2025 HOUSE ENERGY AND NATURAL RESOURCES

HB 1579

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

HB 1579
1/31/2025

Relating to the requirement for data centers to obtain a certificate of public convenience and necessity.

9:06 a.m. Chairman Porter opened the hearing.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak, Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby, Conmy, Foss

Discussion Topics:

- Megawatts
- Local economy
- Utility costs
- Rate of return
- Electric congestion charges
- Grid control

9:06 a.m. Representative Novak introduced the bill and submitted testimony #33173.

9:13 a.m. Randy Christmann, Chairman, Public Service Commissioner, testified in support and submitted testimony #33138.

9:34 a.m. Etienne Snyman, Vice President of Power, Applied Digital, testified in opposition and submitted testimony #33142.

9:49 a.m. Dennis Pathroff, Lobbyist for the GA Group, Power Companies of ND, testified in opposition.

9:52 a.m. Zac Smith, Communications and Government Relations Director, testified in opposition and submitted testimony #33182.

9:57 a.m. Todd Sailor, Minnkota Power Cooperative, testified in opposition

10:01 a.m. Matt Hanson, CEO of McKenzie Electric Cooperative, testified in opposition and submitted testimony #33188.

10:13 a.m. Alex Vournas, General Manager of Montrail Williams Electric Cooperative, testified in opposition and submitted testimony #33206.

10:24 a.m. Sheri Haugen- Hoffert, Public Service Commissioner, testified in opposition and submitted testimony #33141.

10:27 a.m. Terry Effertz, Executive Director, Data Center Coalition of ND, testified in opposition and submitted testimony #33125.

Additional written testimony:

Natalie Peirce, ND Planning Association, submitted testimony in favor #32685.

Jean Schafer, Senior Legislative Representative, Basin Electric Power Cooperative, submitted testimony in opposition #33185.

10:30 a.m. Chairman Porter closed the hearing.

Janae Pinks, Committee Clerk for Leah Kuball, Committee Clerk

NORTH DAKOTA PLANNING ASSOCIATION
Serving North Dakota since 1973

HB1579 Support

January 30, 2025

Dear Energy and Natural Resources Committee Members,

This bill would add data centers to the list of facilities that must obtain a certificate of public convenience from the Public Service Commission. Data centers present impacts to the electrical grid that political subdivisions with zoning authority are not equipped to adequately assess. The Public Service Commission should have the opportunity to make this assessment, whenever a new data center is proposed.

There are other factors to be considered when siting land uses, which are best left in the hands of the local community. The North Dakota Planning Association **supports passage of HB1579, as long as political subdivisions retain zoning authority over data center siting.** The wording of the bill, as introduced, supports this objective.

Thank you for your consideration.

Sincerely,

Rachel Laqua, President
North Dakota Planning Association Board

Testimony in Opposition - HB 1579
House Energy & Natural Resources
January 31, 2025

Chairman Porter and Members of the Committee, thank you for the opportunity to testify on House Bill 1579. My name is Terry Effertz, and I serve as the Executive Director of TechND and the Data Center Coalition of North Dakota. I am here today to express strong opposition to HB 1579 as introduced and to advocate for amending the bill into a legislative study rather than enacting premature regulations that could have unintended negative consequences on North Dakota's ability to attract and retain data centers.

Concerns with HB 1579

1. **The Bill is Premature and Lacks a Comprehensive Understanding of the Industry**
   Data centers are a fast-evolving sector that requires speed, certainty, and consistency in regulatory frameworks. The proposed changes would introduce new requirements for a Certificate of Public Convenience and Necessity (CPCN), a process historically reserved for public utilities, not private businesses investing in critical infrastructure. Before implementing such a significant regulatory shift, we need a thorough study to assess its potential impacts on investment, economic growth, and energy infrastructure.

2. **Creates Regulatory Inconsistencies Across the State**
   The bill risks unequal application of regulations depending on where a data center is located. North Dakota has a mix of utility providers, including investor-owned utilities, rural electric cooperatives, and municipal utilities, each operating under different regulatory structures. This legislation could create disparate treatment of data centers, depending on their location, picking winners and losers based on geography rather than fair and transparent policy.

3. **Data Centers Need Speed and Certainty to Succeed**
   The requirement for a CPCN process for large customers adds complexity, cost, and delay to data center development. Companies looking to establish or expand operations in North Dakota need clear and predictable regulations. Burdensome regulatory processes could discourage investment and push companies to other states with more business-friendly environments.

4. **North Dakota Should Focus on Proactive Planning, Not Reactive Regulation** We recognize the concerns that led to the introduction of HB 1579, particularly grid reliability and responsible growth of large energy consumers. However, the right approach is to study the issue thoroughly—considering input from utilities, data centers, economic development leaders, and policymakers—before enacting policies that could have unintended negative consequences.

Proposal: Amend HB 1579 into a Legislative Study

Rather than advancing HB 1579 in its current form, we strongly encourage the committee to amend the bill into a legislative study that would:

- Assess the impact of large energy consumers, including data centers, on grid reliability and infrastructure needs.
- Examine best practices from other states to determine regulatory approaches that balance economic growth with responsible energy use.
- Engage stakeholders—including data centers, utilities, and economic development organizations—to develop recommendations for a future policy framework that supports both business investment and grid stability.

North Dakota has an opportunity to be a leader in data center investment and next-generation digital infrastructure. However, overly restrictive or premature regulations could send the wrong message to potential investors. A deliberate, well-researched approach through a legislative study will provide the necessary insights to craft a policy that strengthens our economy, ensures energy reliability, and positions North Dakota as a national leader in the data center industry.

For these reasons, we respectfully urge the committee to oppose HB 1579 in its current form and amend it into a legislative study. Thank you for your time and consideration.

House Bill 1579

Presented by: **Randy Christmann, Chair**
Public Service Commission

Before: **House Energy and Natural Resources Committee**
The Honorable Todd Porter, Chair

Date: **January 31, 2025**

TESTIMONY

Chair Porter and members of the House Energy and Natural Resources Committee, I'm Randy Christmann, Chair of the Public Service Commission, here to testify on HB 1579. I am testifying on my own behalf.

The road to this bill has been long, and started with Rep. Novak grilling me about what we can do to hold down utility bills for people without sacrificing reliability. I'm sure she was taking heat from constituents served by MDU about a large bill rider increase that the PSC had recently assessed, and from constituents served by OTP about a large rate increase that was at that time still under consideration. And to her credit, she understood that the Commission cannot just say no. Costs of doing business are increasing for the utilities just like everyone else. They are entitled to recover their costs of providing services to their customers, and they are entitled to a reasonable rate of return on their investments. But she wondered if any of these costs can be avoided?

I pointed out that a large part of the MDU costs, over $30 million, were related to congestion charges, and better planning could have significantly reduced those fees.

To be clear here, the congestion charges I am referring to are imposed by regional transmission organizations. ND utilities are in two RTO's, SPP and MISO. The utilities own their transmission lines but have delegated operational control of the grid to the respective RTO's for the purpose of efficient coordination. Electricity flows on the path of least resistance, so even though a company may have their own transmission line available, their electricity may be flowing on someone else's line, and the company gets billed for the use of that line by the RTO.

When a transmission line anywhere in the system is being used too heavily, the RTO adds congestion fees. The point of the congestion fees is to cause other electric generators closer to the demand to come online to reduce the congestion.

In the case Rep. Novak and I were discussing, a data center which the PSC has no jurisdiction over had been opened in an area of ND that was already facing significant grid congestion issues. (near Trenton) I do not have data, but believe it uses a little over 200 MW. The congestion fees that MDU was assessed, during only a six-month period, are being recovered over two years, and are costing the average residential MDU electric customer about $7.40 per month. The reason these congestion fees were discontinued after six months is equally concerning. SPP made operational changes, including suspension of these congestion fees. But those operational changes, including the suspension of the congestion fees, have that region, especially the McKenzie Co area, facing significantly elevated risks of curtailment of electric service.

It is important for perspective that I demonstrate what a 200 MW load is. MDU's entire service area for Bismarck, Mandan, and the refinery near Mandan,

peaks at around 180 MW. At our technical conference last summer, the Department of Commerce informed us that they are fielding interest from data center operators who are talking about individual facilities needing thousands of MW.

The dilemma we face is that we will be entertaining new large loads popping up very suddenly, requiring far more electricity than Bismarck, Mandan, and the refinery combined, and there may be no public planning of grid impacts and no notification of other utilities or consumers who could get hit by increased costs. Imagine if that data center, which caused the spike I mentioned for MDU customers, had been 2000 MW instead of 200 MW!

Now I want to emphasize that I am not a critic of data centers or other large loads in general. The vast majority of them will likely be wonderful new additions to North Dakota's flourishing economy that provide secondary benefits to everyone involved. Another data center in Ellendale, currently operating at about 180 MW, is served by MDU itself. It has been operational for almost a year and a half and is SAVING the average MDU customer around $4.00/ month! They will be expanding soon, and the expansion is anticipated to enhance those systemwide benefits even more! So, I welcome this industry with open arms, but believe it is our responsibility to our current citizens and industries to proceed with reasonable caution.

This legislation provides that reasonable caution. It simply requires these large loads of 50 MW or more to obtain a Certificate of Public Convenience and Necessity from the PSC. The applicant would explain their project and we will put

out a public notice providing others with an opportunity to comment or request a hearing. This should allow other impacted utilities and customers, as well as other large loads who have invested billions in our state, to protect their investments and possibly minimize impacts, as well as avoid costly litigation. (MDU is currently taking steps to litigate issues related to the congestion issues I described. Reasonable oversight may avoid future litigation.)

As you see in #4 of Section 4, our grounds for denial of a certificate for a large load is if they interfere with utility service, increase rates for non-serving utilities, impact reliability, or cause unreasonable transmission congestion. More likely, when negative impacts are presented, the Commission will set reasonable conditions for the operations to proceed.

What this legislation does not do is require a cooperative electric utility to seek a certificate to serve the load because we do not regulate the cooperatives and do not desire to.

This legislation is about transparency. Making sure impacted neighbors are heard. It's about safety, because overloading the grid can cause long term outages that can potentially be deadly. And it's about cost containment, because putting these large loads in the right places can prove enormously beneficial, but in the wrong places they drive up costs and threaten reliability for everyone.

Chair Porter, this concludes my testimony. Thank you for your time and I will be happy to answer any questions.

House Bill 1579

Presented by: **Sheri Haugen-Hoffart, Commissioner**
Public Service Commission

Before: **House Energy and Natural Resources Committee**
Honorable Todd Porter, Chair

Date: **January 31, 2025**

TESTIMONY

Chairman Porter, members of the House Energy and Natural Resources, I am Public Service Commissioner Sheri Haugen-Hoffart here to testify in opposition to HB 1579, both as introduced and with the amendments provided today.

As a public service commissioner, consumer protection is a responsibility I take very seriously. It is the center of both my and my fellow commissioners' work every day. Despite our shared commitment to consumer protection, we've come to a different conclusion on this bill.

I do care about congestion, so why do I oppose this bill?

First, my experience tells me North Dakota is fair, open and has a predictable process. We need to be very careful not to amend law that is confusing or could become complicated. When reading this bill, I am unclear what the process would look like and fear delays for large-load growth due to inquiries (or protests) due to potential impacts. What this legislation would do is

give the Commission veto power over the development of large loads in North Dakota.

Second, my philosophical approach is that the executive branch authority should not be expanded unless there is compelling reason and that expanded authority will provide a realistic solution. Here, the solution is lacking.

Third, as a regulator, I believe we experienced an one-off situation, as nothing shows we have a systematic problem that needs to be fixed.

We have worked hard as a state to communicate that we are open for business, and this is not a message we want to send. It does nothing to ensure that customers won't be affected by congestion. It is a regulatory expansion that provides no realistic benefits to the customers.

This concludes my testimony. Thank you for your time and I am available for questions.

January 31, 2025

Honorable Chairman Porter and Committee Members,

Applied Digital Corporation (Nasdaq: APLD) is a designer, builder and operator of next-generation digital infrastructure for High Performance Compute ("HPC") applications. Applied Digital has been active in North Dakota since 2021. We've greatly appreciated the collaborative spirit of the state and the opportunity to work with North Dakota employees, contractors, and local and state officials. Our facilities north of Jamestown and in Ellendale reflect the strong partnerships we've built. To date we have invested over $1B in infrastructure in North Dakota and anticipate roughly $4B more in the coming years. According to our economic impact study, conducted by a third party earlier this year, we anticipate becoming a top-ten property tax payer in the state within the next few years. We believe this will create roughly 14,000 temporary and permanent jobs during construction. We anticipate we will be responsible for nearly one-half of a percent (0.5%) of state GDP. Our permanent employment footprint at our facilities is expected to be roughly 400 jobs. According to the study, we anticipate there will be roughly 2,500 indirect jobs as a result of our projects. **Our Ellendale project directly resulted in $5.4 Million being returned to MDU's North Dakota rate payers in 2023 and MDU is projecting that it will directly result in $14 Million being returned to MDU's North Dakota rate payers in 2024.** We recognize that not every large load project in North Dakota has produced the same positive results that our projects have and appreciate the effort to assist in avoiding the mistakes of projects that have not gone as well. However, **North Dakota House Bill HB1579 could produce unintended consequences that we believe may not be the most effective solution considered to improve future outcomes.**

We understand and have received a copy of an intended amendment to the bill, thus our commentary below is related to the proposed amendment as received on January 28, 2025.

Positively, the amendment moves the bill from specifically calling out Data Centers and instead places the onus of its requirements on all "large customers" defined as loads greater than 50 megawatts. We applaud the effort to amend this bill so it no longer singles out a specific industry, as any large load could positively or negatively impact the grid. Hence, this change is appropriate.

Negatively, we have concerns that the amendment could limit the ability of large customers to participate in other Certificate of Public Convenience and Necessity ("CPCN") proceedings that may directly impact their interests. The amendment imposes a requirement for "large customers" to obtain a CPCN and creates a complaint process under Section 49-03-02(4) whereby electric public utilities and rural electric cooperatives can file a complaint with NDPSC, and the NDPSC may respond by either denying a CPCN application or attaching conditions to a large customer's CPCN. This text seems to imply that the only intervener in the CPCN proceeding for a large load shall be an electric public utility or rural electric cooperative. We believe that if large customers are going to be required to obtain a CPCN prior to operating, **other large customers ought to have the express right to intervene in the CPCN process as they are likely to be impacted by another large customer interconnecting to the grid in the largest dollar amounts**.

Historically, the CPCN process has strictly governed regulated public utilities. Expanding the CPCN process to include end-use customers is a new concept and our belief is that more time is needed to contemplate this change.

We urge the committee not to advance this legislation at this time and to provide this additional time to make sure that we get this right before rushing to pass a bill for the sake of getting something done immediately. We agree wholly that this is an important issue, but are unsure if this is the correct solution.

Thank you for your time and consideration. Please feel free to contact me for further information. We look forward to continuing our partnership with North Dakota.

Sincerely,

Etienne Snyman

Etienne Snyman
Executive Vice President of Power
APPLIED DIGITAL

Legislative Assembly

North Dakota House of Representatives

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COMMITTEES:
Education
Energy and Natural Resources (Vice Chair)

January 31, 2025

Good morning, Mr. Chairman and members of the committee. For the record, my name is Anna Novak, representative from district 33.

House bill 1579 is a fairly simple bill, despite the hog house version in front of you being 8 pages long. It seeks to regulate large customers ~~20~~ 50 megawatts or more by requiring a certificate of public convenience and necessity through the Public Service Commission

While it doesn't specifically say it, the bill idea came about because of data centers coming to the state. Data centers are facilities that house very large amounts of information for organizations. Google, Apple, and Nvidia are just some of the companies that need data centers to store their servers, storage devices and networking equipment. They offer North Dakota a lot of benefits and we should welcome the responsible buildout of these facilities. They offer opportunities to increase property taxes as well as high-paying jobs across the state. And with North Dakota being an energy exporter, it offers unique ways for our baseload energy sources such as coal and natural gas to stay relevant in the future.

Last week, President Trump announced that there will be $500 billion dollars of infrastructure investment in the AI industry under his leadership. This is an incredible opportunity for North Dakota.

North Dakota has become a place targeted by data centers because of three main reasons:

1. Cooler climate: the equipment housed in these data centers generate heat while they're running. Our cooler climate significantly reduces their energy usage.
2. Energy need: data centers require an incredible amount of electricity to operate. It isn't unusual for a facility to need anywhere from 100-300 mw of electricity. One of the most important takeaways regarding electricity for data centers is that they absolutely cannot have a blackout situation. They do have backup generation sources on site, typically, but reliability is important to them too.
3. North Dakota has a business-friendly regulatory environment. My bill doesn't change that.

I realize that no industry wants to be regulated. It's important to find a balance of regulation, that ensures we continue being a place that welcomes new and exciting business opportunities like data centers, while ensuring our electrical grid is reliable and North Dakota consumers don't pay higher electricity rates because of the data centers.

The latter has happened in the state. Public service commissioner Randy Christmann will talk about that situation more and explain how making data centers apply for a Certificate of Public Convenience

and Necessity will protect our consumers. North Dakota has some of most inexpensive electricity in the nation - which is another reason data centers want to be here. But regardless of how enticing this business opportunity is to our state, we have a responsibility to keep electricity rates low.

Regarding reliability, it is of extreme importance that the legislature does everything we can to protect North Dakotan's from energy shortages. We live in a state that has extreme weather. Blackouts could create a potentially deadly situation if they were to happen during a bitter cold winter day. Our PSC commissioners have different portfolios they oversee. Commissioner Christmann oversees the SPP operations in our state and Commissioner Kringstad oversees the MISO operations in our state. In the packet of information I handed out, I've included the North American Reliability Corporation's 2024 Winter Assessment. It's a long document so I didn't print the entire thing. But I do want to direct you to a few different pages, which I provided to you:

Page 5 - under bullet 1, where it talks about Midcontinent ISO (MISO). The part I want you to focus on here is the last sentence of the paragraph, where it says "with fewer internal dispatchable resources and increasing reliance on wind and imports, the risk of supply shortfall in winter has increased in MISO".

Page 6 - under the bullet titled "Southwest Power Pool SPP". Again, I would like you to read the last part of the bullet, where it says "The area's vast wind resources can alleviate firm capacity shortages under the right conditions; however, energy risks emerge during periods of low wind". If you know anything about electricity production in our state when it's really hot or really cold is that that's when the wind typically doesn't blow, when we need it the most.

Page 7 - under "Recommendations". The last bullet point is what I would direct you to take note of...It says "state and provincial regulators can assist grid owners and operators in advance of and during extreme cold weather by supporting requested environmental and transportation waivers as well as public appeals for electricity and natural gas conservation." My thought process is that FERC wants our state regulators to be aware of and do something about potential energy shortages. When we are looking to add potentially hundreds of megawatts of electricity usage, I think it makes sense for our PSC to get involved.

Page 9 - On table 2, I want to direct you to find MISO and SPP on the table. Both of those grids show negative margins during extreme weather conditions. Our local co-ops and IOU's do a good job of making sure they have enough baseload electricity when needed. However, because they are part of regional electric grids, they are susceptible to energy shortages during extreme weather.

When working on this bill, I did seek input from the parties impacted. And I will tell you that there was no consensus, despite now four different versions of the bill and a lot of great discussion along the way. This is really complicated and I recognize that what one party likes, another doesn't. There isn't a quick fix. But I do believe the amended bill in front of you is the best version for the state of North Dakota as well as our electricity consumers. If there is a situation where North Dakotans are faced with increased electricity prices because the legislature hasn't given the Public Service Commission the proper tools to regulate data centers, I think the public is going to be frustrated with us...and honestly, they should be.

With that, I'll stand for any questions before I hand it over to Commissioner Christmann. Thank you.

Prepared by the Legislative Council staff for Representative Novak
January 29, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1579

Introduced by

Representatives Novak, Porter, Heinert

Senators Kessel, Patten

A BILL ~~for an Act to amend and reenact sections 49-03.1-01, 49-03.1-02, 49-03.1-03, and 49-03.1-05 of the North Dakota Century Code, relating to the requirement for data centers to obtain a certificate of public convenience and necessity.~~for an Act to amend and reenact sections 49-03-01, 49-03-01.4, 49-03-01.5, 49-03-02, and 49-03-05 of the North Dakota Century Code, relating to the requirement for large customers to obtain a certificate of public convenience and necessity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 49-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-01. Certificates of public convenience and necessity - Who to secure.**~~

~~No~~A ~~public utility shall~~or data center ~~may not~~ begin construction or operation of a ~~public utility plant or system~~data center infrastructure ~~without first obtaining from the commission a certificate that public convenience and necessity require or will require such~~the ~~construction and operation, provided that this certification may not be required for a cooperative-operated data center.~~

~~**SECTION 2. AMENDMENT.** Section 49-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-02. Definitions.**~~

~~In this chapter, unless the context or subject matter otherwise requires:~~

~~1. "Commission" means the public service commission.~~

2. "Data center" means a structure that primarily contains electronic equipment used to process, store, and transit digital information, or conduct data mining, owned by an investor-owned utility, which consumes twenty megawatts or more of energy, which may be:

a. A freestanding structure;

b. A portion of a larger structure which uses environmental control equipment to maintain the proper conditions for the operation of electronic equipments; or

c. A structure that accommodates infrastructure, including servers, storage systems, and networking equipment, ensuring access to information, operating data mining, facilitating the operation of websites, applications, and services, and maintaining optimal performance and uninterrupted data availability for an enterprise or organization.

3. "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in this state to furnish its product or services to the public generally which is statutorily subject to the jurisdiction of the commission. The words "public utility" as used in this chapter do not apply to electric public utilities, telecommunications companies that are not incumbent telecommunications companies under chapter 49-21, or motor carriers of persons or property for hire.

SECTION 3. AMENDMENT. Section 49-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

49-03.1-03. Certificate application.

Application for a certificate of public convenience and necessity shall be made upon forms prescribed by the commission. The commission shall make regulations for the filing of such application. The application must contain a financial statement, a description of the type of service to be offered, a map and description of the area to be served, and a list of all other public utilities or data centers providing similar service in the area. Upon the filing of an application for a certificate of public convenience and necessity, the commission shall set a hearing date which shall not be less than twenty days after the filing. The commission shall cause notice of the hearing to be served by certified mail, at least ten days before the day of hearing, upon every public utility or data center which is operating, or which has applied for a

~~certificate of public convenience and necessity, in the area proposed to be served by the applicant, and on other interested parties as determined by the commission. The commission shall impose an application fee of up to ten thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility or data center in accordance with section 49-02-02.~~

~~**SECTION 4. AMENDMENT.** Section 49-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-05. Prerequisites to issuance of certificate of public convenience and necessity - Waiver of hearing.**~~

~~1. Before any certificate may be issued under this chapter, a certified copy of the articles of incorporation, charter, or organization of the public utility or data center, if the applicant is a corporation or a limited liability company, shall be filed with the commission. At the hearing on the application as provided in section 49-03.1-03, the applicant shall submit evidence showing that the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application therefor. The commission shall have the power, after notice and hearing, to do any of the following:~~

~~1. a. Issue the certificate.~~

~~2. b. Refuse to issue the certificate.~~

~~3. c. Issue the certificate for the construction or operation of only a portion of the contemplated facility, line, plant, or system, or data center.~~

~~4. d. Issue the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate such terms and conditions as in its judgment the public convenience and necessity may require.~~

~~2. Notwithstanding any of the foregoing provisions, the commission may grant a certificate if no interested party has requested a hearing on the application after receiving at least twenty days' notice of opportunity to request such hearing.~~

SECTION 1. AMENDMENT. Section 49-03-01 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01. Certificate of public convenience and necessity - Secured by electric public utility and large customer.

1. An electric public utility may not begin construction or operation of a public utility plant or system, or of an extension of a plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which the electric public utility has lawfully commenced operations. If any electric public utility in constructing or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.
2. An electric transmission provider may not begin construction or operation of an electric transmission line interconnecting with an existing electric transmission line owned or operated by an electric public utility without first obtaining a certificate that public convenience and necessity require or will require the construction or operation.
3. A large customer may not begin operation without first obtaining from the commission a certificate of public convenience and necessity.

SECTION 2. AMENDMENT. Section 49-03-01.4 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.4. Enforcement of act.

1. If any electric public utility, large customer, or electric transmission provider violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or

interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining the electric public utility, large customer, or electric transmission provider from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe any terms and conditions as the commission deems reasonable and proper.

2. This section does not prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility, large customer, electric transmission provider, or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

SECTION 3. AMENDMENT. Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.5. Definitions.

As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public. The term does 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 that is 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.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile [1.61 kilometers] long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.

5. "Large customer" means a facility, addition, or combination of facilities designed with an expected demand of at least fifty megawatts of electricity.

6. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.

~~6.~~7. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility. The term does 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 that is 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.

~~7.~~8. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.

~~8.~~9. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.

~~9.~~10. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

SECTION 4. AMENDMENT. Section 49-03-02 of the North Dakota Century Code is amended and reenacted as follows:

49-03-02. Prerequisites to issuance of certificate of public convenience and necessity.

1. Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility or large customer, if the applicant is a corporation, or a certified copy of the articles of organization of the utility or large customer, if the applicant is a limited liability company, must be filed with the commission. At the hearing on the application after notice as provided in this title, the utility or large customer shall submit evidence showing that the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other

public authority, if required, or has or is about to make application for authority. The commission shall have the power, after notice and hearing, to:

a. Issue the certificate prayed for;

b. Refuse to issue the certificate;

c. Issue the certificate for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension of the same; or

d. Issue the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate terms and conditions as in the judgment of the commission the public convenience and necessity may require.

2. Notwithstanding any other provision of this section, the commission may grant a certificate if an interested party, including any local electric cooperative, has not requested a hearing on an application after receiving at least twenty days' notice of opportunity to request such hearing. In addition, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility if the electric public utility is willing and able to construct and operate a similar electric transmission line.

3. The commission may impose an application fee of up to one hundred seventy-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.

4. Upon receiving a complaint from an electric public utility or rural electric cooperative, when a large customer unreasonably interferes with or is about to interfere with utility service, increase rates for non-serving utilities, impact reliability, or cause unreasonable transmission congestion, the commission may deny or attach conditions to a large customer certificate of public convenience and necessity.

5. For purposes of this section, "large customer" has the meaning provided in section 49-03-01.5.

SECTION 5. AMENDMENT. Section 49-03-05 of the North Dakota Century Code is amended and reenacted as follows:

49-03-05. Complaint upon violation of chapter.

1. If a public utility, large customer, or electric transmission provider engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, or if a public utility, large customer, or electric transmission provider constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission acting on the complaint, or upon its own motion without complaint, with or without notice, may make its order requiring the public utility or large customer complained of to cease and desist from the construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after due notice given, the commission shall make an order with respect to the public utility, large customer, or electric transmission provider and prescribe terms and conditions as are just and reasonable.

2. For purposes of this section, "large customer" has the meaning provided in section 49-03-01.5.

Key Findings

This WRA covers the upcoming three-month (December–February) winter period, providing an evaluation of the generation resource and transmission system adequacy necessary to meet projected winter peak demands and operating reserves. This assessment identifies potential reliability issues of interest and regional risks. The following findings are the ERO Enterprise's independent evaluation of electricity generation and transmission capacity as well as the potential operational concerns that may need to be addressed for the upcoming winter:

1. **All areas are assessed as having adequate resources for normal winter peak-load conditions. However, more extreme winter conditions extending over a wide area could result in electricity supply and energy shortfalls.** Prolonged, wide-area cold snaps can drive sharp increases in electricity demand. Simultaneously, electricity supplies are at risk from freezing temperatures that threaten reliable operation of BPS generators, fuel supply issues for natural-gas-fired generation, and wind and solar resource energy limitations. In three of the past five winters, severe arctic storms have extended across much of North America, causing regional demand for electricity and heating fuel to soar and exposing generation and fuel infrastructure in temperate areas to freezing conditions.[1] The following areas face risks of electricity supply shortfalls during periods of more extreme conditions this winter (see Figure 1).

    - **Midcontinent ISO (MISO):** Reduced coal and natural-gas-fired generation by over 5 GW since Winter 2023–2024 has contributed to a decline in available resources. Lower internal capacity is partially offset by a 2 GW increase in firm capacity imports into the area. Additionally, MISO's margin is being helped by a lower peak demand forecast, down over 4 GW since last winter. MISO recently implemented a seasonal resource adequacy construct that more effectively values risks and resource contributions that vary by time of year. With fewer internal dispatchable resources and increasing reliance on wind and imports, the risk of supply shortfall in winter has increased in MISO.

    - **MRO-SaskPower:** Reserve margins have risen this winter by 17 percentage points over the previous winter due to a net increase in peak winter capacity of more than 200 MW, the majority of which consists of natural gas generation capacity (320 MW). Additional natural gas-fired generation capacity has offset the area's 140 MW decline in coal-fired generation capacity. High numbers of forced generator outages or wind turbine cold temperature derates and outages could lead to operating reserve shortfalls at peak winter demand levels.

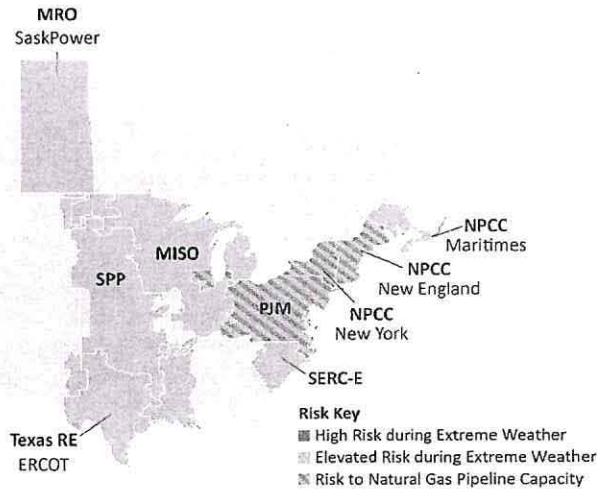

Figure 1: Winter Reliability Risk Area Summary

Seasonal Risk Assessment Summary	
High	Potential for insufficient operating reserves in normal peak conditions
Elevated	Potential for insufficient operating reserves in above-normal conditions
[illegible]	Sufficient operating reserves expected

- **NPCC-Maritimes:** Reserve margins have fallen by 4.6% from the winter of 2023 as forecasted peak demand has grown by more than 5.5% (300 MW). Lower conventional hydro generation capacity has contributed to a drop of 100 MW in total winter generation capacity from last winter. Demand levels at the forecasted peak can strain the area's firm supplies and lead to operating mitigations or energy emergencies.

- **NPCC-New England:** Dispatchable thermal generation capacity has declined by 2.6 GW as forecasted peak demand has risen by 0.6 GW (+3%). The largest capacity increases year over year were for wind and solar resources at a combined 550 MW; however, both of those resource types have limited energy production in the winter months. Potential

[1] See detailed reports on the January 2024 Arctic Storm, Winter Storm Elliott, and Winter Storm Uri.

natural gas transportation constraints compound the risk of generation capacity shortfall during peak demand periods. ISO-New England's (ISO-NE) Inventoried Energy Program provides compensation for generators that maintain inventoried fuel for their assets during extreme cold periods.

- **NPCC-New York:** The Anticipated Reserve Margin (ARM) of 64.3% remains well above the Installed Reserve Margin (IRM) of 22.0% established by the New York State Reliability Council, despite a 2.6 GW decline in resource capacity since last winter. Operators are likely to be challenged in maintaining sufficient reserves during periods of extreme cold weather if non-firm supply of natural gas to generators is interrupted. New York also faces reduced natural gas supply from a regional pipeline issue (see the natural gas fuel highlight in the next column).
- **PJM:** Despite an increase in winter peak demand forecast of over 3.2 GW (2.5%), Planning Reserve Margins in PJM have risen slightly with increased firm imports and demand response. While no BPS reliability issues are currently anticipated in PJM, natural gas infrastructure capacity could be negatively affected if legal proceedings require the shutdown of facilities that were installed as part of a regional natural gas pipeline expansion project (see the natural gas fuel highlight in the next column). Natural gas is the leading fuel for electricity generation in PJM: In 2023 it was over 44.1% of total generation in the PJM real-time energy market.[2] PJM estimates that fuel service for as much as 20 GW of generation capacity is directly or indirectly served by the pipeline at the center of these proceedings.
- **SERC-East:** Lower forecasted peak demand is contributing to a 0.6% uptick in reserve margins for the winter when compared to 2023. However, there has been a nearly 1 GW decline in dispatchable thermal resources (primarily coal-fired generation) and growth in solar capacity that does little to help meet peak winter demand. Severe cold weather extending into the southern United States could lead to energy emergencies due to operators facing fuel supply issues, increases in generator forced outages, and higher electricity demand.
- **Southwest Power Pool (SPP):** The ARM of 44% is five percentage points higher than last winter, driven primarily by a significant increase in demand-response resources. Forecasted peak demand has risen for this winter by 1.8 GW from the previous year while total existing generation capacity has fallen by more than 4 GW. However, of the 4 GW decline in generation resources, nearly 2 GW come from adjustments in wind and solar capacity contributions, which have a lower energy value during the winter season. At the same time, natural gas generation capacity, which has a higher winter energy value, has expanded by 2.6 GW year over year. The area's vast wind resources (8% of the generation fleet) can alleviate firm capacity shortages under the right conditions; however, energy risks emerge during periods of low wind.
- **Texas RE-ERCOT:** The risk of reserve shortage remains elevated due primarily to robust load growth that continues to surpass growth in dispatchable resources. Net internal demand has risen by more than 2 GW since 2023. Solar and wind capacity has increased by more than 3 GW, while dispatchable resources have only increased by 1 GW. In November 2023, ERCOT introduced firm fuel supply service to address fuel-related outages that can occur when natural gas supplies are limited.

2. **Natural gas fuel to generators is threatened this winter by ongoing concerns with natural gas production and delivery in extreme conditions and a potential regional pipeline capacity issue in the U.S. Mid-Atlantic and Northeast.** Natural gas is an essential fuel for electricity generation in winter. While the natural gas industry is making progress on commercial practices and voluntary commitments to improve winter preparedness, supplies to electric generators remain vulnerable in extreme cold temperatures in many parts of North America, placing electric reliability at risk. As winter approaches, NERC encourages all entities across the gas-electric value chain—from production to the burner tip and the busbar—to take all necessary actions to prepare for extreme cold, keep natural gas flowing, and keep the lights and furnaces on.

   At the time of this WRA, the operator of a major interstate natural gas pipeline expansion project serving the U.S. Mid-Atlantic and Northeast is facing legal challenges to the continued operation of the expanded pipeline. According to a recent Federal Energy Regulatory Commission (FERC) filing, a halting of the expanded pipeline operations would affect "firm transportation capacity in New Jersey, New York, Pennsylvania, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia, and Alabama." These states correspond to the PJM, NPCC-New York, SERC-East, and SERC-Southeast assessment areas. During recent extreme winter weather events, each of these areas has experienced or come dangerously close to a shortfall in electricity supply for which fuel availability was a significant factor. Because foreseeable extreme cold temperatures have the potential to push the existing natural gas supply infrastructure to maximum capacity again this winter, a shutdown of in-service regional natural gas facilities would endanger grid reliability.

[2] See the 2023 Annual State of the Market Report for PJM: Volume 2, Section 3: Energy Market, P 209. (March 14, 2024)

3. **Growing winter load underscores the importance of maintaining sufficient dispatchable generation and strong transmission networks.** Winter electric load is growing in most areas as the grid increasingly powers heating, transportation systems, and new data centers. Serving winter load is becoming more challenging and complex as coal-fired and older natural gas-fired generators retire and are replaced by variable and energy-limited resources. Solar resources, which are overwhelmingly the largest share of new resources connecting to the grid, do not provide output during many hours when winter electricity demand is at its highest. New battery resources can extend the output from solar PV for short durations, but winter's longer hours of darkness, cloud cover, and precipitation will push the limits of today's battery storage capabilities and installed energy capacity. Winter resource adequacy depends on dispatchable generation, reliable fuel supplies, and firm transfer agreements.
4. **Regulatory and industry initiatives to address reliability issues from winter storms Elliott and Uri make the grid better prepared for the upcoming winter.** Cold weather reliability standards, generator weatherization efforts, and early commitment of generators in advance of freezing temperatures contributed to fewer generator outages in 2023–2024 winter storms compared to Winter Storm Uri (2021) and Winter Storm Elliott (2022).[3] More accurate weather and load forecasting and better communication among natural gas suppliers, Generator Operators (GOP), and electric grid Balancing Authorities (BA) and Reliability Coordinators (RC) also helped maintain the supply of electricity. Continued vigilance and application of proven mitigations will help reduce reliability risks for the upcoming winter.
5. **The transmission system is recovering from severe damage incurred during the 2024 hurricane season.** The BPS in the U.S. Southeast sustained significant damage in October from hurricanes Helene and Milton, leading to millions of customer outages and damage to hundreds of transmission lines and substations. Over 50,000 utility personnel from across North America worked to restore electricity quickly and safely. Lingering effects that degrade the transmission network can extend for weeks and could make the grid less resilient to extreme winter storms. As restoration in parts of the U.S. Southeast continues, NERC is monitoring the implications for winter reliability.

Recommendations

To reduce the risks of energy shortfalls on the BPS this winter, NERC recommends the following:

- RCs, BAs, and Transmission Operators (TOP) in the elevated risk areas identified in the key findings should review seasonal operating plans and the protocols for communicating and resolving potential supply shortfalls in anticipation of potentially high generator outages and extreme demand levels. Operators should review recommendations contained in the *2022 Winter Storm Elliott Report* and follow-up actions as well as lessons learned from the 2023–2024 Winter.
- Generator Owners (GO) should complete winter readiness plans and checklists prior to December, deploy weatherization packages well in advance of approaching winter storms, and frequently check and maintain cold weather mitigations while conditions persist.
- BAs should be cognizant of the potential for short-term load forecasts to underestimate load in extreme cold weather events and be prepared to take early action to implement protocols and procedures for managing potential reserve deficiencies. Proactive issuance of winter advisories and other steps directed at generator availability contributed to improved reliability during January 2024 winter storms Gerri and Heather compared to prior arctic storms.
- RCs and BAs should implement generator fuel surveys to monitor the adequacy of fuel supplies. They should prepare their operating plans to manage potential supply shortfalls and take proactive steps for generator readiness, fuel availability, load curtailment, and sustained operations in extreme conditions.
- State and provincial regulators can assist grid owners and operators in advance of and during extreme cold weather by supporting requested environmental and transportation waivers as well as public appeals for electricity and natural gas conservation.

[3] See January 2024 Arctic Storms System Performance Review Presentation, FERC Open Meeting, April 25, 2024

Table 1: Seasonal Risk Assessment Summary	
Category	**Criteria[1]**
High Potential for insufficient operating reserves in normal peak conditions	• Planning Reserve Margins do not meet Reference Margin Levels (RML); or • Probabilistic indices exceed benchmarks (e.g., LOLH of 2.4 hours over the season); or • Analysis of the risk hour(s) indicates resources will not be sufficient to meet operating reserves under **normal peak-day demand and outage scenarios**[2]
Elevated Potential for insufficient operating reserves in above-normal conditions	• Probabilistic indices are low but not negligible (e.g., LOLH above 0.1 hours over the season); or • Analysis of the risk hour(s) indicates resources will not be sufficient to meet operating reserves under **extreme peak-day demand with normal resource scenarios** (i.e., typical or expected outage and derate scenarios for conditions);[2] or • Analysis of the risk hour(s) indicates resources will not be sufficient to meet operating reserves under **normal peak-day demand with reduced resources** (i.e., extreme outage and derate scenarios)[3]
Normal Sufficient operating reserves expected	• Probabilistic indices are negligible • Analysis of the risk hour(s) indicates resources will be sufficient to meet operating reserves under normal and extreme peak-day demand and outage scenarios[4]

Table Notes:
[1]The table provides general criteria. Other factors may influence a higher or lower risk assessment.
[2]**Normal resource scenarios** include planned and typical forced outages as well as outages and derates that are closely correlated to the extreme peak demand.
[3]**Reduced resource scenarios** include planned and typical forced outages and low-likelihood resource scenarios, such as extreme low-wind scenarios, low-hydro scenarios during drought years, or high thermal outages when such a scenario is warranted.
[4]Even in normal risk assessment areas, extreme demand and extreme outage scenarios that are not closely linked may indicate risk of operating reserve shortfall.

ARMs, which provide the Planning Reserve Margins for normal peak conditions, as well as reserve margins for seasonal risk scenarios of more extreme conditions are provided in **Table 2**.

Assessment of Planning Reserve Margins and Operational Risk Analysis

Table 2: Seasonal Risk Scenario Margins			
Assessment Area	Anticipated Reserve Margin	Typical Outages	Extreme Conditions
MISO	55.1%	10.3%	-0.8%
MRO-Manitoba	12.3%	9.9%	7.5%
MRO-SaskPower	37.7%	34.0%	20.2%
NPCC-Maritimes	15.1%	10.7%	-6.2%
NPCC-New England	54.5%	35.9%	4.7%
NPCC-New York	64.3%	38.1%	11.2%
NPCC-Ontario	25.1%	25.1%	18.1%
NPCC-Québec	14.1%	10.0%	-3.5%
PJM	40.6%	28.3%	18.5%
SERC-Central	29.2%	22.1%	17.8%
SERC-East	25.0%	20.6%	10.5%
SERC-Florida Peninsula	37.8%	31.7%	15.6%
SERC-Southeast	42.8%	36.4%	30.8%
SPP	44.0%	16.8%	-0.9%
Texas RE-ERCOT	46.1%	27.3%	-19.3%
WECC-AB	36.3%	34.0%	22.7%
WECC-BC	20.9%	20.8%	-4.3%
WECC-CA/MX	72.4%	63.2%	41.7%
WECC-NW	57.9%	53.5%	12.2%
WECC-SW	94.0%	89.5%	53.0%

Seasonal risk scenarios for each assessment area are presented in the **Regional Assessments Dashboards** section. The on-peak reserve margin and seasonal risk scenario charts in each dashboard provide potential winter peak demand and resource condition information. The reserve margins on the right side of the dashboard pages provide a comparison to the previous year's assessment. The seasonal risk scenario charts present deterministic scenarios for further analysis of different demand and resource levels with adjustments for normal and extreme conditions. The assessment areas determined the adjustments to capacity and peak demand based on methods or assumptions that are summarized in the seasonal risk scenario charts; more information about these dashboard charts is provided in the **Data Concepts and Assumptions** section.

The seasonal risk scenario charts can be expressed in terms of reserve margins: In **Table 2**, each assessment area's ARMs are shown alongside the reserve margins for a typical generation outage

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January 31, 2025

To: House Energy and Natural Resources Committee, Rep. Todd Porter, Chairman

Re: Opposition to HB 1579

From: Zac Smith, communications and government relations director, NDAREC

Chairman Porter and members of the committee, for the record, my name is Zac Smith, and I serve as the director of communications and government relations for the North Dakota Association of Rural Electric Cooperatives in Mandan. On behalf of the 17 distribution cooperatives and five generation and transmission cooperatives who are members of our association, I am testifying in opposition to HB 1579. Electric cooperatives take great pride in our role in powering North Dakota's economic growth.

You will hear from my membership about their diligence, planning, and coordination to develop new growth. Cooperatives have processes in place to determine if service is feasible for a new, large load. Members who require large amounts of power are not added to the system unless it makes sense for the cooperative and their wholesale power provider. And it is never done to the detriment of the existing member.

After I speak, you will hear from Todd Sailer, Minnkota Power Cooperative's Vice President of Power Supply, about the diligence and processes a cooperative goes through before adding load. You will also hear from Matt Hanson, CEO of McKenzie Electric Cooperative, about his cooperative's experience managing explosive growth, while taking a deliberate approach to powering the Bakken. I have also included some information from Basin Electric Power Cooperative about their investment in North Dakota generation and transmission.

However, I want to briefly speak to the mechanics of the amendment to this bill. HB 1579 with amendment 25.1252.01001 will take certificates of public convenience and necessity, a process typically reserved for settling territorial disputes between cooperatives and investor-owned utilities, and make the large load end user file with the Public Service Commission, regardless of where they plan to get their power. While the power provider and customer will have worked through several in-depth processes that will be explained by those who follow me, the amendments to this bill will place one final hurdle at the Public Service Commission, in which a large load end user's ability to get power from an incumbent utility may be denied or conditioned. The amendments will replace all the experts who are charged with maintaining

the grid at the distribution, generation and transmission utilities, regional transmission organizations (RTOs) and the Federal Energy Regulatory Commission (FERC), giving final and ultimate authority the Public Service Commission.

Although the commission's jurisdiction does result in some ancillary regulation of cooperatives in areas such as siting and electrical safety, this would require the commission to delve deeper into areas in which the Commission does not currently have jurisdiction. Namely, whether the commission will allow a cooperative to serve in its own territory. Rather than settle territorial disputes and protect consumers from for-profit utilities, the commission will now have final say over the electric cooperative member-owners, a cooperative's elected board of directors, regional transmission organizations and FERC.

Cooperatives have invested billions in the last decade to build both generation and transmission infrastructure in North Dakota and have plans to invest billions more. We have maintained and defended our baseload generation. The proposed amendments to HB 1579 are a broad regulatory expansion that infringes on our elected directors' ability to govern their cooperatives and dilutes the intention of the Territorial Integrity Act. All in the name of solving a congestion problem which should be owned by those who have failed to invest in the region and signed an agreement that functioned exactly as it was designed.

If there is a need for transparency beyond all the public documents filed with the RTOs and FERC, then address that issue directly without putting the PSC in the position to deny or condition development. I urge a "do not pass" on the proposed amended version of HB 1579.

BASIN ELECTRIC POWER COOPERATIVE

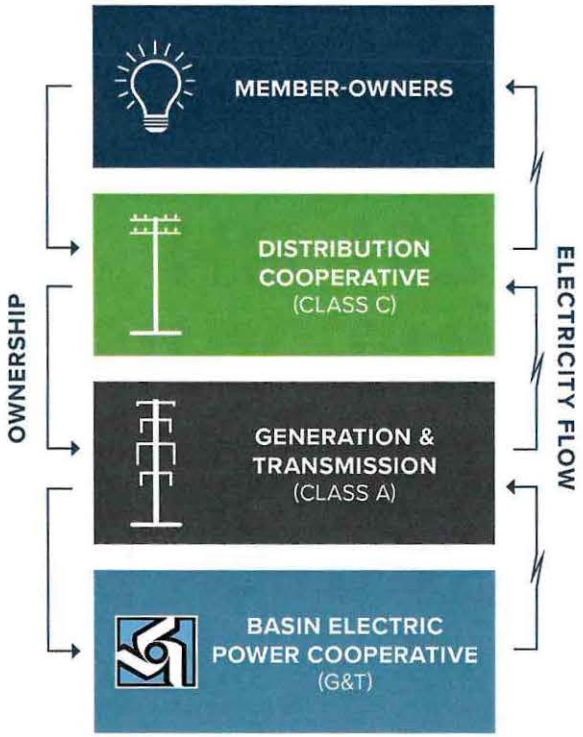
A Touchstone Energy® Cooperative

ND Infrastructure Expansion HB 1579

Jean Schafer

Senior Legislative Representative

Basin Electric Membership Structure



Basin Electric Snapshot

140 Members in 9 States

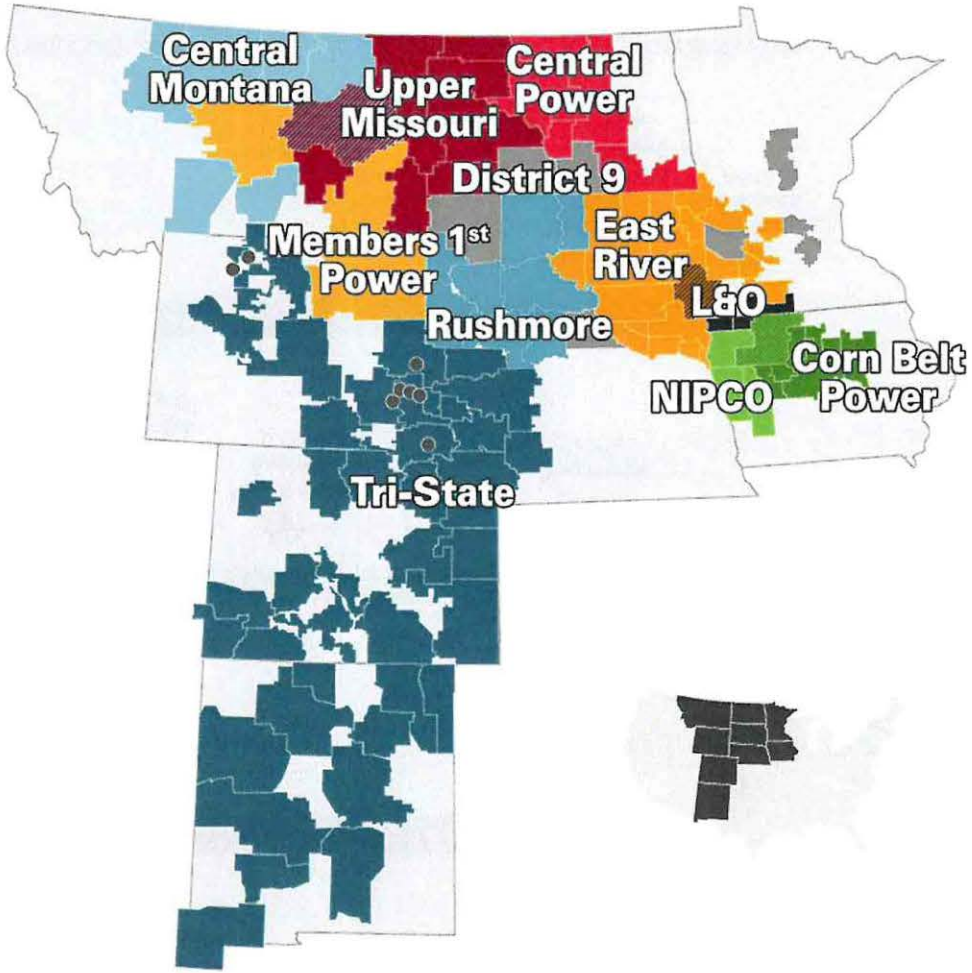
3 million member-owners

Over 8,000 megawatts of winter capacity

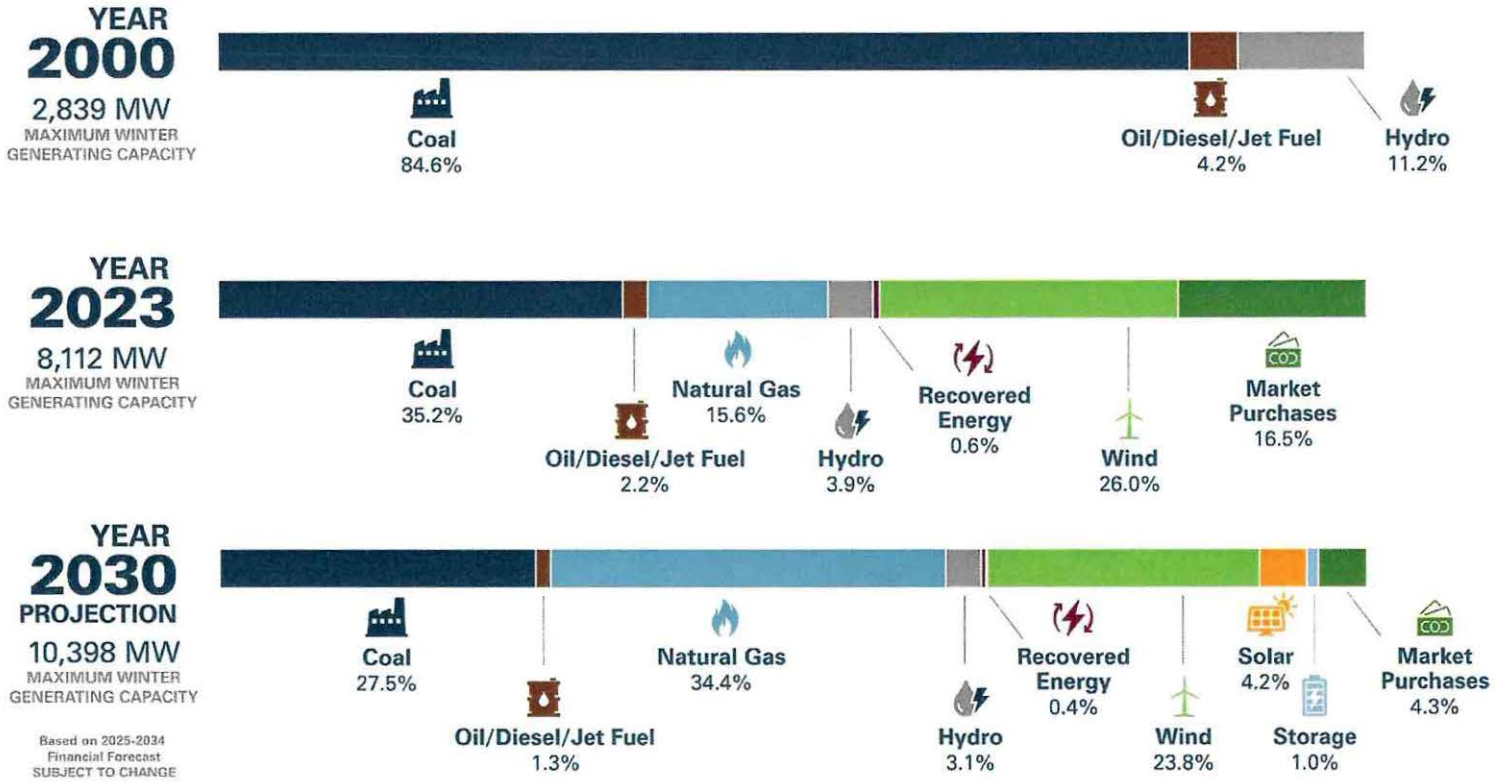
Largest G&T:
- Total MWh sales
- Member sales
- Total Operating Revenue
- Geographic territory served

2nd largest G&T by assets

January 2024 Billing Peak Demand Record – 5,134 MW

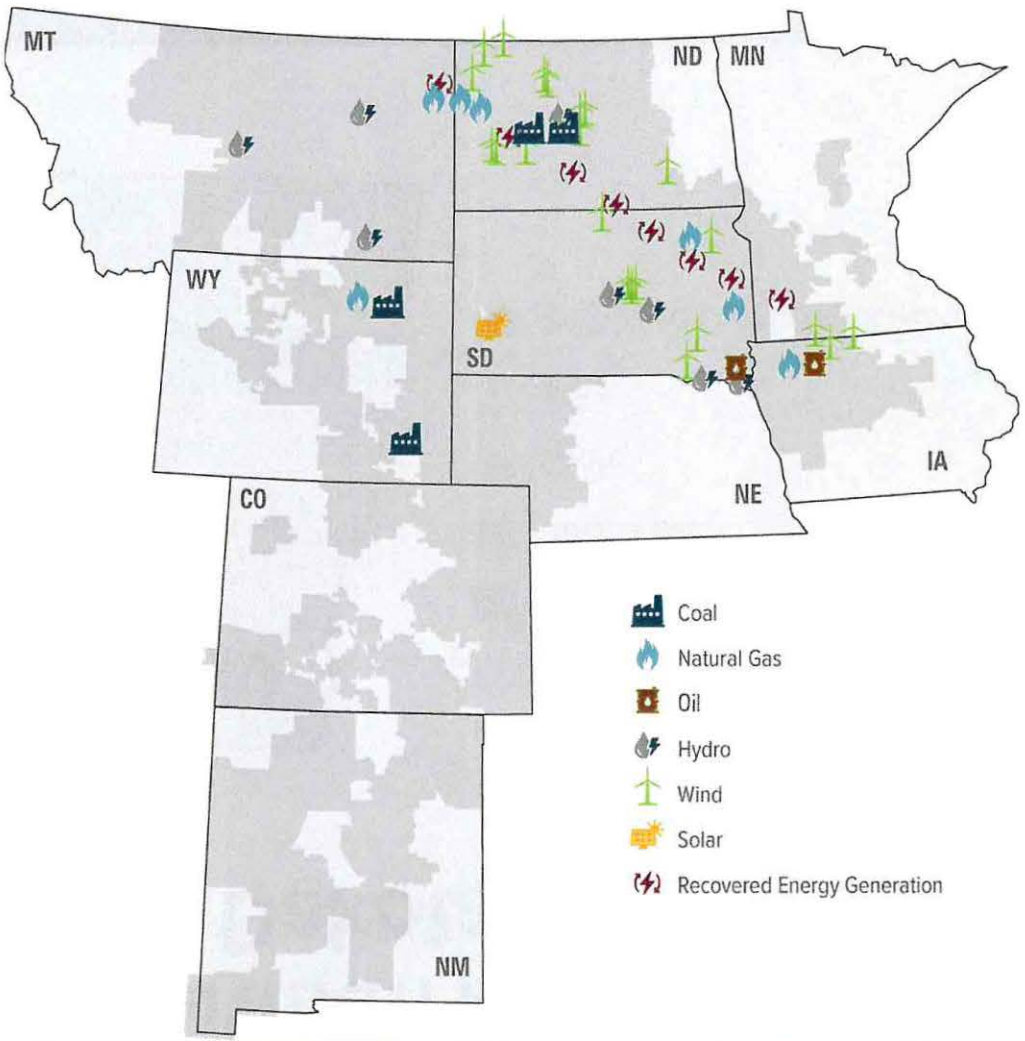


Diverse Generation Portfolio

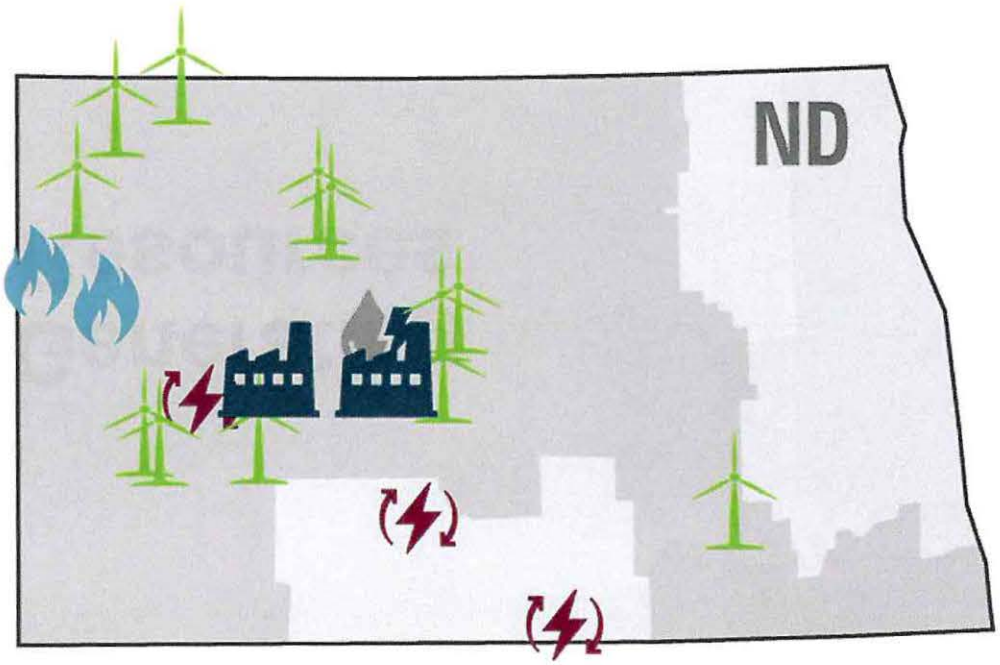


Note: Megawatts based on winter season net generating capacity as of Dec. 31, 2023, across the entire service territory.

Generating Resources



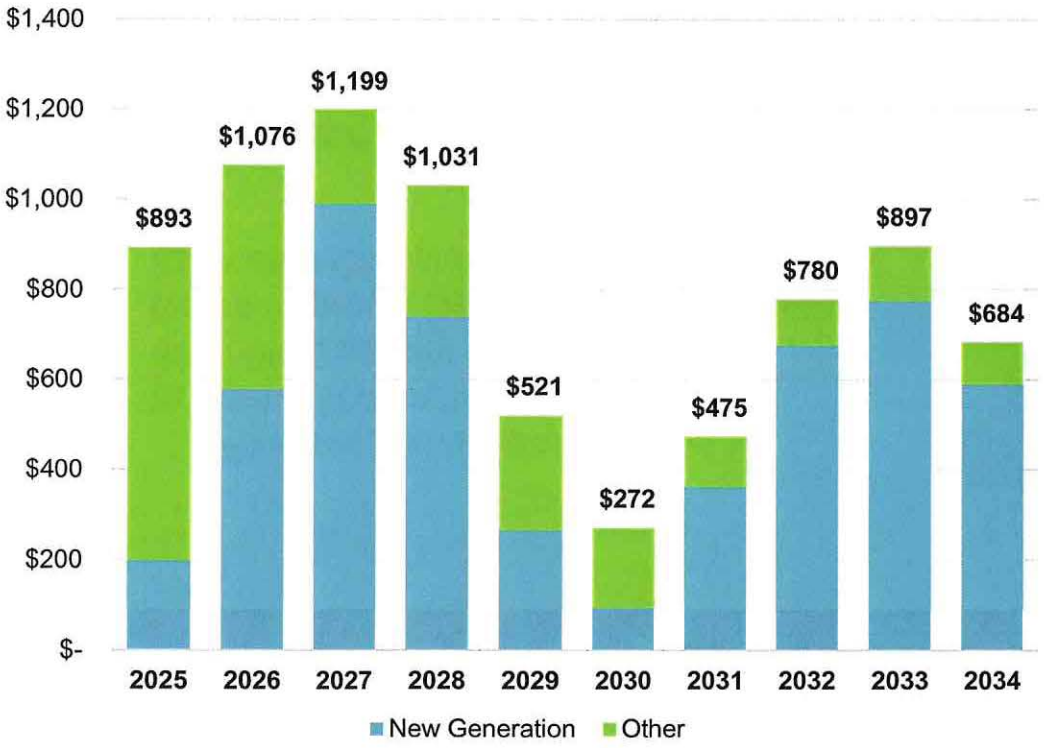
Existing Generation Assets in North Dakota

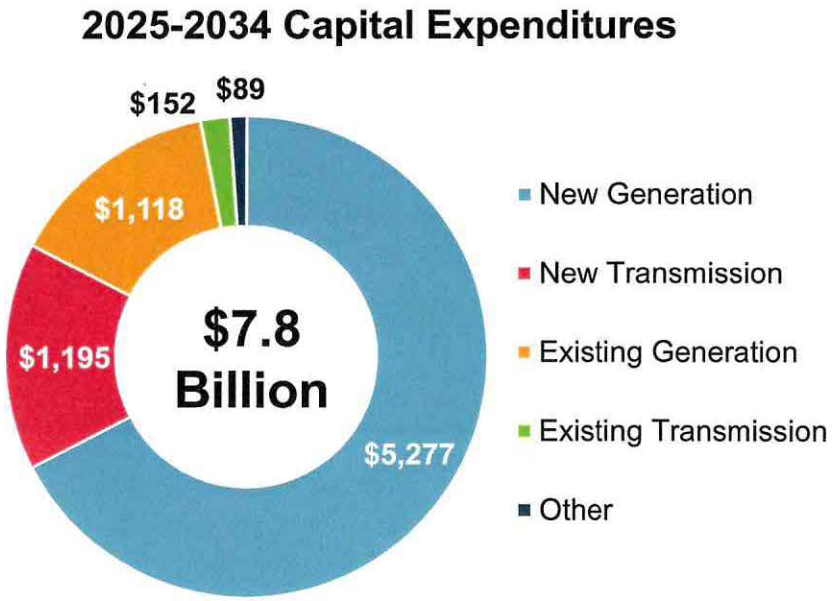


- Coal
- Natural Gas
- Hydro
- Wind
- Recovered Energy Generation

Basin Electric Capital Expenditures - $7.8 Billion

In Millions





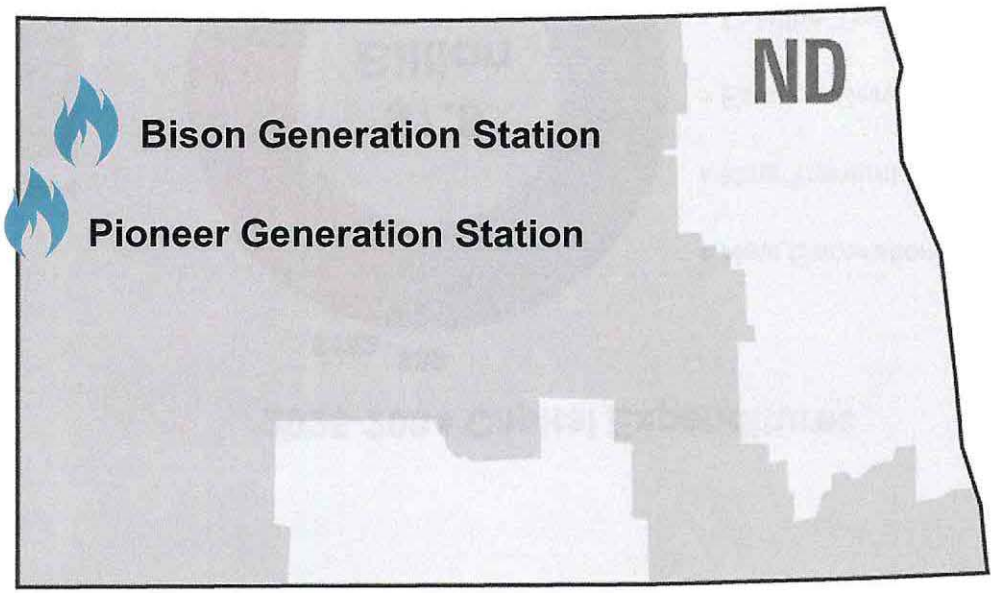
NEW Generation Assets in North Dakota

Pioneer Generation Station IV

- Budget – $805 million
- 600 MW Capacity – Natural Gas
- Board Approval Date – September 2022
- Estimated Completion Date – August 2025

Bison Generation Station

- Budget – nearly $4 billion
- 1,490 MW Capacity – Natural Gas
- Board Approval Date – January 15, 2025
- Estimated Completion Date – 2030



Transmission Buildout

Roundup - Kummer Ridge 345kV

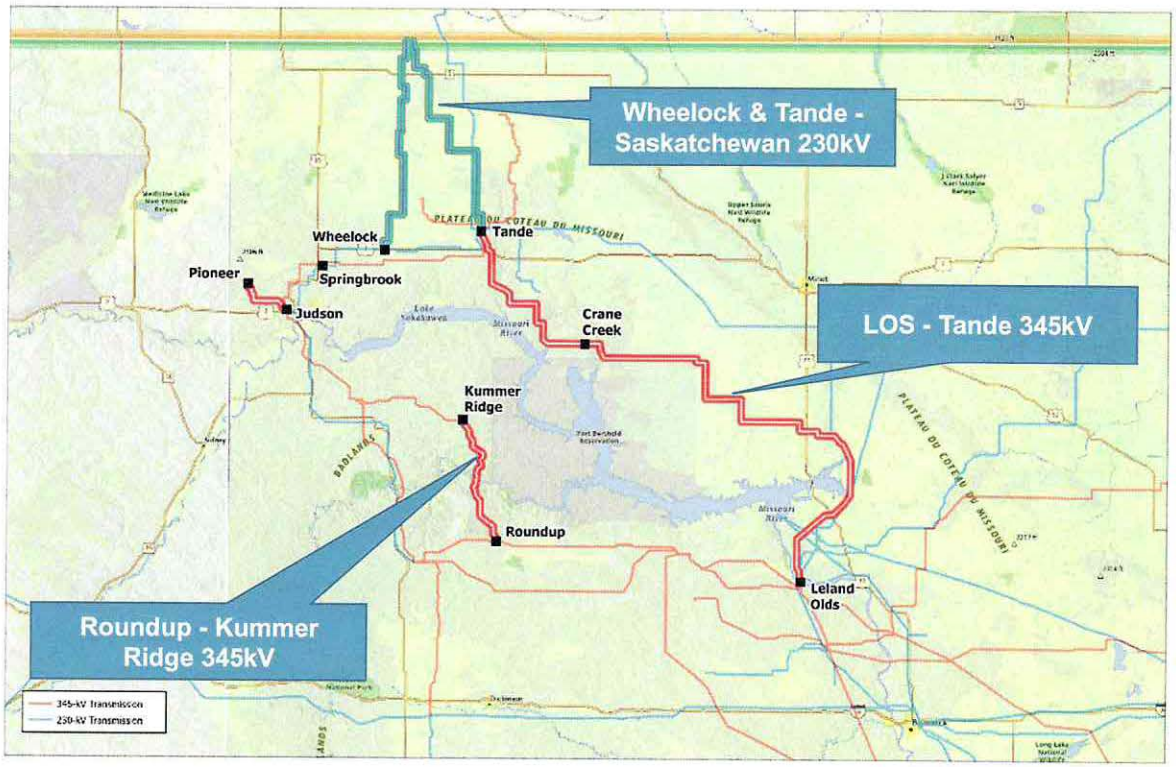
- $95 million
- 35 miles of transmission line
- Energized on December 17, 2024

LOS - Tande 345kV

- $417 million
- 175 miles of transmission line
- Projected completion: November 2026

Wheelock & Tande - Saskatchewan 230kV

- $179 million
- 110 miles of transmission line
- Projected completion: October 2027



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January 31, 2025

To: House Energy and Natural Resources Committee, Representative Todd Porter, Chairman

From: ***Matt Hanson, CEO of McKenzie Electric Cooperative, Watford City***

Re: Opposition to HB 1579 amendments

Chairman Porter and members of the House Energy and Natural Resources Committee, for the record my name is Matt Hanson, and I am the CEO of McKenzie Electric Cooperative. I am testifying today in opposition to the proposed amendments to HB 1579. McKenzie Electric Cooperative provides electric service to nearly 15,000 meters across 7 counties in North Dakota and Montana. McKenzie Electric is among the top 10 largest electricity retailers of the over 900 plus rural electric cooperatives in the nation.

Over the past decade, McKenzie Electric has been at the front and center of supporting the oil and gas development in northwestern North Dakota. In just the last 10 years, McKenzie Electric has successfully planned for and brought on almost 600 megawatts (MW) of new load, successfully navigating double-digit annual growth rates. We have done this without a significant impact to legacy members, as we ensure cost causers are the cost payers and follow solid utility and good governance practices at the cooperative. In fact, there has been a huge benefit to the membership of McKenzie Electric with the large amounts of new infrastructure that has been installed, establishing a very reliable and resilient electric system, along with the benefits of growth.

The story has not been without its own sets of challenges, and the process requires an immense amount of coordination, planning and communication.

To provide a small glimpse into the robust process of meeting the energy needs of our members, it starts with a good understanding of the needs of the electric consumer. Then, we must communicate and coordinate with our transmission providers and wholesale power providers, many times years in advance. It requires a host of utility experts that understand utility planning, utility operations, regulations, compliance and a host of other specific areas. While this process is robust, we always consider the cost and reliability implications. McKenzie Electric's track record over our 80 years of existence demonstrates our priority and focus on serving our membership with safe, reliable, and affordable electricity.

As many of you can relate, the number of obstacles and challenges are not going away. Adding more regulatory steps as proposed in the amended HB 1579, where existing processes and regulation already exist, does not seem to make sense.

The Bakken development has been fast paced over the last decade plus, and McKenzie Electric's position and approach, in my mind, is a huge reason we were successful at getting the electric infrastructure in place to meet the demands. I can only speculate what the impact would have been if we were not able to meet the electricity needs in the necessary timeframes due to additional hurdles.

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As I look to the future, electric demand is going to continue to increase. However, the concern is not siting new loads, as there are solid processes in place to navigate this. Rather, it's the need to build generation and transmission to meet not only the growing demand for electricity, but the current aging infrastructure and retirement of always-available generation.

It really comes down to an equation of pace and timing. Following the process ensures integrity of the electric system. Sure, McKenzie has had to say no to new requests until the system is ready, but the process works. McKenzie's story is a success story for not only the members of the cooperative, but for so many others.

I strongly urge the committee to give a "Do Not Pass" recommendation to the amended HB 1579.

MWEC Mountrail - Williams Electric Cooperative

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Service Area
Toll Free: 1-800-279-2667

PO Box 1346
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PO Box 59
New Town, ND 58763-0059
(701) 627-3550

Chairman Porter and members of the committee,

My name is Alex Vournas, I am the General Manager of Mountrail-Williams Electric Cooperative (MWEC). We are a member-owned distribution electric cooperative serving 8,550 members in northwest North Dakota. I am here to testify in opposition to the proposed amendments.

The regulated investor-owned utility (IOU) in our area and a member of the North Dakota Public Service Commission (NDPSC) have blamed Mountrail-Williams Electric Cooperative and one of our members for transmission congestion charges that the IOU incurred in late 2023. They have singled out one large load as the reason for the congestion, but that is a simplistic and incomplete analysis. It is disingenuous to say that congestion charges and energy prices are the result of only one load instead of the accumulation of all loads, including that IOU's load. There also seems to be a misconception that there is little to no oversight involved in managing load growth on the grid outside of NDPSC regulation. MWEC went through the proper processes and participated in the needed studies with Basin Electric Power Cooperative (Basin) and Southwest Power Pool (SPP) before connecting the large member load to the grid.

Another relevant fact that IOU and the PSC member have consistently failed to mention, is the ability for certain loads to act as a demand response resources, curtailing based on price signals or when called upon by grid operators. The flexibility of these loads makes the power market impact much lower than a typical load of the same size.

There is another side to this story that seems to be getting lost, and that is the IOU's lack of investment in our area. Basin Electric Power Cooperative and the distribution electric cooperatives in northwest North Dakota and eastern

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Montana have made substantial investments on behalf of their members to support the needed electrical build out to serve the Bakken and our growing communities. We've built new generation, transmission lines, substations, and distribution lines. Over the last 15 years, MWEC alone has grown about 750 MW, including oil and gas, industrial, residential, and commercial growth, without NDPSC oversight of large loads. The total investment from the cooperatives in our region over the last 15 years exceeds $2 billion with even more planned in the near future. In contrast, as far as I can observe, the IOU has made minimal investments in our area. That utility serves approximately 150 MW of load in northwest North Dakota, but they have limited generation and transmission. In fact, just two years prior to incurring the congestion charges, the IOU retired its coal power plant in Sidney, MT, leaving only 19 MW of natural gas generation as its dispatchable generation in the area to serve its 150 MW of load.

The regulated IOU is a member of the Midcontinent Independent System Operator (MISO) regional transmission organization (RTO). The electric cooperatives and Western Area Power Administration belong to the Southwest Power Pool (SPP) RTO. Because of the IOU's lack of infrastructure in our area, and membership in a different RTO, they lean predominantly on taking service from SPP transmission lines. In the late 2010s and early 2020s, going to the market instead of building generation was an attractive proposition. Natural gas prices were low, which kept market prices for electricity low. As market conditions have changed, and the IOU has been exposed to higher energy prices and congestion charges, this has turned out to be costly. If they had invested in the needed generation resources in the area to serve their load, instead of islanding themselves in the wrong market and relying on other utilities, they could have protected their customers from some of those market costs. It appears the regulated IOU made the choice to lean on the

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market and it turned out to be a costly decision, leaving them looking for someone to blame.

Rural Electric Cooperatives have provided electricity to our members, using our own process and self-governance to responsibly develop and support our communities for over eighty years. Rural Electric Cooperatives have also been instrumental in the last fifteen years serving explosive growth of the Bakken. The electric cooperatives do not need more regulations.

Thank you.

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

HB 1579
2/13/2025
Subcommittee

Relating to the requirement for data centers to obtain a certificate of public convenience and necessity.

8:02 a.m. Chairwoman Novak opened the meeting.

Members Present: Chairwoman Novak, Representative Johnson, Representative Foss

Members Absent: Representative Olson

Discussion Topics:

- Data Centers
- Transmission lines

8:03 a.m. Zach Smith, Communication and Government Relations Director, ND Association of Rural Electric Cooperatives, NDAREC, answered questions for the committee.

8:28 a.m. Nick Phillips, Executive Vice President of External Affairs, Applied Digital, answered questions for the committee.

8:47 a.m. Randy Christman, ND Public Service Commissioner, answered questions for the committee.

8:58 a.m. Chairwoman Novak closed the hearing.

Leah Kuball, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

HB 1579
2/20/2025
Subcommittee

Relating to the requirement for data centers to obtain a certificate of public convenience and necessity.

10:03 a.m. Chairman Porter called the meeting to order.

Members Present: Chairwoman Novak, Representatives: Johnson, Olson, Foss

Discussion Topics:

- Study
- Agency input
- State and Federal agencies
- Stake holders

10:08 a.m. Representative J. Olson moved to amend LC#25.1252.01005. and to include on pg. 5 line 8 after 'municipal power providers and independent power producers' strike the wording on pg. 5 line 12 'Attorney General's office' and replace that with 'Regional Transmissions Organizations'. Line 10 North Dakota Petroleum Council and renumber appropriately. #38211

10:08 a.m. Representative Foss seconded the motion.

Voice vote: Motion carried.

10:11 a.m. Representative Novak proposed an amendment for the purpose of clarifying language of the bill.

10:11 a.m. Representative Novak moved to adopt proposed amendment.

10:11 a.m. Representative J. Olson seconded the motion.

Voice vote: Motion carried

10:19 a.m. Representative J. Olson moved a Do Pass as Amended recommendation to full committee.

10:19 a.m. Representative Foss seconded the motion.

Representatives	Vote
Chairwoman Anna Novak	Y
Representative Austin Foss	Y
Representative Jorin Johnson	Y
Representative Jeremy Olson	Y

Motion carried: 4-0-0.

10:20 a.m. Chairwoman Novak adjourned the meeting.

Janae Pinks, Committee Clerk for Leah Kuball, Committee Clerk

25.1252.01005
Title.

Prepared by the Legislative Council
staff for Representative Novak
February 19, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1579

Introduced by

Representatives Novak, Porter, Heinert

Senators Kessel, Patten

A BILL ~~for an Act to amend and reenact sections 49-03.1-01, 49-03.1-02, 49-03.1-03, and 49-03.1-05 of the North Dakota Century Code, relating to the requirement for data centers to obtain a certificate of public convenience and necessity.~~for an Act to provide for a legislative management study relating to the impact of large energy consumers on the state's electrical grid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 49-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-01. Certificates of public convenience and necessity - Who to secure.**~~

~~No~~A ~~public utility shall~~or data center may not ~~begin construction or operation of a public utility plant or system~~data center infrastructure ~~without first obtaining from the commission a certificate that public convenience and necessity require or will require such~~the ~~construction and operation, provided that this certification may not be required for a cooperative-operated data center.~~

~~**SECTION 2. AMENDMENT.** Section 49-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-02. Definitions.**~~

~~In this chapter, unless the context or subject matter otherwise requires:~~

~~1. "Commission" means the public service commission.~~

~~2. "Data center" means a structure that primarily contains electronic equipment used to process, store, and transit digital information, or conduct data mining, owned by an investor-owned utility, which consumes twenty megawatts or more of energy, which may be:~~

~~a. A freestanding structure;~~

~~b. A portion of a larger structure which uses environmental control equipment to maintain the proper conditions for the operation of electronic equipments; or~~

~~c. A structure that accommodates infrastructure, including servers, storage systems, and networking equipment, ensuring access to information, operating data mining, facilitating the operation of websites, applications, and services, and maintaining optimal performance and uninterrupted data availability for an enterprise or organization.~~

~~3. "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in this state to furnish its product or services to the public generally which is statutorily subject to the jurisdiction of the commission. The words "public utility" as used in this chapter do not apply to electric public utilities, telecommunications companies that are not incumbent telecommunications companies under chapter 49-21, or motor carriers of persons or property for hire.~~

~~**SECTION 3. AMENDMENT.** Section 49-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-03. Certificate application.**~~

~~Application for a certificate of public convenience and necessity shall be made upon forms prescribed by the commission. The commission shall make regulations for the filing of such application. The application must contain a financial statement, a description of the type of service to be offered, a map and description of the area to be served, and a list of all other public utilities or data centers providing similar service in the area. Upon the filing of an application for a certificate of public convenience and necessity, the commission shall set a hearing date which shall not be less than twenty days after the filing. The commission shall cause notice of the hearing to be served by certified mail, at least ten days before the day of hearing, upon every public utility or data center which is operating, or which has applied for a~~

~~certificate of public convenience and necessity, in the area proposed to be served by the applicant, and on other interested parties as determined by the commission. The commission shall impose an application fee of up to ten thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility or data center in accordance with section 49-02-02.~~

~~**SECTION 4. AMENDMENT.** Section 49-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-05. Prerequisites to issuance of certificate of public convenience and necessity - Waiver of hearing.**~~

~~1. Before any certificate may be issued under this chapter, a certified copy of the articles of incorporation, charter, or organization of the public utility or data center, if the applicant is a corporation or a limited liability company, shall be filed with the commission. At the hearing on the application as provided in section 49-03.1-03, the applicant shall submit evidence showing that the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application therefor. The commission shall have the power, after notice and hearing, to do any of the following:~~

~~1. a. Issue the certificate.~~

~~2. b. Refuse to issue the certificate.~~

~~3. c. Issue the certificate for the construction or operation of only a portion of the contemplated facility, line, plant, or system, or data center.~~

~~4. d. Issue the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate such terms and conditions as in its judgment the public convenience and necessity may require.~~

~~2. Notwithstanding any of the foregoing provisions, the commission may grant a certificate if no interested party has requested a hearing on the application after receiving at least twenty days' notice of opportunity to request such hearing.~~

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - IMPACT OF LARGE ENERGY CONSUMERS ON THE ELECTRICAL GRID.

1. During the 2025-26 interim, the legislative management shall study the impact of large energy consumers, including data centers, on the electrical grid of this state, regulatory structure, and economic development. The study must include an evaluation of the:
   a. Electrical grid reliability and infrastructure requirements within the state, including the capacity of the electrical grid, necessary upgrades to accommodate large energy consumers, effects of congestion on the electrical grid caused by increased development, and best practices for integrating high-demand users while maintaining reliability for all ratepayers;
   b. Regulatory consistency throughout the state, including an assessment of the manner in which state and local laws and regulations impact large energy consumers, whether the certificate of public convenience and necessity process is appropriate for private-sector end users, and whether regulatory inconsistencies exist between investor-owned utilities, rural electric cooperatives, and municipal utilities;
   c. Economic impacts affecting the energy industry of the state, including an assessment of job creation, tax revenue generation, and long-term investment trends tied to data center development and other large energy consumers;
   d. Market dynamics of the local and national energy industry, including the role of demand-side management, local versus regional energy market participation, and the ability of large consumers to support grid stability through off-peak consumption or other grid-supportive practices;
   e. Costs and impacts of all regulated and exempted public utilities, including best reporting practices; and
   f. Regulatory and exemption criteria relating to load size, system integration, application processes, impacts to consumers and access to the regional grid

systems, electrical generation sources, the feasibility of co-located backup generators at various facilities, and generation sources including legacy electric generation units.

2. The study must include input from representatives of:
   a. Data center operators and other large energy consumers operating or considering investment in the state;
   b. Investor-owned utilities, rural electric cooperatives, and municipal power providers;
   c. The public service commission;
   d. The lignite energy council;
   e. The North Dakota transmission authority;
   f. The attorney general's office; and
   g. Any other relevant state or federal agency.
3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

HB 1579
2/20/2025

Relating to the requirement for data centers to obtain a certificate of public convenience and necessity.

10:37 a.m. Chairman Porter opened the meeting.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chairwoman Novak, Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby, Conmy, Foss
Members Absent: Representative M. Ruby

Discussion Topics:

- Shall study
- High energy usages

10:42 a.m. Representative Novak moved to amend Subsection 1a and 2b of LC#01005.

10:43 a.m. Representative J. Olson seconded the motion.

10:43 a.m. Voice vote - motion passed.

10:43 a.m. Representative Novak moved a Do Pass as Amended.

10:43 a.m. Representative J. Olson seconded the motion.

Representatives	Vote
Chairman Todd Porter	Y
Vice Chairman Dick Anderson	Y
Vice Chairwoman Anna Novak	Y
Representative Liz Conmy	Y
Representative Jason Dockter	AB
Representative Austin Foss	Y
Representative Jared Hagert	AB
Representative Craig Headland	Y
Representative Pat Heinert	Y
Representative Jorin Johnson	Y
Representative Andrew Marschall	Y
Representative Jeremy Olson	Y
Representative Matthew Ruby	AB

10:44 a.m. Motion passed 10-0-3.
10:44 a.m. Representative Foss will carry the bill.
10:44 a.m. Chairman Porter closed the meeting.

Janae Pinks, Committee Clerk for Leah Kuball, Committee Clerk

RS 2/20/25
1 of 5

25.1252.01006
Title.02000

Adopted by the Energy and Natural Resources Committee
February 20, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1579

Introduced by

Representatives Novak, Porter, Heinert

Senators Kessel, Patten

A BILL ~~for an Act to amend and reenact sections 49-03.1-01, 49-03.1-02, 49-03.1-03, and 49-03.1-05 of the North Dakota Century Code, relating to the requirement for data centers to obtain a certificate of public convenience and necessity.~~for an Act to provide for a legislative management study relating to the impact of large energy consumers on the state's electrical grid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 49-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-01. Certificates of public convenience and necessity - Who to secure.**~~

~~No~~A public utility ~~shall~~or data center may not begin construction or operation of a public utility plant or system~~data center infrastructure~~ without first obtaining from the commission a certificate that public convenience and necessity require or will require such~~the~~ construction and operation~~, provided that this certification may not be required for a cooperative-operated data center~~.

~~**SECTION 2. AMENDMENT.** Section 49-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-02. Definitions.**~~

~~In this chapter, unless the context or subject matter otherwise requires:~~

~~1. "Commission" means the public service commission.~~

2. "Data center" means a structure that primarily contains electronic equipment used to process, store, and transit digital information, or conduct data mining, owned by an investor-owned utility, which consumes twenty megawatts or more of energy, which may be:

a. A freestanding structure;

b. A portion of a larger structure which uses environmental control equipment to maintain the proper conditions for the operation of electronic equipments; or

c. A structure that accommodates infrastructure, including servers, storage systems, and networking equipment, ensuring access to information, operating data mining, facilitating the operation of websites, applications, and services, and maintaining optimal performance and uninterrupted data availability for an enterprise or organization.

3. "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in this state to furnish its product or services to the public generally which is statutorily subject to the jurisdiction of the commission. The words "public utility" as used in this chapter do not apply to electric public utilities, telecommunications companies that are not incumbent telecommunications companies under chapter 49-21, or motor carriers of persons or property for hire.

SECTION 3. AMENDMENT. Section 49-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

49-03.1-03. Certificate application.

Application for a certificate of public convenience and necessity shall be made upon forms prescribed by the commission. The commission shall make regulations for the filing of such application. The application must contain a financial statement, a description of the type of service to be offered, a map and description of the area to be served, and a list of all other public utilities or data centers providing similar service in the area. Upon the filing of an application for a certificate of public convenience and necessity, the commission shall set a hearing date which shall not be less than twenty days after the filing. The commission shall cause notice of the hearing to be served by certified mail, at least ten days before the day of hearing, upon every public utility or data center which is operating, or which has applied for a

~~certificate of public convenience and necessity, in the area proposed to be served by the applicant, and on other interested parties as determined by the commission. The commission shall impose an application fee of up to ten thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility or data center in accordance with section 49-02-02.~~

~~**SECTION 4. AMENDMENT.** Section 49-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**49-03.1-05. Prerequisites to issuance of certificate of public convenience and necessity - Waiver of hearing.**~~

~~1.~~ ~~Before any certificate may be issued under this chapter, a certified copy of the articles of incorporation, charter, or organization of the public utility or data center, if the applicant is a corporation or a limited liability company, shall be filed with the commission. At the hearing on the application as provided in section 49-03.1-03, the applicant shall submit evidence showing that the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application therefor. The commission shall have the power, after notice and hearing, to do any of the following:~~

~~1.~~ ~~a. Issue the certificate.~~

~~2.~~ ~~b. Refuse to issue the certificate.~~

~~3.~~ ~~c. Issue the certificate for the construction or operation of only a portion of the contemplated facility, line, plant, or system, or data center.~~

~~4.~~ ~~d. Issue the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate such terms and conditions as in its judgment the public convenience and necessity may require.~~

~~2. Notwithstanding any of the foregoing provisions, the commission may grant a certificate if no interested party has requested a hearing on the application after receiving at least twenty days' notice of opportunity to request such hearing.~~

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - IMPACT OF LARGE ENERGY CONSUMERS ON THE ELECTRICAL GRID.

1. During the 2025-26 interim, the legislative management shall study the impact of large energy consumers, including data centers, on the electrical grid of this state, regulatory structure, and economic development. The study must include an evaluation of the:
   a. Electrical grid reliability and infrastructure requirements within the state, including the capacity of the electrical grid, necessary upgrades to accommodate large energy consumers, the cost of necessary upgrades to accommodate large energy consumers, how the cost of necessary upgrades to accommodate large energy consumers are allocated, effects of congestion on the electrical grid caused by increased development, and best practices for integrating high-demand users while maintaining reliability for all ratepayers;
   b. Regulatory consistency throughout the state, including an assessment of the manner in which state and local laws and regulations impact large energy consumers, whether the certificate of public convenience and necessity process is appropriate for private-sector end users, and whether regulatory inconsistencies exist between investor-owned utilities, rural electric cooperatives, municipal power providers, and independent power producers;
   c. Economic impacts affecting the energy industry of the state, including an assessment of job creation, tax revenue generation, and long-term investment trends tied to data center development and other large energy consumers;
   d. Market dynamics of the local and national energy industry, including the role of demand-side management, local versus regional energy market participation, and the ability of large consumers to support grid stability through off-peak consumption or other grid-supportive practices;
   e. Costs and impacts of all regulated and exempted public utilities, including best reporting practices; and

f. Regulatory and exemption criteria relating to load size, system integration, application processes, impacts to consumers and access to the regional grid systems, electrical generation sources, the feasibility of colocated backup generators at various facilities, and generation sources including legacy electric generation units.

2. The study must include input from representatives of:
   a. Data center operators and other large energy consumers operating or considering investment in the state;
   b. Investor-owned utilities, rural electric cooperatives, municipal power providers, and independent power producers;
   c. The public service commission;
   d. The lignite energy council;
   e. The North Dakota transmission authority;
   f. Regional transmission organizations;
   g. The petroleum council; and
   h. Any other relevant state or federal agency.
3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

REPORT OF STANDING COMMITTEE
HB 1579

Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS (25.1252.01006)** and when so amended, recommends **DO PASS** (10 YEAS, 0 NAYS, 3 ABSENT OR EXCUSED AND NOT VOTING). HB 1579 was placed on the Sixth order on the calendar.

2025 SENATE ENERGY AND NATURAL RESOURCES

HB 1579

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

HB 1579
3/28/2025

A BILL for an Act to provide for a legislative management study relating to the impact of large energy consumers on the state's electrical grid.

9:30 a.m. Chairman Patten opened the hearing.

Members present:
Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Data center benefits and challenges
- Regulatory environment for energy producers
- Employment opportunities in data centers
- Reliability of electrical grid during extreme weather

9:30 a.m. Representative Novak introduced the bill, proposed an amendment and submitted testimony in favor #44369.

9:43 a.m. Jodi Smith, Interim Executive Director, Retirement & Investment Office, testified in favor and submitted testimony #44349.

9:50 a.m. Lisa Feldner, Applied Digital, introduced Martin Vega.

9:50 a.m. Martin Vega, Director of Community Operations, Applied Digital, testified in favor.

9:53 a.m. Terry Effertz, Executive Director, Tech ND, testified in favor.

9:55 a.m. Kelvin Hullet, SVP, Bank of ND, testified as neutral.

Additional written testimony:

Dennis Pathroff, Power Companies of North Dakota, submitted testimony in favor #44354.

Nick Phillips, Executive Vice President of External Affairs, Applied Digital, submitted testimony in favor #44353.

Zac Smith, NDAREC, NDAREC, submitted testimony in favor #44360.

10:07 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

NORTH Dakota Be Legendary. | Retirement & Investment

House Bill 1579
North Dakota Retirement and Investment Office (RIO)
Testimony before Senate Energy and Natural Resources
Senator Dale Patten, Chair

Jodi Smith – Interim Executive Director
Scott Anderson, CFA, MBA – Chief Investment Officer

I. RIO Statutory Authority and Responsibilities

The Retirement and Investment Office (RIO) was created by the 1989 Legislative Assembly to capture administrative and investment cost savings in the management of the State Investment Board (SIB) and Teachers' Fund for Retirement (TFFR) programs. RIO's statutory authority is found in North Dakota Century Code (NDCC) chapter 54-52.5.

The SIB was created by the 1963 Legislative Assembly to invest five funds: State bonding fund; Teachers' insurance and retirement fund; State fire and tornado fund; Workmen's compensation fund; and Highway patrolmen's retirement fund. The SIB's statutory authority is found in NDCC chapter 21-10.

The TFFR was created in 1913 to provide retirement income to North Dakota public school educators. It is a qualified defined benefit public pension plan covered under Section 401(a) of the Internal Revenue Code. NDCC Chapter 15-39-1 contains the statutory language governing TFFR. It is supplemented by Title 82 of the North Dakota Administrative Code.

II. LEGACY FUND OVERVIEW

The **North Dakota Legacy Fund** was established in 2010 following the passage of a constitutional amendment approved by North Dakota voters. The fund was created to ensure that a portion of the state's tax revenues from oil and gas production would be set aside for the long-term benefit of North Dakotans, securing financial stability for future generations.

The Legacy Fund operates as a sovereign wealth fund, receiving 30% of all oil and gas tax revenues collected in the state. It serves as a strategic financial resource for the state, generating investment earnings that can be utilized for various purposes including legislative appropriations, infrastructure investments, economic diversification initiatives, and maintaining financial reserves to mitigate economic downturns.

The Legacy Fund is overseen by the Legacy and Budget Stabilization Fund Advisory Board (Advisory Board) whose duty is to recommend for the investment of funds to

present to the SIB. The SIB governs investment decisions regarding the fund, ensuring that assets are allocated prudently across diverse asset classes to maximize long-term returns while managing risk.

Additionally, NDCC § 54-03-35 states, the Advisory Board is to review any legislative, initiated, or referred measure for asset allocation and investment policy affecting the legacy fund for purposes of requesting the RIO arrange for the preparation and submission of a cost-benefit analysis. The Advisory Committee consists of:

- Senator Jerry Klein, chairman
- Representative Glenn Bosch, vice chairman
- Representative Keith Kempenich
- Representative Jonathan Warrey
- Senator Kathy Hogan
- Senator Scott Meyer
- State Treasurer Thomas Beadle
- Tax Commissioner Brian Kroshus
- Bank of North Dakota President Don Morgan
- Office of Management and Budget Director Joe Morrissette

Adopted in July of 2023, the asset allocation the Advisory Board selected for the Legacy Fund aims to accelerate the fund's growth, generate higher returns, and provide more predictable earnings for long-term benefits to the state's citizens.

During the **2023-2025 biennium,** the Legacy Fund generated **$601 million in earnings**. At the end of the biennium, these fund earnings will be transferred to the state's general fund.

As of August 31, 2024, the Legacy Fund had a balance of $11.4 billion and had returned 9.3 percent for the year to date, a full 60 basis points above the 8.7 percent benchmark.

III. IN-STATE INVESTMENT PROGRAM

In 2021, state legislation established an In-State Investment program requiring a portion of Legacy Fund assets be invested in North Dakota and empowering the SIB, as advised by the Advisory Board, to administer the program. Since the program's inception, more than **$450 million** has been committed to 40 North Dakota businesses and communities. (See attached document for an illustration these in-state investments.)

Among the fixed-income investments reported, more than $311 million has been committed through Bank of North Dakota's Match Loan Program funding 9 loans used to attract and retain companies with investment-grade ratings by offering financing at below-prime interest rates. An additional $50 million is invested through the bank's Infrastructure Revolving Loan Fund supporting 11 loans to political subdivisions by providing affordable financing for infrastructure projects, most frequently road improvements.

Through the North Dakota Growth Fund, which is managed by 50 South Capital, the Legacy Fund supports the development of the state's entrepreneurial ecosystem by making private equity and venture capital investments with a strong risk-adjusted return potential. Twenty North Dakota businesses are reported to have received $89 million in funding commitments.

To tap additional in-state opportunities, the SIB will add another investment manager to the program's roster later this year.

The proposed amendment will be added to the following portion of the century code:

21-10-11. Legacy and budget stabilization fund advisory board.

1. The legacy and budget stabilization fund advisory board is created to develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the state investment board.

2. The goal of investment for the legacy fund is principal preservation and growth while maximizing total return for an appropriate level of risk and to provide a direct benefit to the state by investing a portion of the principal in the state. Preference must be given to qualified investment firms and financial institutions with a presence in the state for investment of the legacy fund.

3. The board shall determine the asset allocation for the investment of the principal of the legacy fund including:

a. A target allocation of seven hundred million dollars to fixed income investments within the state, including:

(1) Up to one hundred fifty million dollars for infrastructure loans to political subdivisions under section 6-09-49.1. The net return to the legacy fund under this paragraph must be fixed at a target rate of one and one-half percent;

(2) A minimum of four hundred million dollars for the Bank of North Dakota's certificate of deposit match program with an interest rate fixed at the equivalent yield of United States treasury bonds having the same term, up to a maximum term of twenty years; and

(3) Other qualified fixed income investments within the state based on guidelines developed by the legacy and budget stabilization fund advisory board.

b. A target allocation of six hundred million dollars to equity investments in the state, including:

(1) Investments in one or more equity funds, venture capital funds, or alternative investment funds with a primary strategy of investing in emerging or expanding companies in the state. Equity investments under this paragraph must:

(a) Be managed by qualified investment firms, financial institutions, or equity funds which have a strategy to invest in qualified companies operating or seeking to operate in the state and which have a direct connection to the state; and

(b) Have a benchmark investment return equal to the five-year average net return for the legacy fund, excluding in-state investments; and

(2) Other eligible investments under this subdivision based on guidelines developed by the legacy and budget stabilization fund advisory board. The legacy fund may be invested in large-scale infrastructure projects under paragraph 2 of subdivision b of subsection 3 when deemed beneficial to the state. The legacy fund advisory board and state investment board shall prudently diversify the investments of the legacy fund unless the boards reasonably determine that, because of special circumstances, the purposes of the state are better served without diversification of the legacy fund investments.

IV. Summary

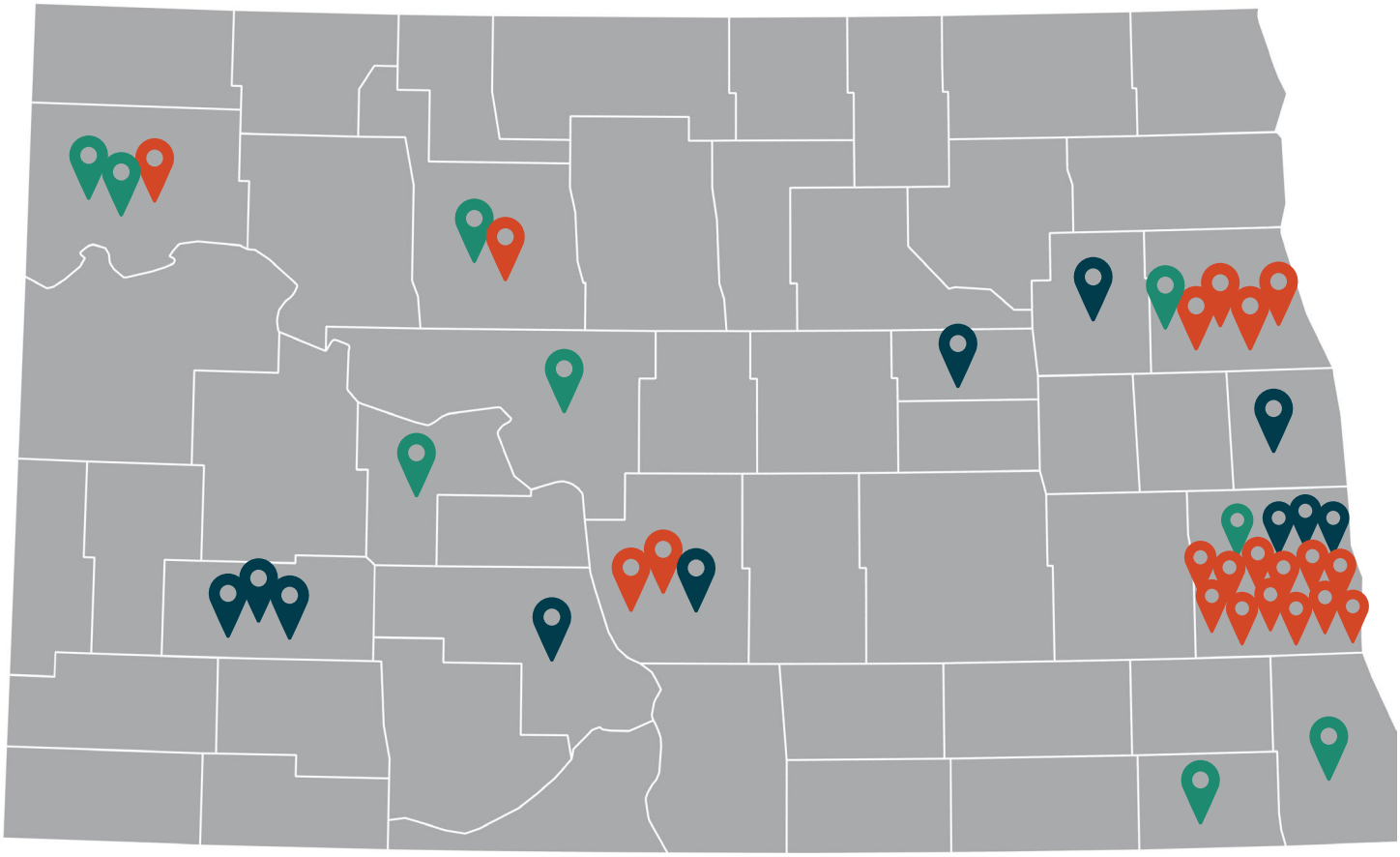
In summary, RIO supports HB 1579, which proposes amendments to section 21-10-11 of the North Dakota Century Code under paragraph 2 of subdivision b of subsection 3. Approving the amendment will allow the Legacy and Budget Stabilization Fund Advisory Board and the State Investment Board to invest in large-scale infrastructure projects within the State of North Dakota.

NORTH Dakota | State Investment Board
Be Legendary. RETIREMENT & INVESTMENT

Legacy Fund's In-state Investment Program

In 2021, state legislation established an In-state Investment program requiring a portion of Legacy Fund assets be invested in North Dakota and empowering the State Investment Board, as advised by the Legacy and Budget Stabilization Fund Advisory Board, to administer the program.

As of 06/30/2024, more than $450 million is invested in or committed to 40 North Dakota businesses or communities.



Investment Locations

BND Match Loans
$311,051,165 in Fixed Income.
9 Investments Statewide.

BND Infrastructure Loans
$50,059,095 in Fixed Income.
11 Investments Statewide.

North Dakota Growth Fund
$89,000,000 in Private Equity commitments, $49,344,389 net asset value. 20 Investments Statewide.

NORTH DAKOTA
Growth Fund

NDGF Portfolio – Underlying North Dakota Companies

As of June 30, 2024

AETHERO	Grand Forks	Homeland Hempcrete Homes Built Better.	Bismarck
BUSHEL	Fargo	MIDLAND GARAGE DOOR MFG CO	West Fargo
Chipp	Fargo	PAVEWISE	Bismarck
COCO coders	Fargo	release	Fargo
Crusoe	Williston	RxE2	Fargo
DDetect Auto	Fargo	Soiltech	Fargo
devii	Fargo	Snowbird	Minot
Edgewood Healthcare	Grand Forks	thread AUTONOMOUS INSPECTION	Grand Forks
FARMENTED FOODS	Fargo	tugboat	Grand Forks
generAI	Fargo	WalkWise	Fargo

March 27, 2025

Honorable Chairman Patten and Committee Members,

Applied Digital Corporation (Nasdaq: APLD) is a designer, builder and operator of next-generation digital infrastructure for High Performance Compute ("HPC") applications. Applied Digital has been active in North Dakota since 2021. We've greatly appreciated the collaborative spirit of the state and the opportunity to work with North Dakota employees, contractors, and local and state officials. Our facilities north of Jamestown and in Ellendale reflect the strong partnerships we've built. To date we have invested over $1B in infrastructure in North Dakota and anticipate roughly $4B more in the coming years.

As you are aware it is important to ensure that large loads such as data centers, manufacturing, ethanol plants, and others have access to a reliable grid. It is also important to ensure that these loads have either a net-neutral impact on the grid or a positive one. **As a result of our Ellendale project, MDU returned $5.4 million to its North Dakota rate payers for our usage in 2023 and estimates that it will return $14 million to its North Dakota rate payers for our usage in 2024.** This very positive outcome was the result of careful planning and consideration by many.

We are thankful for Representative Novak's leadership and desire to understand the impact of large loads on the grid and look forward to working with the interim committee to study how to help increase the positive outcomes of large loads on the grid while also helping to mitigate potential challenges that can possibly arise from these large loads.

We are aware of an amendment to the language and from what we have seen are supportive of such changes.

In the House, this bill passed 89 to 3, a very strong message of support.

We urge the committee to adopt the changes and advance HB1579 to help the legislature study the impacts of large loads on the grid.

Thank you for your time and consideration. Please feel free to contact me for further information. We look forward to continuing our partnership with North Dakota.

Sincerely,

Nick Phillips

Nick Phillips
Executive Vice President of External Affairs
APPLIED DIGITAL

Nick@AppliedDigital.com

Power Companies OF NORTH DAKOTA

Good morning, Chairman Patten and members of the Senate Energy and Natural Resources Committee,

The Power Companies of North Dakota ("PCND") urges a "Do Pass" recommendation on HB 1579.

PCND is a coalition of the state's leading shareholder-owned gas and electric utilities. Our members include MDU Resources Group, Xcel Energy, Otter Tail Power Company, and ALLETE. Together, PCND members serve over 427,000 North Dakota customers, employ over 1,200 North Dakotans, and manage significant power generation and transmission infrastructure across our state.

North Dakota has a unique opportunity to become a hub for data centers, leveraging our abundant energy resources and climate well-suited for data centers. This would not only enhance our state's technological infrastructure but also create high-paying jobs and stimulate local economies.

Given the complexity and significance of this opportunity, we believe a comprehensive interim study is essential to evaluate infrastructure requirements, energy demands, and the broader impact of data center expansion. PCND and its members are prepared to actively contribute their expertise and industry insights to help develop a well-informed and balanced study.

For these reasons, we respectfully request a "Do Pass" recommendation on HB 1579, and we'd be happy to work with the committee on any proposed amendments.

Thank you, Chairman Patten and committee members.

NDARECs
North Dakota Association of Rural Electric Cooperatives
3201 Nygren Drive NW • P.O. Box 727 • Mandan, ND 58554-0727

ND Living
Phone: 701.663.6501 or 800.234.0518
Fax: 701.663.3745 www.ndarec.com

March 28, 2025

To: Senate Energy and Natural Resources Committee, Senator Dale Patten, Chairman

Re: Support for HB 1579

From: Zac Smith, communications and government relations director, NDAREC

Chairman Patten and members of the committee, my name is Zac Smith, and I serve as the director of communications and government relations for the North Dakota Association of Rural Electric Cooperatives in Mandan. On behalf of the 17 distribution cooperatives and five generation and transmission cooperatives who are members of our association, we support the study contained in HB 1579. Electric cooperatives take great pride in our role in powering North Dakota's economic growth.

This bill generated a lot of opposition in its original form, which demonstrated the need for further study, communication, and education about load growth and how it is handled at multiple planning stages on the grid. North Dakota's Electric cooperatives are committed to continuing to come to the table and share our story through the interim. We support this effort and urge a do pass on HB 1579.

Legislative Assembly

North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Anna Novak
District 33
1139 Elbowoods Drive
Hazen, ND 58545-4923
anovak@ndlegis.gov

COMMITTEES:
Education
Energy and Natural Resources (Vice Chair)

March 26, 2025

Good morning, Mr. Chairman and members of the committee. For the record, my name is Anna Novak, representative from district 33.

Amended house bill 1579 provides for a shall study on the impact of large energy consumers on the electrical grid.

The original bill idea came about because of data centers coming to the state. Those are the large energy consumers we are most concerned about currently.

Data centers are facilities that house very large amounts of information for organizations. Google, Apple, and Nvidia are just some of the companies that need data centers to store their servers, storage devices and networking equipment. They offer North Dakota a lot of benefits and we should welcome the responsible buildout of these facilities. They offer opportunities to increase property taxes as well as high-paying jobs across the state. And with North Dakota being an energy exporter, it offers unique ways for our baseload energy sources such as coal and natural gas to stay relevant in the future.

North Dakota has become a place targeted by data centers because of three main reasons:

1. Cooler climate: the equipment housed in these data centers generate heat while they're running. Our cooler climate significantly reduces their energy usage.
2. Energy need: data centers require an incredible amount of electricity to operate. It isn't unusual for a facility to need anywhere from 100-300 mw of electricity. One of the most important takeaways regarding electricity for data centers is that they absolutely cannot have a blackout situation. They do have backup generation sources on site, typically, but reliability is important to them too.
3. North Dakota has a business-friendly regulatory environment.

I realize that no industry wants to be regulated. It's important to find a balance of regulation, that ensures we continue being a place that welcomes new and exciting business opportunities like data centers, while ensuring our electrical grid is reliable and North Dakota consumers don't pay higher electricity rates because of the data centers.

Regarding reliability, it is of extreme importance that the legislature does everything we can to protect North Dakotans from energy shortages. We live in a state that has extreme weather. Blackouts could create a potentially deadly situation if they were to happen during a polar vortex.

The original bill would have required a large energy user, one that uses more than 50 mw of electricity, to apply for a Certificate of Public Convenience and Necessity with the Public Service Commission. The bill hearing was contentious because of the different types of electricity producers we have in the state. Co-ops, independent power producers and investor-owned utilities all run differently because of the ways they are governed. I tried to come up with a bill that made everyone happy, but after 7 or 8 different versions, I realized that task was impossible.

So, at the end of the day, we came up with a very robust study. The one in front of you today is a different version than was passed in the House, but only slightly because of some conversations I had with our co-cops and REC's after the bill was passed. That is section 2 of the bill. Section 1 of the bill was also added after this passed the house, at the request of the Retirement and Investment Office. Jodi Smith is here and will discuss the details of that after me.

With that, I'll stand for any questions that you may have. Thank you, Mr. Chairman and members of the committee.

Prepared by the Legislative Council
staff for Representative Novak
March 27, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1579

Introduced by

Representatives Novak, Porter, Heinert

Senators Kessel, Patten

A BILL for an Act to create and enact a new subsection to section 21-10-11 of the North Dakota Century Code, relating to the legacy and budget stabilization fund advisory board; and to provide for a legislative management study ~~relating to the impact of large energy consumers on the state's electrical grid~~.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 21-10-11 of the North Dakota Century Code is created and enacted as follows:

The legacy fund may be invested in large-scale infrastructure projects under paragraph 2 of subdivision b of subsection 3 when deemed beneficial to the state. The legacy fund advisory board and state investment board prudently shall diversify the investments of the legacy fund unless the boards reasonably determine that, because of special circumstances, the purposes of the state are better served without diversification of the legacy fund investments.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - IMPACT OF LARGE ENERGY CONSUMERS ON THE ELECTRICAL GRID.

1. During the 2025-26 interim, the legislative management shall study the impact of large energy consumers, including data centers, on the electrical grid of this state, regulatory structure, and economic development. The study must include an evaluation of the:

a. Electrical grid reliability and infrastructure requirements within the state, including the capacity of the electrical grid, necessary upgrades to accommodate large energy consumers, the cost of necessary upgrades to accommodate large energy consumers, how the cost of necessary upgrades to accommodate large energy consumers are allocated, effects of congestion on the electrical grid caused by increased development, and best practices for integrating high-demand users while maintaining reliability for all ratepayers;

b. Regulatory consistency throughout the state, including an assessment of the manner in which state and local laws and regulations impact large energy consumers, whether the certificate of public convenience and necessity process is appropriate for private-sector end users, and whether regulatory inconsistencies exist between investor-owned utilities, rural electric cooperatives, municipal power providers, and independent power producers;

c. Economic impacts affecting the energy industry of the state, including an assessment of job creation, tax revenue generation, and long-term investment trends tied to data center development and other large energy consumers;

d. Market dynamics of the local and national energy industry, including the role of demand-side management, local versus regional energy market participation, and the ability of large consumers to support grid stability through off-peak consumption or other grid-supportive practices;

e. Costs and impacts of all regulated and exempted public utilities, including best reporting practices; and

f. Regulatory and exemption criteria relating to load size, system integration, application processes, impacts to consumers and access to the regional grid systems, electrical generation sources, the feasibility of colocated backup generators at various facilities, and generation sources including legacy electric generation units.

2. The study must include input from representatives of:

a. Data center operators and other large energy consumers operating or considering investment in the state;

b. Investor-owned utilities, rural electric cooperatives, municipal power providers, and independent power producers;

c. The public service commission;

d. The lignite energy council;

e. The North Dakota transmission authority;

f. Regional transmission organizations;

g. The petroleum council; and

h. Any other relevant state or federal agency.

3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

HB 1579
4/3/2025

A BILL for an Act to provide for a legislative management study relating to the impact of large energy consumers on the state's electrical grid.

3:12 p.m. Chairman Patten opened the hearing.

Members present:
Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- In-state investment program
- Infrastructure project approvals

3:13 p.m. Jodi Smith, Interim Executive Director, Retirement & Investment Office, introduced proposed amendment and submitted testimony #44636.

3:18 p.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

NORTH Dakota | Retirement & Investment
Be Legendary.

House Bill 1579
North Dakota Retirement and Investment Office (RIO)
Testimony before Senate Energy and Natural Resources
Senator Dale Patten, Chair

Jodi Smith – Interim Executive Director
Scott Anderson, CFA, MBA – Chief Investment Officer

I. RIO Statutory Authority and Responsibilities

The Retirement and Investment Office (RIO) was created by the 1989 Legislative Assembly to capture administrative and investment cost savings in the management of the State Investment Board (SIB) and Teachers' Fund for Retirement (TFFR) programs. RIO's statutory authority is found in North Dakota Century Code (NDCC) chapter 54-52.5.

The SIB was created by the 1963 Legislative Assembly to invest five funds: State bonding fund; Teachers' insurance and retirement fund; State fire and tornado fund; Workmen's compensation fund; and Highway patrolmen's retirement fund. The SIB's statutory authority is found in NDCC chapter 21-10.

The TFFR was created in 1913 to provide retirement income to North Dakota public school educators. It is a qualified defined benefit public pension plan covered under Section 401(a) of the Internal Revenue Code. NDCC Chapter 15-39-1 contains the statutory language governing TFFR. It is supplemented by Title 82 of the North Dakota Administrative Code.

II. IN-STATE INVESTMENT PROGRAM

In 2021, state legislation established an In-State Investment program requiring a portion of Legacy Fund assets be invested in North Dakota and empowering the SIB, as advised by the Advisory Board, to administer the program. Since the program's inception, more than **$450 million** has been committed to 40 North Dakota businesses and communities. (See attached document for an illustration these in-state investments.)

Among the fixed-income investments reported, more than $311 million has been committed through Bank of North Dakota's Match Loan Program funding 9 loans used to attract and retain companies with investment-grade ratings by offering financing at below-prime interest rates. An additional $50 million is invested through the bank's Infrastructure Revolving Loan Fund supporting 11 loans to political subdivisions by

providing affordable financing for infrastructure projects, most frequently road improvements.

Through the North Dakota Growth Fund, which is managed by 50 South Capital, the Legacy Fund supports the development of the state's entrepreneurial ecosystem by making private equity and venture capital investments with a strong risk-adjusted return potential. Twenty North Dakota businesses are reported to have received $89 million in funding commitments.

To tap additional in-state opportunities, the SIB will add another investment manager to the program's roster later this year.

The proposed amendment will be added to the following portion of the century code:

21-10-11. Legacy and budget stabilization fund advisory board.

1. The legacy and budget stabilization fund advisory board is created to develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the state investment board.

2. The goal of investment for the legacy fund is principal preservation and growth while maximizing total return for an appropriate level of risk and to provide a direct benefit to the state by investing a portion of the principal in the state. Preference must be given to qualified investment firms and financial institutions with a presence in the state for investment of the legacy fund.

3. The board shall determine the asset allocation for the investment of the principal of the legacy fund including:

a. A target allocation of seven hundred million dollars to fixed income investments within the state, including:

(1) Up to one hundred fifty million dollars for infrastructure loans to political subdivisions under section 6-09-49.1. The net return to the legacy fund under this paragraph must be fixed at a target rate of one and one-half percent;

(2) A minimum of four hundred million dollars for the Bank of North Dakota's certificate of deposit match program with an interest rate fixed at the equivalent yield of United States treasury bonds having the same term, up to a maximum term of twenty years; and

(3) Other qualified fixed income investments within the state based on guidelines developed by the legacy and budget stabilization fund advisory board.

b. A target allocation of six hundred million dollars to equity investments in the state, including:

(1) Investments in one or more equity funds, venture capital funds, or alternative investment funds with a primary strategy of investing in emerging or expanding companies in the state. Equity investments under this paragraph must:

(a) Be managed by qualified investment firms, financial institutions, or equity funds which have a strategy to invest in qualified companies operating or seeking to operate in the state and which have a direct connection to the state; and

(b) Have a benchmark investment return equal to the five-year average net return for the legacy fund, excluding in-state investments; and

(2) Other eligible investments under this subdivision based on guidelines developed by the legacy and budget stabilization fund advisory board. The legacy fund may be invested in large-scale infrastructure projects ~~under paragraph 2 of subdivision b of subsection 3~~ underwritten and managed by a qualified investment management firm or financial institution when deemed beneficial to the state. The legacy fund advisory board and state investment board shall prudently diversify the investments of the legacy fund per the legacy fund investment policy unless the boards reasonably determine that, because of special circumstances, the purposes of the state are better served with a more concentrated strategy for the in-state infrastructure funds ~~without diversification~~ of the legacy fund investments.

III. Summary

In summary, RIO supports HB 1579, which proposes amendments to section 21-10-11 of the North Dakota Century Code under paragraph 2 of subdivision b of subsection 3. Approving the amendment will allow the Legacy and Budget Stabilization Fund Advisory Board and the State Investment Board to invest in large-scale infrastructure projects within the State of North Dakota.

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

HB 1579
4/10/2025

A BILL for an Act to provide for a legislative management study relating to the impact of large energy consumers on the state's electrical grid.

10:11 a.m. Chairman Patten opened the hearing.

Members present:
Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Energy infrastructure
- Legal fund utilization

10:11 a.m. Chairman Patten updated the committee on the progress of the amendment involving energy infrastructure investment limits.

10:12 a.m. Chairman Patten adjourned the meeting.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

HB 1579
4/17/2025

A BILL for an Act to provide for a legislative management study relating to the impact of large energy consumers on the state's electrical grid.

9:49 a.m. Chairman Patten opened the hearing.

Members present:
Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Grid reliability and capacity
- Data center energy consumption

9:50 a.m. Chairman Patten reintroduced Senator Novack's proposed amendment LC# 25.1252.02002, previous testimony #44369.

9:52 a.m. Recessed the hearing.

10:01 a.m. Reconvened the hearing.

10:01 a.m. Chairman Patten introduced original House Bill LC# 25.1252.02000.

10:05 a.m. Committee members discussed educating the public on grid reliability, landowner concerns, underground line costs, and data-center viability.

10:11 a.m. Senator Kessel moved a Do Pass.

10:11 a.m. Senator Gerhardt seconded the motion.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	Y

Motion Passed 7-0-0.

10:11 a.m. Senator Kessel will carry the bill.

10:13 a.m. Chairman Patten adjourned the meeting.

Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
ENGROSSED HB 1579 (25.1252.02000)

Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1579 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.