Lignite Energy Council
LEADING THROUGH ADVOCACY AND INNOVATION

September 1, 2026

Members of the Special Ad Hoc Policy Committee,

The Lignite Energy Council opposes Senate Bill 2406. The bill's broad restrictions on nondisclosure agreements could create serious unintended consequences for North Dakota's Lignite Research, Development and Marketing Program and other state-supported research and commercialization efforts.

For decades, the State of North Dakota and the lignite industry have partnered through the Lignite Research Council (LRC) and Industrial Commission to support research, development, demonstration, and commercialization of new technologies. State law directs the LRC to prioritize projects that attract at least 50 percent private matching investment and have a high probability of commercialization.

These public-private partnerships routinely involve proprietary technology, engineering designs, intellectual property, technical data, cost information, business plans and commercialization strategies. Protecting this information is essential to attracting private companies and private matching investment to North Dakota.

The Legislature has already recognized this need. NDCC 54-17.5-06 specifically establishes a process for protecting trade secrets and commercial, financial, and proprietary information submitted by applicants and contractors participating in the Lignite Research Program.

SB 2406 creates significant uncertainty around that framework. The bill broadly defines an "industrial project" as a project relating to the development of a business, industry, utility, or infrastructure. That definition could encompass many projects funded through the Lignite Research Program.

The definition of "nondisclosure agreement" is equally broad. It includes not only stand-alone NDAs, but any agreement, provision, clause or contractual term that has the purpose or effect of designating information concerning an industrial project as confidential. The bill also defines an "agency" to include a contractor acting on behalf of the state.

These provisions could reach confidentiality requirements contained in LRC grants, research contracts, demonstration projects and commercialization agreements. The consequences

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extend beyond the Lignite Research Program and could create uncertainty for other state programs and public-private partnerships involving proprietary or commercially sensitive information.

The practical concern is that prospective research partners and companies may be less willing to bring proprietary technologies, intellectual property and private investment to North Dakota if they cannot be confident their commercially sensitive information will be protected.

North Dakota has successfully partnered with private industry to advance research and economic development while operating under existing public records and confidentiality laws. SB 2406 risks disrupting that balance and creating unintended consequences for programs that have served our state well.

For these reasons, the Lignite Energy Council respectfully requests a DO NOT PASS recommendation on SB 2406.

Sincerely,

Jonathan Fortner
President & CEO
Lignite Energy Council