

COMPREHENSIVE ENERGY POLICY STUDY - BACKGROUND MEMORANDUM

The Energy Development and Transmission Committee was created in 2007 by House Bill No. 1462 and was codified in North Dakota Century Code Section 54-35-18. The committee replaced the Electric Industry Competition Committee and has a broader scope of study. The committee must study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry, from the obtaining of the raw natural resources to the sale of the final product in this state, other states, and other countries. The study may include the review of and recommendations relating to policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy. In 2011, Senate Bill No. 2186 removed the expiration date of August 1, 2011, and made the committee permanent. In addition, the bill removed the mention of the study of the taxation of shallow gas to reduce energy costs.

COMMITTEE HISTORY

The Legislative Management has assigned other studies to this committee in the past interims; however, none has been assigned this interim.

During the 2007-08 interim, this committee was assigned one study of the siting and decommissioning of commercial wind farms. The study included the identification of key issues of public and industry concerns; the solicitation of public input from local government officials, electric utilities, the wind industry, landowners, farm organizations, and other concerned interests; the review of the laws and policies of other jurisdictions; the recommendations concerning laws or policies needed in this state to address wind farm siting and reclamation of wind farm sites; and the decommissioning of wind farm sites. The committee did not make any recommendation regarding this study.

During the 2009-10 interim, this committee was assigned three studies. Section 3 of House Bill No. 1449 required the study of wind resources and other natural resources in the same location. The study was required to include the review of laws relating to the siting and decommissioning of a wind energy conversion facility, the desirability of an environmental assessment as a condition of siting, and the desirability of regulation of wind energy conversion facilities to address the effects on water, soil, cultural resources, and future development of other natural resources. The committee did not make any recommendation regarding this study.

Second, Section 2 of House Bill No. 1509 directed a study of wind easements and wind energy leases, including a consideration of confidentiality clauses, liability for damages and taxes, insurance, and other

concerns of property owners and wind developers. The committee did not make any recommendation regarding this study.

Third, House Concurrent Resolution No. 3044 directed a study of wind rights. In particular, the resolution suggested defining wind rights by connecting wind rights to the surface estate and protecting adjacent property rights through setbacks. The committee did not make any recommendation regarding this study.

Although this committee did not make any recommendation based on the assigned studies, the committee has made recommendations as part of the comprehensive energy policy study. As a result of the 2007-08 interim study, the committee recommended nine bills:

- Senate Bill No. 2031 extended the reduction in taxable value from 3 percent to 1.5 percent of assessed value for a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of 100 kilowatts or more from January 1, 2011, to January 1, 2015.
- Senate Bill No. 2032, as introduced, made permanent the sales and use tax exemption from materials used in the construction or expansion of a wind-powered facility and, as passed, extended the exemption to 2015.
- Senate Bill No. 2033 extended the 15 percent income tax credit for the installation of geothermal, solar, wind, or biomass energy devices from an end date of January 1, 2011, to an end date of January 1, 2015, and generally, allowed a credit carryover of 10 years.
- Senate Bill No. 2034 extended the oil extraction tax exemption for tertiary recovery projects using carbon dioxide from 10 years from the date of incremental production to an unlimited duration.
- Senate Bill No. 2035 included a powerplant that uses beneficiated coal within the sales and use tax exemption and included a severance tax exemption on coal purchased for coal beneficiation which is used in an agricultural commodity processing facility.
- Senate Bill No. 2036 extended the coal conversion tax exemption for repowering to include electrical generating unit that uses beneficiated coal. The bill limited the repowering extension to units that complete repowering. The previous exemption was applied to electrical generating plants.
- Senate Bill No. 2037 included within the sales and use tax exemption the construction or expansion of a system used to compress,

process, gather, or refine gas from an oil well, rather than only a gas well.

- House Bill No. 1032 excluded from the siting jurisdiction of the Public Service Commission construction conducted wholly within land for which a utility previously had obtained a certificate of site compatibility or a route permit from the commission and excluded actions conducted wholly within land on which is located an energy conversion facility or transmission facility that was constructed before April 9, 1975. In addition, the bill excluded from the siting jurisdiction of the Public Service Commission pipelines with an inside diameter of four inches or less or a length of one mile or less or gathering pipelines as defined by federal law.
- House Bill No. 1033 would have reduced the time allowed for the Public Service Commission to designate the route for a transmission facility from six months to three months after receiving the application, but did not pass.

During the 2009-10 interim, the committee recommended five bills relating to the comprehensive energy policy study:

- Senate Bill No. 2030 would have created a biodiesel plant production incentive, but did not pass.
- Senate Bill No. 2031 would have removed the sunset on the sales tax exemption for wind facilities, but did not pass.
- Senate Bill No. 2032 which allowed the Oil and Gas Research Council to promote innovation and safety, enhancement of environment, and an increase in education concerning the distribution of petroleum products and allowing the Industrial Commission, as manager of the Oil and Gas Research Council, to provide financial assistance for processing and activities directly related to the refining industry and the petroleum marketing industry.
- Senate Bill No. 2033 would have allowed oil and gas impact fund grants for long-term planning and engineering studies associated with road infrastructure, water, sewer, housing, local services, and other needs. The bill would have changed the administration of the funds by having the Board of University and School Lands make the grants instead of the director of the Energy Development Impact Office. Although the bill did not pass, similar substance of the bill was adopted in House Bill No. 1013.
- Senate Bill No. 2034 treated green diesel the same as biodiesel.

The review of previous studies and bills is helpful in avoiding duplication in future studies. In addition, to avoid duplication this committee may wish to avoid studying areas being studied by other interim committees. The interim Natural Resources Committee is studying Section 5 of House Bill

No. 1014 which directs a study of potash mining and taxation issues.

ENERGY POLICY LEGISLATION

In an effort to create a comprehensive energy policy, the Legislative Assembly passed 2007 House Bill No. 1462 creating Title 17. Title 17 was created in part by moving sections of the Century Code already in existence into Title 17. Title 17 includes what was formerly Sections 4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, 4-14.1-09, and 4-14.1-10 relating to ethanol plant production incentives from the ethanol production incentive fund; Chapter 6-09.17 relating to the biodiesel partnership in assisting community expansion (PACE) fund being used for interest rate buydowns on loans to biodiesel production facilities; Section 9-01-22 relating to the termination of a wind option agreement; Sections 47-05-14 through 47-05-16 relating to the creation of wind easements and termination for lack of development; Section 47-16-42 relating to the termination of a wind energy lease for lack of development; and Chapter 49-24 relating to the North Dakota Transmission Authority.

In 2007, House Bill No. 1462 created the 25x25 initiative for inclusion in Section 17-01-01. This initiative adopts the goal of having the agricultural, forestry, and working lands of the United States provide from renewable resources not less than 25 percent of the total energy consumed in the United States by January 1, 2025. The initiative defines renewable energy to include biofuels, solar, wind, hydropower, geothermal, carbon recycling, carbon sequestration, use of waste heat, recycling, low emissions technologies that create or use hydrogen, and energy efficiency initiatives.

In 2009 the Legislative Assembly made a number of changes to provisions in Title 17 and created new provisions in Title 17. Four bills created major new law in Title 17. These bills include Senate Bill Nos. 2350 and 2228 and House Bill Nos. 1509 and 1322.

Senate Bill No. 2350 created the North Dakota Ethanol Council consisting of members appointed by a facility located in this state which produces more than one million gallons of agriculturally derived denatured ethanol. The council is charged with expending money collected through an assessment at the rate of thirty-one hundredths of 1 percent per gallon imposed upon all ethanol produced and sold in this state for the purpose of funding research, education programs, promotion, and market development efforts, and state, regional, national, and international entities that promote ethanol utilization. In addition, the bill provides for a refund of the assessment, a continuing appropriation for the assessment, and a penalty of a Class B misdemeanor for a person violating calculation and submission provisions of the assessment.

Senate Bill No. 2228 requires the Department of Commerce to administer the biofuel blender pump incentive fund. The fund is to be used to provide

cost-share grants of up to \$5,000 per pump for the installation of biofuel blender pumps to retailers who qualify and install pumps that dispense at retail a blend of gasoline and ethanol in a ratio selected by the purchaser and have at least four hoses that include a hose that dispenses E-10, a blend of at least E-20, and E-85 fuel.

House Bill No. 1509 requires a wind easement and a wind energy lease to contain certain warnings; to allow time for the document to be reviewed and discussed with an attorney or other landowners; to prohibit a property owner from being liable for property taxes associated with a wind energy facility; to prohibit a property owner for being liable for damages caused by the wind energy facility; to prohibit making the property owner liable for a violation of law or regulation; to allow the property owner to terminate the agreement if the wind energy facility has not operated for a period of at least three years; to state circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments; to require the owner of a wind energy facility to carry general liability insurance; and to allow for judicial relief.

The Energy Policy Commission, also known as the EmPower North Dakota Commission, was first created by 2007 House Bill No. 1462. The bill required the Department of Commerce to convene an energy policy commission for developing a comprehensive energy policy as part of the North Dakota energy independence initiative. The purpose for this policy was to:

1. Stimulate the development of renewable and traditional fossil-based energy within the state with the goal of providing secure, diverse, sustainable, and competitive energy supplies to reduce the dependence on foreign energy sources.
2. Promote the development of new technologies to decrease dependence on foreign energy supplies.
3. Address the growth of fossil fuel and renewable energy industries to encourage the state's competitiveness.
4. Address research, development, and marketing of North Dakota-produced energy.
5. Address the expansion of existing energy resources and the diversification of this state's energy resource base.
6. Evaluate existing tax credits and incentives.
7. Modernize and expand this state's energy infrastructure.
8. Examine potential innovations to improve environmental conditions through new technologies and review energy industry workforce and training needs and develop a strategy to maximize the state's market opportunities.

The Energy Policy Commission was codified in Section 17-07-01 through 2009 House Bill No. 1322. Under this bill, the purpose of the commission is to

develop a comprehensive energy policy, update that policy, and monitor progress in reaching the goals of the policy. The Energy Policy Commission consists of the Commissioner of Commerce as chairman and members appointed by the Governor to represent the agricultural community, the Lignite Energy Council, the North Dakota Petroleum Council, the biodiesel industry, the biomass industry, the wind industry, the ethanol industry, the North Dakota Petroleum Marketers Association, the North Dakota investor-owned electric utility industry, the generation and transmission electric cooperative industry, the lignite coal-producing industry, the refining or gas-processing industry, and additional nonvoting members. In short, the Energy Policy Commission is studying a comprehensive energy policy, and the same issue is being studied by this committee.

In 2011 the Legislative Assembly made changes and created provisions to Title 17. Three bills provided for major change to Title 17--House Bill No. 1218 and Senate Bill Nos. 2034 and 2057.

House Bill No. 1218 made further changes to the law relating to the Energy Policy Commission. The bill clarified that the state comprehensive energy policy is made by the Legislative Assembly, and the Energy Policy Commission makes recommendations for changes in that policy.

Senate Bill No. 2034 treats green diesel, which is drop-in compatible with diesel fuel, at parity with biodiesel, which is vegetable oil. As stated earlier, this bill was introduced at the recommendation of this committee.

Senate Bill No. 2057 created a chapter in Title 17 on a biofuel blender pump incentive program to be administered by the Department of Commerce. The bill provided a cost-share grant of up to \$34,000 per retail location. The bill provided that 5 percent of any appropriated money be used for administration and marketing. The bill continued the same program that was created under 2009 Senate Bill No. 2228 as mentioned before in this memorandum, but expired under the provisions of that bill.

In addition to Title 17, the Legislative Assembly has adopted a number of concurrent resolutions relating to energy policy since 2007. In 2009 the Legislative Assembly adopted House Concurrent Resolution Nos. 3030 and 3039. House Concurrent Resolution No. 3030 urged Congress to use commonsense principles for climate change legislation. These principles included that federal action should not impede economic growth, new job creation, or lower the standard of living; should be fully transparent so that consumers are aware of potential economic impacts; should provide encouragement for research and development; should allow cost recovery; should tie greenhouse gas reduction requirements to scientifically based technology that is available, reliable, and economically feasible; should recognize and protect existing and past investment decisions for generation resources; should allow development of resources in the United

States; and should recognize the worldwide scope of the issue. House Concurrent Resolution No. 3039 urged the President and Congress to develop energy resources on the Outer Continental Shelf, promote domestic energy production, and to not impose additional taxes on America's energy producers.

In 2009 the Legislative Assembly adopted a constitutional measure. House Concurrent Resolution No. 3054 established a North Dakota legacy fund, provided for deposit of certain oil and gas revenues in the fund, and imposed limitations on use of money in the fund. In particular, 30 percent of revenue from taxes on oil and gas production or extraction is transferred into the legacy fund and the Legislative Assembly may deposit additional funds. The principal and earnings in the legacy fund may not be expended until the fiscal year beginning in 2017 and an expenditure from the principal would require a two-thirds vote of the members elected to each house of the Legislative Assembly. A total cap of 15 percent of the principal would be imposed on expenditures each biennium. Interest accruing after the 2016 fiscal year would be deposited in the state general fund. This measure was submitted to the qualified electors at the general election in 2010 and was approved by the voters.

2011 LEGISLATION

There were numerous bills and resolutions introduced during the 2011 legislative session that relate to energy. The following bills are classified by the headings of taxation, governmental entity, other bills, and resolutions. Some bills are classified in multiple categories and will be noted with an asterisk.

Taxation

The taxation category is divided into property taxes, income taxes, sales and use taxes, and oil and gas taxes.

Property Taxes

House Bill No. 1071 provided that land that was assessed agricultural property at the time it was put to use for extraction of oil, natural gas, or subsurface minerals must continue to be assessed as agricultural property if the remainder of the surface owner's parcel of property on which the subsurface mineral activity is occurring continues to qualify for assessment as agricultural property.

Senate Bill No. 2263 advanced the reporting date for transmission and distribution tax line reports to allow time for corrections to be made as suggested by counties. The bill also adjusted the allocation formula for generation taxes on wind farms to be based on rated capacity and location of wind generators. This is in lieu of property tax electric distribution tax, although wind energy pays property tax at a reduced level.

Income Taxes

Senate Bill No. 2034* provided an income tax credit for a fuel supplier who blends green diesel fuel of at least 5 percent blend. The bill provided an income tax credit for a seller of green diesel fuel equal to 10 percent per year for five years of the direct costs incurred to adapt or add equipment to allow sale of diesel fuel containing at least 2 percent green diesel fuel.

House Bill No. 1124 made technical changes to income and financial tax laws. The bill expanded the energy device income tax credit for individuals who install geothermal energy devices.

Sales and Use Taxes

Senate Bill No. 2202 allowed the owner or operator of a facility entitled to the sales and use tax exemption for materials used to compress, process, gather, or refine gas or materials used in constructing or expanding an oil refinery to pass the exemption through to a contractor working on the project.

Senate Bill No. 2336 provided a sales tax exemption for the first \$5 million of sales and use taxes on machinery or equipment acquired to produce coal from a new mine located in this state and permitted by the Public Service Commission after December 31, 2010.

House Bill No. 1046 established a tax of 2 percent of the sales price of potash and 4 percent of the gross value of potash byproducts extracted in this state. The bill does not provide for allocation of revenue from the taxes. It is not anticipated that potash mining will occur before 2013 and that an allocation formula will be established in 2013. The bill provided that the land and processing plant, mining facility, or satellite facility are to be assessed and taxed by local taxing authorities. The bill provided a sales and use tax exemption from the sale of potash or potash byproducts taxable at the time of production in this state. The bill also provided for a tax on potash and potash byproducts production, which is described in the portion of this memorandum relating to taxation of minerals.

Oil and Gas Taxes

House Bill No. 1467 extended the effective date through June 30, 2013, for a triggered oil extraction tax rate reduction. If the trigger price is reached, the first 75,000 barrels or \$4.5 million of oil produced during the first 18 months from a horizontal well is subject to a reduced tax rate of 2 percent, instead of the normal 6.5 percent oil extraction tax. The rate reduction would become effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than the trigger price of \$55.

House Bill No. 1013 increased from \$8 million to \$100 million per biennium the amount to be deposited in the oil and gas impact grant fund from the first one percentage point of the oil and gas gross production tax. The bill also changed the name of the Energy

Development Impact Office to the Energy Infrastructure and Impact Office. The bill transferred the authority to make grants for oil and gas impact from the Energy Development Impact Office to the Board of University and School Lands. The Energy Infrastructure and Impact Office is to make recommendations to the board on grants to political subdivisions. The recommendations are to include recommendations for 35 percent of impact funding to go to cities of 10,000 or more population and the remainder to go to smaller cities and counties, school districts, and other political subdivisions impacted by oil and gas development.

Senate Bill No. 2150 appropriated \$5 million from the oil and gas impact grant fund for grants to school districts that can demonstrate rapid enrollment growth.

Senate Bill No. 2325 appropriated \$350,000 from the oil and gas impact grant fund for updating and maintaining reports for transportation infrastructure needs for all the county and township roads.

House Bill No. 1077 eliminated the \$750 per capita limit on the amount a city may receive under the oil and gas gross production allocation formula.

Senate Bill No. 2129 made statutory changes to implement the requirements of Article X, Section 26, of the Constitution of North Dakota, requiring deposit of 30 percent of all oil and gas tax revenue in the legacy fund. Under this bill, political subdivisions are held harmless against allocation reductions because of the legacy fund deposit and each political subdivision is to receive the same proportion of oil and gas gross production tax revenues as it received before the legacy fund was established. The entire amount of the deposits in the legacy fund is to be deducted from the state's share of oil and gas gross production taxes and oil extraction taxes.

House Bill No. 1451 eliminated the permanent oil tax trust fund and provides for biennial revenues from oil and gas taxes designated for deposit in the state general fund to be deposited as follows:

1. The first \$200 million into the state general fund;
2. The next \$341,790,000 into the property tax relief sustainability fund;
3. The next \$100 million into the state general fund;
4. The next \$100 million into the strategic investment and improvements fund;
5. The next \$22 million into the state disaster relief fund; and
6. Any additional revenues into the strategic investment and improvements fund.

Governmental Entity

The governmental entity category is divided into the Industrial Commission, Department of Commerce, Public Service Commission, and State Investment Board.

Industrial Commission

Senate Bill No. 2032 expanded the purposes of the Oil and Gas Research Council to allow the promotion of innovation in safety, enhancement of environment, and increase in education concerning the distribution of petroleum products and allows the Industrial Commission, as manager of the Oil and Gas Research Council, to provide financial assistance for processes and activities directly related to the refining industry and petroleum marketing industry. This bill was recommended by the Energy Development and Transmission Committee.

Department of Commerce

Senate Bill No. 2034* included green diesel within the definition of "energy-related commodities." The bill directed the Office of Renewable Energy and Energy Efficiency to disseminate information regarding green diesel. This bill was recommended by the Energy Development and Transmission Committee.

House Bill No. 1014 provided one-time funding of \$1.5 million for renewable energy development programs, \$532,000 for the carbon dioxide storage facility administration fund, \$90,000 for temporary employees for the core library, \$62,400 for paleontologic preparatory work, and \$115,000 for fracturing sand, oil-bearing rock, and coalbed methane studies.

The bill provided that up to \$1.5 million of the lignite research grants funding is for contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and jobs or that will lead to increased development of lignite and its products and create new lignite jobs and economic growth for the general welfare of this state. The bill also provided that a portion of the funds appropriated may be used for the purpose of contracting for nonmatching studies and activities in support of the Lignite Vision 21 Project; for litigation that may be necessary to protect and promote the continued development of lignite resources; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts.

The funding for the carbon dioxide storage facility administrative fund is for the purpose of hiring one full-time equivalent position for up to three years until fee income is sufficient to provide funding for the administration of the provisions of Chapter 38-22 or the Industrial Commission is to use this funding to provide a timely response to the Environmental Protection Agency's rules relating to carbon dioxide sequestration and develop a coordinated response from state agencies with the goal of the state having

Class VI primacy for carbon dioxide storage in North Dakota.

Public Service Commission

Senate Bill No. 2196 expanded the Public Service Commission's jurisdiction over wind energy conversion to facilities exceeding .5 megawatts and to other generating facilities exceeding 50 megawatts. The bill provided that the fee for a transfer of a certificate or permit for construction within an existing permit is the anticipated expense of processing the application.

Senate Bill No. 2322 required an electric transmission provider to obtain a certificate of public convenience and necessity and prohibited issuance if an electric public utility is willing and able to construct the line. The bill allowed the Public Service Commission to impose an application fee and applies provisions relating to electric public utilities that construct a transmission line to electric transmission providers.

House Bill No. 1221 required periodic reports to the Public Service Commission by a public utility that has received an advanced determination of prudence. The bill removed a review of reasonableness in determining prudence and allows the recovery of reasonable amounts incurred during construction, even if the resource addition is not operational with an amortization period for a discontinued resource addition not to exceed five years. The bill prohibited return on amounts incurred after discontinuation and the public utility may request deferred accounting treatment for costs incurred for a discontinued resource addition.

House Bill No. 1382 added showing the approximate horizontal location, including all lines, line direction, intersections, tees, and lateral lines, to the definition of locate and pipelines, cables, gathering facilities, and carbon dioxide facilities to the definition of underground facility for the purposes of the one-call excavation notice system.

State Investment Board

Senate Bill No. 2302 created a Legacy and Budget Stabilization Fund Advisory Board to develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the State Investment Board. The bill provided the board must consist of two members of the Senate appointed by the Senate majority leader, two members of the House of Representatives appointed by the House majority leader, the director of the Office of Management and Budget or designee, the president of the Bank of North Dakota or designee, and the Tax Commissioner or designee. The bill required the Legislative Council to provide staff services to the Legacy and Budget Stabilization Fund Advisory Board and required the staff and consultants of the Retirement and Investment Office to advise the board in developing asset allocation and

investment policies. The bill contained an emergency clause and became effective on April 26, 2011.

Other Bills

The other bills category is divided into wind, royalties, oil and gas, conservation, and water.

Wind

Senate Bill No. 2206 required anemometer towers to be painted, have one or more safety sleeves, and have a marker ball on each guy wire. The bill allowed the Aeronautics Commission to establish a database that contains the location of each anemometer tower and enforce safety measures. The bill appropriated \$4,500 to the commission for establishing the database. The bill allowed existing anemometer towers until August 1, 2014, to be updated.

Royalties

House Bill No. 1241 required an operator of an oil and gas lease to pay interest on royalties after 150 days from when the oil and gas is marketed even if not requested by the mineral owner.

Oil and Gas

House Bill No. 1216 designated hydraulic fracturing--a mechanical method of increasing the permeability of rock to increase the amount of oil and gas produced from the rock--as an acceptable recovery process. This bill included an emergency clause and became effective April 11, 2011.

House Bill No. 1241 revised the notice procedures for notice of oil and gas drilling operations and the provisions for payment of damages for loss of agricultural production and income caused by oil and gas production and completion operations. The bill required a mineral developer to provide at least seven days' notice before initial entry upon the land for activities that do not disturb the surface for proposed oil and gas drilling operations. The notice must include an offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work in oil and gas operations before commencement of operations. The bill required a mineral developer to pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income caused by oil and gas production and completion operations which must be paid annually unless the surface owner elects to receive a single lump sum payment. The damage and disruption and loss of production payments provisions are effective for drilling operations commenced after July 31, 2011.

Conservation

Senate Bill No. 2198 provided that any new construction or any remodeling of a public building which affects the heating, ventilation, or air-conditioning systems in the building and which is paid for using any state funds must be constructed to

include open protocol heating, ventilation, and air-conditioning systems that provide for interoperability of the systems. The bill becomes effective on January 1, 2012.

Water

House Bill No. 1206 established the Western Area Water Supply Authority. The mission of the authority is to treat, store, and distribute water to western North Dakota to provide for the supply and distribution of water to the people of western North Dakota for domestic, rural water, municipal, livestock, industrial, oil and gas development, and other purposes. The authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities; water districts; and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. The bill provided that the Bank of North Dakota is to provide a loan of \$50 million to the authority for the construction of the project. The State Water Commission is required to make available from funding appropriated to the commission \$25 million as a zero interest loan to the authority. The bill also appropriated \$25 million from the general fund to the Bank of North Dakota to provide a loan to the authority for a maximum term of eight years from the completion of the \$50 million loan from the Bank at 5 percent interest per year. The bill appropriated \$10 million from the resources trust fund to the Bank of North Dakota for the purpose of providing a loan to the authority for a maximum term of two years from the completion of the \$25 million loan from the general fund at 5 percent interest per year. The bill provided that this funding must be structured so that funding is provided, as needed, first from the \$25 million zero interest loan from the State Water Commission, second from the \$50 million loan from the Bank of North Dakota, third from the \$25 million loan from the general fund, and last from the \$10 million loan from the resources trust fund. Repayment of loans must be structured so that repayment is first of the \$50 million loan from the Bank of North Dakota, second of the \$25 million loan from the general fund for deposit of the principal in the general fund and interest in the resources trust fund, third from the \$10 million loan from the resources trust fund for deposit in the resources trust fund, and last of the \$25 million zero interest loan from the State Water Commission for deposit in the resources trust fund. The authority is required to repay the loans from revenues from the project. Upon repayment of the State Water Commission zero interest loan, the authority is required to provide 5 percent of the net profits to the State Water Commission for deposit by the State Treasurer in the resources trust fund until June 30, 2040. Concerning second phase funding, at

the request of the authority the State Water Commission is required to consider a loan of \$40 million from the resources trust fund for inclusion within the State Water Commission's budget. The bill included an emergency clause and became effective May 5, 2011.

Resolutions

House Concurrent Resolution No. 3019 urges the United States Army Corps of Engineers to immediately cease the wrongful denial of access and the wrongful requirement of payment of natural flows of the Missouri River.

House Concurrent Resolution No. 3031 expresses the concern of the Legislative Assembly with the scope, justification, and substance of the Office of Surface Mining Reclamation and Enforcement's stream protection rule.

House Concurrent Resolution No. 3008 urges Congress to clearly delegate responsibility for the regulation of hydraulic fracturing to the states.

REPORTS

The Legislative Council delegated to the Energy Development and Transmission Committee the responsibility to receive reports from a number of entities during the interim.

North Dakota Transmission Authority

Under Section 17-05-13, the North Dakota Transmission Authority is required to deliver a written report on its activities to the Legislative Council each biennium.

North Dakota Pipeline Authority

Under Section 54-17.7-13, the North Dakota Pipeline Authority is required to deliver a written report on its activities to the Legislative Council each biennium.

Energy Policy Commission

Under Section 17-07-01, the Energy Policy Commission is to make recommendations concerning a comprehensive energy policy. The Energy Policy Commission is required to report biennially to the Legislative Management.

Industrial Commission

As a part of Section 38-22-15, which establishes permit, fee, and title requirements for the geologic storage of carbon dioxide, the Industrial Commission is required to file a report beginning December 2014 and every four consecutive years on the amount of money in the carbon dioxide storage facility trust fund and if fees being paid into it are sufficient to satisfy the fund's objectives under Section 38-22-15. Under the same section, storage operators of carbon dioxide must pay a fee based on the expense associated with long-term monitoring and management of a closed

storage facility. The fees are placed in a carbon dioxide storage facility trust fund.

Coal Conversion Facilities

As a result of 2009 Senate Bill No. 2221 and as codified under Section 57-60-02.1, a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions is entitled to a 20 percent reduction in the state general fund share of the coal conversion tax. In addition, the facility may receive an additional reduction of 1 percent for each two percentage points of capture of carbon dioxide emissions up to 50 percent and for 10 years. A coal conversion facility that receives a credit is required to report to the Legislative Council. The report must include an overview of the project; a status report on past, current, and captured carbon dioxide; any changes to the carbon dioxide capture system; and the status of federal law and any federal benefits to the project. The only project in this state at this time is at the Antelope Valley Station near Beulah. The Antelope Valley Station is part of an energy complex that includes the Great Plains Synfuels Plant and the Freedom Mine.

SUGGESTED STUDY APPROACH

Although the committee may study any particular area of energy, the difficult issue is for any particular area to relate comprehensively to the energy policy of this state. There are a number of entities in state government that carry out this state's energy policy, including the Public Service Commission, the Department of Commerce, the Industrial Commission, and the State Board of Higher Education. The Department of Commerce is the umbrella organization for the Energy Policy Commission, and the Industrial Commission is the umbrella agency for the North Dakota Transmission Authority; the North Dakota Pipeline Authority; and the Renewable Energy Council, which is chaired by the Commissioner of Commerce. Because energy policy is being administered and in some cases developed by other governmental entities, the committee may wish to receive testimony from these entities on energy policy before coordinating or changing the current policies.