



# 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 requires 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.

House Concurrent Resolution No. 3034 (2023) directs the study of sustainable energy policies to maximize the economic viability of existing energy sources, assess future demands on electricity in the state, and determine the feasibility of advanced nuclear energy development and transmission in the state. Due to the similarities in the studies directed by Section 54-35-18 and House Concurrent Resolution No. 3034, the two studies have been combined into a comprehensive study.

### RECENT COMMITTEE HISTORY Assigned Studies

#### 2017-18 Interim

- **Hub city and hub city school district allocation** - Pursuant to Section 22 of Senate Bill No. 2013 (2017), the committee studied the oil and gas tax revenue allocations to hub cities and hub city school districts, including current and historical oil and gas tax revenue allocations and the appropriate level of oil and gas tax allocations. The committee recommended continuing the concept of hub cities in the oil and gas tax allocation formulas.
- **Wind energy taxation and revenue distribution** - Pursuant to Section 34 of House Bill No. 1015 (2017), the committee studied the taxation of wind energy and the distribution of tax collections related to wind energy, including the various methods of taxing wind energy and the appropriate level of distributions to the taxing districts and the state. The committee recommended changing the allocation of wind generation tax collections to distribute a portion of the revenue collections to the state.
- **Oil well refracturing** - Pursuant to House Concurrent Resolution No. 3027 (2017), the committee studied the estimated fiscal impact of refracturing existing oil wells, including the estimated costs and benefits related to tax collections and any potential tax incentives for refracturing existing oil wells. The committee made no recommendations related to this study.

#### 2019-20 Interim

- No studies in addition to the committee's statutory duties were assigned to the committee for this interim.

#### 2021-22 Interim

- **Natural gas and propane infrastructure development** - Pursuant to House Bill No. 1159 (2021), the committee studied natural gas and propane infrastructure development in the state, including consideration of the current infrastructure available for natural gas and propane, challenges related to the development of

natural gas and propane infrastructure, community needs for natural gas and propane infrastructure, and a cost-benefit analysis of any state incentives to encourage the development of natural gas and propane infrastructure. The committee made no recommendations related to this study.

- **Coal conversion facility bonding and reclamation** - Pursuant to Section 2 of House Bill No. 1455 (2021), the committee studied the need, cost, effect, and appropriate process for bonding and ensuring reclamation of coal conversion facilities, including an examination and assessment of the methods and amounts of financial assurance and schedules, the interaction of economics and the statutes, rules, and policies relating to the remaining useful life and early retirement of coal conversion facilities, the role of the Public Service Commission (PSC) in all electrical generation retirement, and the appropriate involvement of the public, local communities, and political subdivisions in the retirement process. The committee made no recommendations related to this study.
- **Oil and gas lease postproduction deductions** - Pursuant to Senate Bill No. 2217 (2021), the committee studied deductions for postproduction costs under oil and gas leases, including consideration of the methods used to calculate the value of oil and gas, the point of sale used to determine the value, oil and gas sales in the absence of an arm's-length contract, any deductions or incentives applied to the value, the methods used to report any deductions or incentives on mineral royalty statements, and an analysis and review of state-mandated natural gas capture targets, federal land permitting restrictions, the effectiveness of using onsite flare mitigation technologies, and the infrastructure necessary to enhance oil and natural gas value. The committee made no recommendations related to this study.

## RECENT ENERGY POLICY LEGISLATION

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

### 2019 Bills and Resolutions

- **House Bill No. 1383** prohibited the PSC from identifying prime farmland, unique farmland, or irrigated land as exclusion or avoidance areas when evaluating and designating geographical areas for site, corridor, or route suitability. The bill prohibited the PSC from conditioning the issuance of a certificate or permit on an applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.
- **Senate Bill No. 2037** created Chapters 38-23 and 38-24 to provide for the regulation of high-level radioactive waste and high-level radioactive waste disposal.
- **Senate Bill No. 2100** authorized the PSC to adopt rules governing the decommissioning of commercial solar energy conversion facilities.
- **Senate Bill No. 2123** authorized the Industrial Commission to enter public and private contracts for the reclamation of saltwater handling facility sites and treating plant sites. The bill authorized money in the abandoned oil and gas well plugging and site reclamation fund to be used for the reclamation of saltwater handling facilities and treating plants and authorized the Industrial Commission to seek reimbursement from the operator of a pipeline facility, production facility, saltwater handling facility, and treating plant for the cost of plugging, replugging, and reclamation.
- **Senate Bill No. 2254** provided wind turbines and associated facilities that are part of certain electric energy conversion facilities may not be considered improvements for purposes of construction liens.
- **Senate Bill No. 2261** prohibited the PSC from conditioning the issuance of a certificate or permit for an electric energy conversion facility or an electric transmission facility on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.
- **Senate Bill No. 2344** provided a framework for the underground storage of carbon dioxide. The bill authorized a person conducting unit operations for enhanced oil recovery; utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals; disposal operations; or any other operation authorized by the Industrial Commission under Chapter 38-08 to utilize subsurface geologic formations in the state for such operations or any other permissible purpose under Chapter 38-08.

### 2021 Bills and Resolutions

- **House Bill No. 1067** required an electric utility to submit integrated resource plans to the PSC and allowed the PSC to assess a fee reasonably necessary for completing an investigation into the integrated resource plans submitted by an electric public utility.
- **House Bill No. 1080** reduced the maximum fee for late oil and gas royalty payments to the Board of University and School Lands.
- **House Bill No. 1095** prohibited a wind energy conversion facility that has not been issued a certificate of site compatibility and which exceeds five megawatts of electricity from repowering the wind energy conversion facility without first having obtained a certificate of site compatibility.
- **House Bill No. 1158** allocated 50 percent of any mitigation payments to the federal environmental law impact review fund reducing the allocation to the environmental impact mitigation fund.
- **House Bill No. 1412** imposed a lignite research tax in lieu of the state's portion of tax imposed on coal conversion facilities. The bill provided a county the option of exempting the county's portion of the coal conversion tax. The lignite research tax imposed in lieu of the state's portion of the coal conversion tax is deposited in the lignite research fund and any coal conversion tax not exempted by a county is allocated to the county. The bill also provided the board of county commissioners the option of exempting up to 70 percent of the coal severance tax. The bill is effective through June 30, 2026.
- **House Bill No. 1452** replaced the 25x25 initiative with the low-emission technology initiative, allowed the Energy Policy Commission to identify and make recommendations to the Clean Sustainable Energy Authority on technologies related to low-emission advancements, provided guidelines for what may be included in the Energy Policy Commission's recommendations, and updated the purchasing exemption for procurements by the Industrial Commission for energy-related programs under the Clean Sustainable Energy Authority.
- **House Bill No. 1455** required a utility owner or operator of an electric energy conversion facility to notify the PSC and the auditor of the county in which the facility is located if the owner or operator considers removing the electric energy conversion facility.
- **Senate Bill No. 2014** added the appraised value, or whichever is greater, to the threshold of no more than 30 percent of the total project costs for any single transmission facility project may be financed by bonds issued under Section 17-05-08 which are supported by the debt service reserve fund approved by the Industrial Commission. The bill also changed the factors that determine the amount of the fee a storage operator must pay the Industrial Commission for each ton of carbon dioxide injected for storage to include the contribution of the storage facility and the source of the carbon dioxide to the energy and agriculture production economy of North Dakota.
- **Senate Bill No. 2065** authorized the Industrial Commission to establish a regulatory structure for the underground storage of natural gas and for the development of underground manufactured cavern spaces. The bill provided the permit requirements for underground storage, provided the notice and hearing requirements, and authorized the Board of University and School Lands to lease lands under its control for the underground storage of oil and gas.
- **Senate Bill No. 2091** provided the terms "electric public utility" and "rural electric cooperative" do 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 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.
- **Senate Bill No. 2152** provided a sales and use tax exemption for sales of carbon dioxide used for secure geologic storage.
- **Senate Bill No. 2206** authorized a public utility with a new or existing facility that uses lignite mined in North Dakota to recover research and development costs to develop carbon dioxide capture and sequestration and provided a financial incentive set at a reasonable rate for power purchase agreements of a dispatchable on-demand generating unit, plant, or facility deemed to protect grid reliability.
- **Senate Bill No. 2237** added coal-fueled electric generating units to the list of entities the Department of Environmental Quality may not regulate more strictly than the federal government regulates under the federal Clean Air Act.

- **Senate Bill No. 2238** required the Department of Environmental Quality to develop and implement a state regional haze plan consistent with the federal Clean Air Act and pursuant to the requirements set forth in the bill.
- **Senate Bill No. 2263** required an applicant of an electric energy conversion facility or electric transmission project to provide notice of the application to the owner of record of any land located within the site or corridor for the project.
- **Senate Bill No. 2319** provided for the distribution of oil and gas tax revenue from straddle wells. The bill defined a straddle well as a well located outside the exterior boundaries of a reservation, which has one or more laterals penetrating a reservation boundary. The bill required the Industrial Commission to certify to the Tax Commissioner the spacing unit acreage associated with straddle wells, the Tax Commissioner to certify to the State Treasurer the total oil and gas gross production and oil extraction taxes attributable to production from straddle wells, and the State Treasurer to provide a monthly distribution of oil and gas tax revenue to tribes with straddle well spacing unit acreage. For wells drilled before July 1, 2019, a tribe received 50 percent of the straddle well tax revenue multiplied by the associated spacing unit acreage located within the reservation boundaries. For wells drilled on or after July 1, 2019, the tribe received 80 percent of the straddle well tax revenue multiplied by the associated trust land spacing unit acreage located within the reservation boundaries and 20 percent of the straddle well tax revenue multiplied by the associated nontrust land spacing unit acreage located within the reservation boundaries. The bill applied to oil and gas tax revenue collections allocated by the State Treasurer after September 1, 2021.
- **Senate Bill No. 2328** provided a producer employing a flare mitigation system installed on a qualifying well on or after June 30, 2021, a temporary credit against oil extraction tax. The credit was equal to 75 cents per one million British thermal units of flare mitigation resulting from the onsite flare mitigation system. The credit could be claimed for up to 12 months per well and could not exceed \$6,000 per well per month. The credit did not apply to production from wells located within the exterior boundaries of the Fort Berthold Reservation unless the Tribal Chairman submitted to the Tax Commissioner a written request for the credit to apply. The credit was effective through June 30, 2023.
- **House Concurrent Resolution No. 3025** urged the federal government to refrain from enacting regulations that threaten the reliability and affordability of electric power in North Dakota and to increase support for research, development, and deployment for next generation carbon-based energy generation.
- **Senate Concurrent Resolution No. 4012** established a state policy to support the reliability and resilience of the electric grid, ensure price transparency to consumers in electric markets, and incentivize carbon capture utilization and storage as an alternative to preserve dispatchable thermal electric generation and its associated benefits.

### 2023 Bills and Resolutions

- **House Bill No. 1097** authorizes the Industrial Commission to site utility-scale energy storage of five megawatts or more and hydrogen refinement and transmission facilities, requires the Industrial Commission to provide two notices of a public hearing at a reasonable interval before the public hearing, and allows a utility to adjust the route of an electric transmission line before or during construction. The bill also clarifies 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 authorizes the commission to accept application fees over \$100,000.
- **House Bill No. 1165** replaces 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** authorizes the Industrial Commission to establish a new well status of enhanced oil recovery potential. The bill requires 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 provides 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** allows 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** requires an applicant for an energy conversion and transmission facility site to inform the 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** provides 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 requires 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** creates a severance tax exemption for the first 1 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** creates 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 is available for taxable events occurring through June 30, 2025.
- **Senate Bill No. 2009** requires 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, requires the Agriculture Commissioner to deposit the payment into the environmental impact mitigation fund, and prevents the section from being interpreted to limit an applicant from conducting mitigation activities.
- **Senate Bill No. 2057** requires 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 requires the Industrial Commission to provide notice of the hearing by publication when the individuals or entities cannot be served.
- **Senate Bill No. 2058** authorizes 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 clarifies 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** extends the sunset date on the state energy research center fund from June 30, 2027, to June 30, 2029. The bill also increases 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** authorizes 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.

## 2023-24 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 14 of House Bill No. 1014 requires the State Energy Research Center to provide at least one report to the Legislative Management regarding the center's study of prospective in-state resources of economically feasible accumulations of critical minerals, including rare earth elements and other high-value minerals or materials that may be suitable for extraction and enrichment.
- Section 15 of House Bill No. 1014 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 requires the North Dakota Transmission Authority to provide a biennial report to the Legislative Council regarding its activities.

#### Energy Policy Commission

- Section 17-07-01 directs the Energy Policy Commission to provide a biennial report to the Legislative Management regarding its recommendations concerning a comprehensive energy policy.

#### 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 the council's 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 program's financial impact 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. There are no eligible coal conversion facilities receiving a credit; therefore, no report is required.

#### Agriculture Commissioner

- Section 1 of Senate Bill No. 2194 requires the Agriculture Commissioner to provide a report to the Legislative Management by June first of each even-numbered year regarding the implementation of and services provided under the postproduction royalty oversight program.

#### Department of Transportation

- Section 1 of House Bill No. 1081 requires the Department of Transportation to provide a report to the Legislative Management before August 1, 2024, regarding the department's findings and recommendations on the department's study of the feasibility and impact of imposing an electronic vehicle charging tax to offset lost revenue from gas tax sales.

- Senate Bill No. 2063 requires the Department of Transportation to provide a report to the Legislative Management before July 1, 2024, regarding the deployment and administration of electric vehicle charging stations.

### **Energy and Environmental Research Center**

- Section 17 of House Bill No. 1014 requires the Energy and Environmental Research Center to provide at least one report to the Legislative Management regarding the status of the center's study of future lignite electrical generation facilities.

### **Assigned Studies**

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

### **Sustainable Energy Policy**

House Concurrent Resolution No. 3034 directs the study of sustainable energy policies to maximize the economic viability of existing energy sources, assess future demands on electricity in the state, and determine the feasibility of advanced nuclear energy development and transmission in the state.

### **Electric Vehicles**

Section 16 of House Bill No. 1012 directs a study of the effect of electric vehicles in the state. As part of the study, the Legislative Management shall consider the assessment of fees to offset reductions in motor fuel tax revenues; the impact of electric vehicles on electric demand and the electrical grid; the installation of electric vehicle charging infrastructure by private and public entities, including potential funding sources; the impact to public services and public transportation providers; and the effect on employment opportunities and other economic impacts, including tourism, automobile dealers, the energy industry, and the critical minerals industry. The study must include input from key stakeholders, including electric vehicle manufacturers, electric vehicle dealers, electric utilities, electric vehicle charging station manufacturers, and other transportation entities.

### **Natural Gas in Small Communities**

Section 1 of Senate Bill No. 2366 directs the study of accessibility of natural gas in small communities. The study must include 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.

## **SUGGESTED STUDY APPROACH - COMPREHENSIVE ENERGY POLICY**

Although the committee may study any particular area of energy, the area of study must relate comprehensively to the energy policy of this state and must include a study of sustainable energy policies and the feasibility of advanced nuclear energy development and transmission in the state as directed by House Concurrent Resolution No. 3034. A number of entities in state government carry out the state's energy policy, including the PSC, Department of Commerce, and Industrial Commission. The Department of Commerce is the umbrella organization for the Energy Policy 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.