in
28 coal-producing counties or those counties with recoverable coal reserves, which will
29 attract matching private industry investment equal to at least fifty percent or more of
30 the total cost, and which will result in development and demonstration of a marketable

1 lignite product or products with a high level of probability of near term
2 commercialization.

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

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

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

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

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

20 **54-17.5-04. Industrial commission powers.**

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

23 1. To make grants or loans, and to provide other forms of financial assistance as
24 necessary or appropriate, to qualified persons for research, development, and
25 marketing projects, processes, or activities directly related to lignite and products
26 derived from lignite.

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

- 1 3. To issue evidences of indebtedness as authorized in this chapter and to borrow money
2 in an amount not to exceed six million dollars from the Bank of North Dakota for a
3 period not to exceed five years on the terms and conditions as the Bank of North
4 Dakota and the industrial commission may approve without the necessity of
5 establishing or maintaining any reserve fund as otherwise required by section
6 54-17.5-05.
- 7 4. To receive and accept aid, grants, or contributions of money or other things of value
8 from any source to be held, used, and applied to carry out the purposes of this
9 chapter, subject to the conditions upon which the aid, grants, or contributions are
10 made, including aid, grants, or contributions from any department, agency, or
11 instrumentality of the United States for any purpose consistent with the provisions of
12 this chapter.
- 13 5. To issue and sell evidences of indebtedness in an amount or amounts as the
14 commission may determine, plus costs of issuance, financing, and any evidences of
15 indebtedness funded reserve funds required by agreements with or for the benefit of
16 holders of the evidences of indebtedness for the purpose of funding research,
17 development, and marketing projects, processes, or activities directly related to lignite
18 and products derived from lignite.
- 19 6. To refund and refinance its evidences of indebtedness from time to time as often as it
20 is advantageous and in the public interest to do so, and to pledge any and all income
21 and revenues derived by the commission under this chapter or from a project,
22 process, or activity funded under this chapter to secure payment or redemption of the
23 evidences of indebtedness.
- 24 7. To keep accurate records of all financial transactions performed under this chapter.
- 25 8. To adopt and enforce policies, rules, and orders to effectuate the purpose of this
26 chapter.

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

29 **54-17.5-06. Access to commission records.**

- 30 1. Materials and data submitted to, or made or received by, the commission, to the extent
31 that the commission determines the materials or data consist of trade secrets or

1 commercial, financial, or proprietary information of individuals or entities applying to or
2 contracting with the commission or receiving commission services under this chapter,
3 are not public records subject to section 44-04-18 and section 6 of article XI of the
4 Constitution of North Dakota, and are subject to section 44-04-18.4.

- 5 2. A person or entity must file a request with the commission to have material designated as
6 confidential under subsection 1. A request to have material designated as
7 confidential is exempt as defined in section 44-04-17.1. The request must contain any
8 information required by the commission, and must include at least the following:
- 9 a. A general description of the nature of the information sought to be protected.
 - 10 b. An explanation of why the information derives independent economic value,
11 actual or potential, from not being generally known to other persons.
 - 12 c. An explanation of why the information is not readily ascertainable by proper
13 means by other persons.
 - 14 d. A general description of any person or entity that may obtain economic value
15 from disclosure or use of the information, and how the person or entity may
16 obtain this value.
 - 17 e. A description of the efforts used to maintain the secrecy of the information.
- 18 3. Any information submitted under subsection 2 is confidential. The commission shall
19 examine the request and determine whether the information is relevant to the matter at
20 hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If
21 the commission determines the information is either not relevant or not a trade secret,
22 the commission shall notify the requester and the requester may ask for the return of
23 the information and request within ten days of the notice. If no return is sought, the
24 information and request are a public record.
- 25 4. The names or identities of independent technical reviewers on any project or program
26 and the names of individual lignite council members making recommendations are
27 confidential and may not be disclosed by the commission, and are not public records
28 subject to section 44-04-18 or section 6 of article XI of the Constitution of North
29 Dakota.