



North Dakota Legislative Council

Prepared for the Energy Development and Transmission Committee
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COMPREHENSIVE ENERGY POLICY STUDY - BACKGROUND MEMORANDUM

The Legislative Assembly created the Energy Development and Transmission Committee in House Bill No. 1462 (2007). The committee, which is codified in North Dakota Century Code Section 54-35-18, replaced the Electric Industry Competition Committee and has a broader scope of study. The committee was made permanent through the removal of the August 1, 2011, expiration date by Senate Bill No. 2186 (2011) and is comprised of six members of the Senate and six members of the House of Representatives.

Section 54-35-18 directs the committee to 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 committee's duties under Section 54-35-18 were expanded by Senate Bill No. 2289 (2023), which required the committee to develop a comprehensive statewide energy policy that supports the long-term development of energy opportunities in the state and seek solutions for the challenges realized through the successful development of energy opportunities. The committee's study also may include the review of, and recommendations relating to, policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy.

RECENT COMMITTEE HISTORY Assigned Studies

2023-24 Interim

- **Sustainable energy policies** - Pursuant to House Concurrent Resolution 3034 (2023), the committee studied sustainable energy policies to maximize the economic viability of existing energy sources, assessed future demands on electricity, and reviewed the feasibility of advanced nuclear energy development and transmission in the state. The committee considered a bill draft to provide for a Legislative Management study relating to the development of advanced nuclear energy. The study included evaluations of site locations, electric connectivity, land use considerations, and economic impacts, with participation from higher education and energy industry participants. The bill draft provided an appropriation of \$500,000 for the purpose of contracting for consulting services. Committee members noted the study to determine the feasibility of advanced nuclear energy development and transmission was larger than anticipated and should be expanded to provide a potential solution to issues relating to increased load growth in North Dakota. Committee members agreed the proposed study must consider social and community interests regarding the location of a nuclear facility and acknowledged a community's acceptance of a facility is a key factor in the siting and permitting process. The committee recommended House Bill No. 1025 (2025) directing a Legislative Management study on advanced nuclear energy.
- **Electric vehicles** - Pursuant to House Bill No. 1012 (2023), the committee studied the effect of electric vehicles (EV) in the state, including consideration of the assessment of fees to offset reductions in motor fuel tax revenues, the impact of EVs on electric demand and the electrical grid, the installation of EV charging infrastructure by private and public entities, the impact of public services and public transportation providers, and the effect on employment opportunities and other economic impacts. The committee discussed the use of a reasonable EV fee that would include a registration fee with a tax for EV charging stations on public roadways. The committee discussed the importance of out-of-state travelers paying their fair share of roadway use and agreed a residential charging tax would be a hardship on homeowners. Committee members recognized

North Dakota's EV statistics are well below the national average while acknowledging the potential impact EVs may have on the state's motor fuel tax revenues in the future. The committee made no recommendations related to this study.

- **Natural gas development** - Pursuant to Senate Bill No. 2366 (2023), the committee studied the accessibility of natural gas in small communities, including a review of existing programs to assist small communities with gaining access to natural gas and accessibility assistance programs that may need to be extended. Committee members acknowledged several positive steps the state has taken to promote and expand natural gas and propane infrastructure development to unserved and underserved communities in the state. Committee members recognize federal funding is absent regarding transmission and accessibility of natural gas in small communities and recognized block grants could be used to help assist local communities. The committee made no recommendations related to this study.

RECENT ENERGY POLICY LEGISLATION

Title 17, relating to energy policy, established the North Dakota Transmission Authority, the North Dakota Ethanol Council, and the Energy Policy Commission, and included provisions for energy incentives relating to ethanol and biodiesel. The Legislative Assembly approved the following bills and concurrent resolutions relating to energy policy.

2023 Bills

- **House Bill No. 1097** authorized the Industrial Commission to site utility-scale energy storage of five megawatts or more and hydrogen refinement and transmission facilities, required the Industrial Commission to provide two notices of a public hearing at a reasonable interval before the public hearing, and allowed a utility to adjust the route of an electric transmission line before or during construction. The bill also clarified when the Industrial Commission can collect fees for an application, a new permit or certificate, or a permit or certificate that is reviewed for transfer to a new company or entity and authorized the commission to accept application fees over \$100,000.
- **House Bill No. 1165** replaced the State Health Officer with the Department of Environmental Quality as the entity to which operators of coal gasification plants must file an annual report listing the byproducts produced by the gasification plant.
- **House Bill No. 1272** authorized the Industrial Commission to establish a new well status of enhanced oil recovery potential. The bill required the Industrial Commission to provide notice and a hearing for review of a well's enhanced oil recovery potential status when a surface owner requests a review of the status and the well has been on enhanced oil recovery potential status for at least 12 years. The bill also provided a surface owner the right to request a review of enhanced oil recovery status every 2 years after receiving notice and hearing.
- **House Bill No. 1286** allowed a tribe to make an irrevocable election to opt-out of the oil extraction tax rate increase triggered by an increase in the average price of a barrel of crude oil by providing written notice to the Tax Commissioner.
- **House Bill No. 1315** required an applicant for an energy conversion and transmission facility site to inform the Public Service Commission (PSC) that the applicant has executed or filed an unexecuted generation interconnection agreement, or comparable transmission services agreement, with the affected regional transmission organization or transmission owner.
- **House Bill No. 1427** provided a reduced oil extraction tax rate of 2 percent of the gross value at the well for oil extracted from a certified restimulation well for the first 75,000 barrels of oil extracted or 18 months, whichever occurs first. A restimulation well is defined as a previously completed oil or gas well that, following completion and production of oil, has been treated with an application of fluid under pressure for the purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil. A restimulation well does not include a well that has less than 60 months of production or is producing more than 125 barrels of oil per day reported to the Industrial Commission before completion of the restimulation treatment; is part of a qualifying secondary recovery project, qualifying tertiary recovery project, or stripper well or stripper well

property; or is drilled but not completed and does not have a record of oil production reported to the Industrial Commission. The bill required the certification of qualifying well status prepared by the Industrial Commission to be submitted to the Tax Commissioner within 6 months of the month in which the first oil was produced from the restimulation well for the well to qualify for the rate reduction from the first day of eligibility.

- **House Bill No. 1511** created a severance tax exemption for the first one million tons of coal per year used as a feedstock by a coal processing facility that utilizes coal as a feedstock in this state. The owner or operator of the coal processing facility that utilizes coal as a feedstock is required to certify to the coal mine owner or operator the amount of coal purchased for use as a feedstock by the facility; used as a feedstock by the facility for extraction of critical minerals or rare earth elements from lignite coal; used as a feedstock by the facility to create tangible personal property other than electricity, water, gas, or steam from lignite coal; and resold or used in any manner other than as a feedstock at the facility. The coal mine owner or operator is required to report the amounts of coal certified by the owner or operator of the facility to the Tax Commissioner and pay any severance tax due.
- **Senate Bill No. 2006** created a sales and use tax exemption for sales of tangible personal property used to construct, expand, or upgrade a facility that refines renewable feedstock into sustainable aviation fuel. To receive the exemption at the time of purchase, the owner of the facility must receive from the Tax Commissioner a certificate that the tangible personal property the owner intends to purchase to construct, expand, or upgrade the facility qualifies for the exemption. The exemption was available for taxable events occurring through June 30, 2025.
- **Senate Bill No. 2009** required an applicant under Chapter 49-22 to make a payment to the Agriculture Commissioner when an applicant elects to provide a payment to mitigate the environmental impact of construction or operation of an energy conversion or transmission facility, required the Agriculture Commissioner to deposit the payment into the Environmental Impact Mitigation Fund, and prevented the section from being interpreted to limit an applicant from conducting mitigation activities.
- **Senate Bill No. 2057** required the Industrial Commission to provide notice of a public permit hearing to individuals and entities by mail or third-party commercial delivery, tracking service requested, to the individual's or entity's last address of record. The bill also required the Industrial Commission to provide notice of the hearing by publication when the individuals or entities cannot be served.
- **Senate Bill No. 2058** authorized the Industrial Commission to regulate the location and operation of wellhead and lease equipment, oil and gas separators, emulsion treaters, boilers, electric generators, flares, newly constructed underground gathering pipelines, flare mitigation systems, and all other equipment located at or on an oil or gas well site or underground gathering pipeline facility. The bill clarified the power and authority of the Industrial Commission may not be interpreted to supersede or modify requirements related to oil and gas production under Chapters 32.1-06 or 61-28, the federal Clean Air Act, or the federal Clean Water Act.
- **Senate Bill No. 2161** extended the sunset date on the State Energy Research Center Fund from June 30, 2027, to June 30, 2029. The bill also increased the maximum amount of oil and gas gross production tax and oil extraction tax revenues that may be deposited in the State Energy Research Center Fund from \$5 million to \$7.5 million per biennium.
- **Senate Bill No. 2194** authorized the Industrial Commission to expend funds from the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund to defray the expenses of the Postproduction Royalty Oversight Program and the Pipeline Restoration and Reclamation Oversight Program.

2025 Bills and Resolutions

- **House Bill No. 1258** clarifies a permit from the PSC for the construction of an electric transmission facility within a designated corridor supersedes and pre-empts any local land use or zoning requirements. Additionally, before an electric transmission facility is approved, the applicant must

comply with the road use agreements of the impacted political subdivision. However, the requirements of the impacted political subdivision may be superseded if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive or are in direct conflict with state or federal laws or rules. This bill applies retroactively to January 1, 2025.

- **House Bill No. 1459** provides a declaration of state policy to encourage and promote the development, production, and utilization of critical and rare earth minerals. The bill provides critical minerals and rare earth minerals occurring within or associated with coal-bearing formations, coal seams, or coal combustion residuals are part of the coal estate for owning, leasing, taxing, and development unless expressly severed. The bill requires an operator to pay any mineral owner, respective to the mineral owner's undivided interest, a royalty of no less than 2.5 percent of the gross proceeds from critical and rare earth mineral extraction. The royalty must be paid annually by March 31 of the following year. The bill also provides an owner or operator of a coal conversion facility may not be held liable for waste, conversion, destruction, or damage to any extent which arises from the purchase, combustion, gasification, or sale of any minerals, substances, compounds, byproduct within the coal, coal ash, or coal products.
- **House Bill No. 1539** provides a definition for "backup electric generation" for generation that is not interconnected with the power grid and is temporary. Backup electric generation is excluded from the definition of "electric energy conversion facilities" and state regulations under the Energy Conversion and Transmission Facility Siting Act.
- **Senate Bill No. 2014** permits money in the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund to be used for administrative expenses, including salaries, wages, and operating expenses, with legislative approval.
- **Senate Bill No. 2116** permits the PSC to hold a technical hearing on energy conversion or transmission facility applications by the commission's own motion or a motion of a directly interested person. During a technical hearing, the parties may present evidence and examine witnesses. The bill also removes the requirement for a public hearing before the commission may grant a waiver or extension for light-mitigating technology systems.
- **Senate Bill No. 2117** establishes the State Abandoned Mine Reclamation Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines Fund. The bill provides the fund may be used for abatement and treatment of the effects of acid mine drainage from coal mining practices and the control of coal mine fires. The bill expands the definition of "abandoned mine reclamation plan" to include the requirements of the federal Surface Mining Control and Reclamation Act of 1977. The bill specifies land and water designated for remedial action under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 are not eligible for reclamation or drainage abatement under Chapter 38-14.2. The bill also changes the priorities for the PSC in its administration of the Abandoned Mine Reclamation Program.
- **Senate Bill No. 2188** adds the Director of the Department of Water Resources as a member of the Clean Sustainable Energy Authority. The bill extends the Bank of North Dakota line of credit to the Industrial Commission from June 30, 2025, to June 30, 2029, to support loans issued from the Clean Sustainable Energy Fund.
- **Senate Bill No. 2335** requires an individual seeking compensation from a mineral developer for damages arising out of oil drilling and production operations to obtain a written appraisal by a certified appraiser before beginning a legal action. The bill provides a court may take jurisdiction over the action only if a copy of the appraisal has been provided to the mineral developer. The bill provides within 30 days of receiving a copy of the appraisal, a developer may make an updated offer of settlement to the surface owner. The bill provides once the appraisal is complete, the mineral developer is required to either reimburse the surface owner or directly pay the appraiser all reasonable actual costs of the appraisal. The bill provides appraisal or opinion of the value is inadmissible in a legal action under Chapter 38-11.1, unless the information is offered by the surface owner.

- **Senate Bill No. 2339** creates a new chapter outlining the requirements for a qualified utility's wildfire mitigation plan to be submitted to the PSC.
- **Senate Bill No. 2359** repeals the state renewable and recycled energy objective and corresponding qualifications.
- **House Concurrent Resolution No. 3015** urges the Southwest Power Pool and Midcontinent Independent System Operator to promptly and decisively act to maintain the reliability of the bulk power system by addressing market failures that have allowed capacity retirements to outpace replacement.
- **House Concurrent Resolution No. 3016** recognizes the benefits of enhanced oil recovery and encourages the state of North Dakota and federal government to maintain favorable policies that support development of carbon capture technology and utilization of carbon dioxide as a commodity for advancing energy security.
- **House Concurrent Resolution No. 3017** recognizes December 6 as annual "Miner's Day" to honor the hard work and dedication of coal miners.

2025-26 INTERIM REPORTS AND STUDIES

Reports

State Energy Research Center

- Section 15-11-40 requires the State Energy Research Center to deliver an annual report on its research activities and accomplishments.
- Section 27 of Senate Bill No. 2014 requires the State Energy Research Center to provide at least one report to the Legislative Management regarding the status and results of its salt cavern underground energy storage and research project.

North Dakota Transmission Authority

- Section 17-05-13(1) requires the North Dakota Transmission Authority to provide a biennial report to the Legislative Council regarding its activities.
- Section 17-05-13(2) requires the North Dakota Transmission Authority to provide an annual report to the Legislative Council regarding the status of the resilience of the electric grid.

Industrial Commission

- Section 38-22-15, which establishes permit, fee, and title requirements for the geologic storage of carbon dioxide, requires the Industrial Commission to file a report with the Director of the Legislative Council beginning December 2014 and every 4 years thereafter on the amount of money in the Carbon Dioxide Storage Facility Trust Fund and whether fees being paid into the fund are sufficient to satisfy the fund's objectives. The Industrial Commission is required to file the next report in 2026.

High-Level Radioactive Waste Advisory Council

- Section 38-23-08 requires the High-Level Radioactive Waste Advisory Council to provide a written report to the Legislative Management regarding its recommendations and findings.

North Dakota Pipeline Authority

- Section 54-17.7-13 requires the North Dakota Pipeline Authority to deliver a biennial written report to the Legislative Council regarding its activities.

Clean Sustainable Energy Authority

- Section 54-63.1-04 requires the Clean Sustainable Energy Authority to provide a biennial report to the Legislative Management regarding its activities and the financial impact of programs administered by the authority on state revenues and the state's economy.

Coal Conversion Facilities

- Section 57-60-02.1 provides a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions and receives a credit is required to report to the Legislative Council.

Agriculture Commissioner

- Section 4.1-01-26 requires the Agriculture Commissioner to provide a report to the Energy Development and Transmission Committee by June 1 of each even-numbered year regarding the implementation of and services provided under the Postproduction Royalty Oversight Program.

Assigned Studies

The Legislative Management assigned two studies to the Energy Development and Transmission Committee.

Large Energy Consumers

Section 1 of House Bill No. 1579 (2025) directs a study of 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:

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

The study must include input from representatives of data center operators and other large energy consumers operating or considering investment in the state; investor-owned utilities, rural electric cooperatives, municipal power providers, and independent power producers; the PSC; the Lignite Energy Council; the North Dakota Transmission Authority; regional transmission organizations; the North Dakota Petroleum Council; and any other relevant state or federal agencies.

Geothermal Energy

Section 1 of Senate Bill No. 2360 (2025) directs a study of the feasibility of developing geothermal energy in the state. The study must include an evaluation of the state's geology and the feasibility of resource exploration and production of geothermal energy in the state, support opportunities for startup geothermal companies, including fostering innovation and promoting economic growth within the state's

energy sector, the application of geothermal energy to nonproductive oil and gas wells to extend the life of the well through the use of a complementary energy extraction method, and other opportunities to advance geothermal energy opportunities in the state.

SUGGESTED STUDY APPROACH - COMPREHENSIVE ENERGY POLICY

Although the committee may study any area of energy, the area of study must relate comprehensively to the energy policy of this state. Several entities in state government carry out the state's energy policy, including the PSC, Department of Commerce, and Industrial Commission. The Industrial Commission is the umbrella agency for the North Dakota Transmission Authority, the North Dakota Pipeline Authority, and the Renewable Energy Council. However, the Renewable Energy Council is chaired by the Commissioner of the Department 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.