Prepared by the North Dakota Legislative Council
staff for the Energy Development and
Transmission Committee
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COMPREHENSIVE ENERGY POLICY STUDY

House Bill No. 1462, Section 4, (attached as an appendix) changed the Electric Industry Competition Committee to the Energy Development and Transmission Committee in North Dakota Century Code (NDCC) Section 54-35-18. As reconstituted, 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 and the taxation of shallow gas. The statute establishing the committee expires on August 1, 2011.

During the 2005-06 interim, the Electric Industry Competition Committee recommended a bill draft to create the Energy Development and Transmission Committee. This recommendation was adopted by the Legislative Council and House Bill No. 1028 was introduced and passed by the Legislative Assembly. In addition, language identical to that provided in House Bill No. 1028 was included in House Bill No. 1462 and additional language relating to the study of the impact of a comprehensive energy policy and the taxation of shallow gas was included.

The language in House Bill No. 1462 provides the final version of NDCC Section 54-35-18. When possible, bills amending the same section of law should be harmonized. Because House Bill No. 1462 includes all the language in House Bill No. 1028, harmonization of both bills occurs by recognizing House Bill No. 1462. When the legislative history is discussed in this memorandum, the history for House Bill No. 1028 will be considered part of the history of House Bill No. 1462.

Discussion of the Electric Industry Competition Committee included support for the new committee so that the committee could study any area of energy that became important. For example, the Electric Industry Competition Committee was unable to study the creation of a pipeline authority because of being limited to electricity.

ENERGY POLICY

In an effort to create a comprehensive energy policy, the Legislative Assembly passed House Bill No. 1462 (2007) creating NDCC Title 17. Title 17 will include 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.

House Bill No. 1462 creates the 25x'25 initiative for inclusion in NDCC Title 17. 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 addition to this policy, House Bill No. 1462 creates the Energy Policy Commission for developing a comprehensive energy policy as part of the North Dakota energy independence initiative. The purpose for this policy is 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 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, and the refining or gas processing industry.

In short, this committee is studying a comprehensive energy policy and the same issue is being studied by the Energy Policy Commission. Although the Energy Policy Commission is to address a comprehensive policy, the Commissioner of Commerce (subsequently identified as chairman of the commission) released a comprehensive energy policy entitled *North Dakota: A New Model for Sensible Energy Policy* before the 2007 legislative session. Under the heading "What Can We Learn From the North Dakota Model?" the document contains these six directives:

1. An energy policy must include effective energy conservation and energy efficiency measures.
2. An energy policy needs to have clear plans for developing alternative, United States-based fuel options that include specific goals for ethanol, biodiesel, wind, and other renewable fuel options.
3. The transportation infrastructure for moving power through transmission lines and substations and transporting liquids as gaseous fuels needs to be developed in concert with new production facilities.
4. Agricultural policies need to be coupled with energy policies.
5. Sensible energy policy requires education of and communication to the public.
6. Government may provide vision and leadership in forging partnerships between historical competitors.

In addition to the policy statements in House Bill No. 1462, House Concurrent Resolution No. 3020 (2007) declares that the renewable energy policy of this state includes the support of 25 percent of the state's and nation's energy supply coming from renewable energy resources by the year 2025. The Legislative Assembly also passed House Bill No. 1506 (2007), which establishes a state renewable and recycled energy objective that 10 percent of all electricity sold at retail within the state by the year 2015 be obtained from renewable energy and recycled energy sources. In addition, Senate Concurrent Resolution No. 4001 (2007) urges the President and Congress to make the entire nation available for energy development in an environmentally responsible manner as well.

The preceding bills and resolutions address broad policies relating to energy development in this state. The portion of this memorandum entitled **2007 LEGISLATION** identifies legislation that addresses particular energy issues. Although each of the measures may not address a broad and comprehensive energy policy, as a whole the bills are the most recent expression of energy policy by the Legislative Assembly.

2007 LEGISLATION

There were numerous bills introduced during the 2007 legislative session that relate to energy. The bills are classified by the headings of taxation, governmental entity, other bills, and failed legislation. Some bills are classified in multiple categories and these will be noted with an asterisk.

Taxation

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

Property Taxes

House Bill No. 1072 moves the statutory provisions regarding taxable valuation of centrally assessed wind turbine electric generators from the general property assessment chapter to the chapter on centrally assessed property.

House Bill No. 1073 requires exclusion of carbon dioxide pipeline property, for which payments in lieu of taxes are required, from valuation of property in a taxing district for purposes of determining the mill rate for the taxing district.

House Bill No. 1317* reduces the taxable valuation of a centrally assessed wind turbine electric generation unit with a nameplate capacity of 100 kilowatts or more from 3 percent to 1.5 percent of assessed value if construction of the unit is completed after June 30, 2007, and before January 1, 2011. House Bill No. 1018 changed the first date from June 30, 2007, to June 30, 2006.

Income Taxes

House Bill No. 1018 allows the increase of the aggregate amount of seed capital investment tax credits from $2.5 million to $3.5 million for each calendar year and biofuels production facilities are added to businesses for which agricultural business investment tax credits are available.

House Bill No. 1233 allows assignment of a geothermal, solar, or wind energy device installation income tax credit but the assignment may be made only to the purchaser of the power under a power purchase agreement or to a taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. The total amount that may be sold is $3 million.

House Bill No. 1514 adds biomass energy devices to the income tax credit available for installation of geothermal, solar, or wind energy devices.

Senate Bill No. 2081 revises provisions of the agricultural business investment income tax credit to provide that qualified investments must be in the form of cash or a fee simple interest in real property in this state and revises the provisions for certification of qualified businesses and limitations on the credit. In addition, the carryforward for excess credits is extended from 5 years to 10 years.

Senate Bill No. 2298* provides that for geothermal, solar, or wind energy devices installed after December 31, 2006, if ownership of the device is transferred at the time installation is complete, the purchaser of the device is eligible for the income tax credit for such devices.

Sales and Use Taxes

House Bill No. 1049* provides for reduction and elimination of sales and use taxes on natural gas and other fuels used for heating purposes. On January 1, 2008, the sales and use tax ratio for natural gas is reduced from 2 percent to 1 percent, coal used for heating purposes is exempted from sales taxes, the special fuels tax on diesel fuel used as heating fuels is reduced from 4 cents to 2 cents per gallon, and the rate of special fuels tax on propane is reduced from 2 percent to 1 percent. On July 1, 2009, sales of natural gas and other heating fuels are exempted from sales and use taxes and special fuels taxes.

House Bill No. 1462* provides a sales and use tax exemption for materials used in compressing, processing, gathering, or refining natural gas and materials used in construction or expansion of an oil refinery.

House Bill No. 1365* provides that the sales and use tax exemption for power plant repowering or environmental upgrade equipment is available for equipment delivered on or after January 1, 2007, for plants that began construction before July 1, 1991. The bill also expands the exemption for an electrical generating plant burning any type of coal, rather than only lignite coal.

Senate Bill No. 2298* extends the sales tax exemption for power plant construction, production, environmental upgrade, and repowering equipment from electrical generating facilities powered by lignite or wind to apply to any other type of electrical power generating facility. The sales tax exemption for materials used to construct agricultural commodity processing facilities is amended to allow the facility to receive the exemption at the time of purchase rather than by applying for a refund. The sales tax exemption provisions are estimated to reduce state revenues by $2.4 million for the 2007-09 biennium.

Coal Taxes

House Bill No. 1093 provides that for the 2007-09 biennium, 3.5 percent of coal conversion tax allocations to the state general fund are instead allocated to the lignite research fund and from July 1, 2009, until July 31, 2018, 5 percent of the coal conversion tax allocations to the state general fund must be instead allocated to the lignite research fund. The allocation is estimated to be $1,750,000 for the 2007-09 biennium.

House Bill No. 1365* extends coal conversion tax benefits for repowering to plants using any type of coal rather than only lignite coal.

Oil and Gas Taxes

House Bill No. 1044 increases allocations to counties from oil and gas gross production taxes by up to $750,000 per year per county.

House Bill No. 1128* increases from $1.3 million to $3 million per biennium the amount of oil extraction tax revenues to be deposited into the oil and gas research fund.

House Bill No. 1279 makes permanent the gross production tax exemption for shallow gas during the first 24 months of production, which was scheduled to expire June 30, 2007. The bill requires the study of allocation of oil and gas tax revenues to or for the benefit of political subdivisions with emphasis on determining whether allocations sufficiently address oil and gas development infrastructure impact to political subdivisions. This study was assigned to the interim Taxation Committee.

House Bill No. 1395 provides that the first $700,000 of the state's share of tax revenues from oil produced from wells within the exterior boundaries of the Fort Berthold Reservation must be transferred to the permanent oil tax trust fund.

Senate Bill No. 2178* allows a county that reaches the annual cap on oil and gas gross production tax revenue to receive an additional $1 million in revenues if the county levies a total of at least 10 mills for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any additional amount received by the county is not for allocation to political subdivisions within the county but must be credited entirely to the county general fund.

In addition, the bill repeals the statutory permanent oil tax trust fund effective June 30, 2009, if the voters of the state approve the constitutional oil tax trust fund at the 2008 general election, as proposed by 2007 House Concurrent Resolution No. 3045.

Senate Bill No. 2397 provides an oil extraction tax reduction to 2 percent from 6.5 percent for the first 75,000 barrels of oil during the first 18 months after completion from a horizontal well drilled and completed in the Bakken formation from July 1, 2007, through June 30, 2008. The total tax is 7 percent because of the additional 5 percent gross production tax.

Senate Bill No. 2419 authorizes the Governor to enter agreements with the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation. The state oil and gas gross production tax must apply to all wells within the Fort Berthold Reservation, and the state oil extraction tax for trust lands on the Fort Berthold Reservation may not exceed a 6.5 percent rate but may be reduced through negotiation of the agreement. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state. For production from nontrust lands on the Fort Berthold Reservation, the tribe must receive 20 percent of total oil and gas gross production tax collections in lieu of application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state's share of revenue under the agreement is subject to allocation among political subdivisions within the boundaries of the reservation. The bill is ineffective after June 30, 2009, unless by that date the Governor's office notifies the Tax Commissioner and the Legislative Council that an agreement has been entered with the Three Affiliated Tribes.

Fuels Taxes

House Bill No. 1049* reduces the special fuels tax for diesel fuel used for heating fuel from four cents to two cents per gallon from January 1, 2008, through June 30, 2009, and after that date makes diesel fuel used for heating fuel exempt from the special fuels tax. The bill reduces the rate of tax for propane sold for use as heating fuel from 2 percent to 1 percent effective January 1, 2008, and makes that fuel exempt from special fuels taxes beginning July 1, 2009.

House Bill No. 1138 allows a refund for emergency medical services operations for taxes paid on motor vehicle fuel, special fuel, and aviation fuel.

House Bill No. 1348 retains the special fuels special excise tax rate of 2 percent for sales of propane but changes the tax rate to four cents per gallon for diesel fuel and special fuels other than propane.

Senate Bill No. 2085 provides that fuels tax reports must be based on fuel in physical inventory and that reports of physical inventory readings must be provided to the Tax Commissioner on a monthly basis.

Senate Bill No. 2087 provides a definition of E85 fuel for motor vehicle fuels tax purposes and biodiesel for special fuels tax purposes.

Senate Bill No. 2089 eliminates the motor vehicle fuels tax requirement that invoices or sales tickets must include the state fuels tax as a separate item or a statement that the state tax is included in the price.

Governmental Entity

Industrial Commission

Senate Bill No. 2288 encourages a biomass energy center to identify and evaluate incentives for cellulosic ethanol production and biomass energy through the Legislative Assembly or at the federal level, creates the Renewable Energy Council, and provides authority to the Industrial Commission to finance renewable energy projects out of the renewable energy development fund to which $3 million was appropriated. In addition, the bill appropriates $20 million from the general fund to the Industrial Commission for renewable energy functions.

House Bill No. 1060* provides for the establishment of a geologic data preservation fund to be used to defray the expenses of preserving geologic data compiled by the Industrial Commission and disseminating the data to county, state, and federal departments and agencies and members of the general public. The bill also provides that provisions in NDCC Title 38 authorizing the Industrial Commission to perform well and hole plugging, reclamation work, equipment removal, leak prevention, and similar work are not subject to the state purchasing practices under Chapter 50-44.4.

House Bill No. 1127 authorizes the Industrial Commission to borrow money in an amount not to exceed $6 million from the Bank of North Dakota for a period not to exceed five years on the terms and conditions as the Bank of North Dakota and the Industrial Commission may approve without the necessity of establishing or maintaining any reserve fund as otherwise required for evidences of indebtedness issued with respect to activities of the Lignite Research Council. The bill provides that a request to have material designated as confidential which is received by the Industrial Commission and which consists of trade secrets or the commercial, financial, or proprietary information of individuals or entities applying to or contracting with the Industrial Commission or receiving Industrial Commission services is exempt from open records requirements. The bill also provides that procurements through a contract or other instrument executed by the Industrial Commission under NDCC Chapter 49-24 are not subject to state purchasing requirements.

House Bill No. 1128* establishes a North Dakota Pipeline Authority to be governed by the Industrial Commission. The bill enumerates the powers of the Pipeline Authority and authorizes the Industrial Commission to issue evidences of indebtedness. The bill provides that until sold or disposed by the Pipeline Authority, the authority and the pipeline facilities are exempt from certain regulations of the Public Service Commission. The bill requires the Pipeline Authority to report to the Legislative Council during each biennium and exempts procurements of the authority from the state purchasing practices provisions. The bill provides that federal or state assistance for the oil and gas research, development, and marketing program established for the Oil and Gas Research Council are not considered business incentives for the purposes of NDCC Chapter 54-60.1. The bill was declared to be an emergency measure and became effective upon its filing with the Secretary of State on April 11, 2007.

House Bill No. 1439 increases the membership of the Oil and Gas Research Council from seven members to eight members by adding as a member the president of the Northern Alliance of Independent Producers or the designee of the president.

House Bill No. 1503 extends the effective date of the tribal-state guaranty program from June 30, 2007, to July 31, 2011.

House Bill No. 1515 authorizes the Industrial Commission to establish an incentive program to assist the agricultural community to demonstrate the production, harvest, storage, and delivery of a biomass feedstock on a commercial scale to a private sector end user. The bill provides that if Senate Bill No. 2288 becomes effective, which it did, the Industrial Commission, in coordination with the Renewable Energy Council, may establish the biomass incentive and research program. The bill also establishes a biomass incentive and research fund and allows the Industrial Commission to transfer up to $1 million from the Biofuels PACE fund to the biomass incentive and research fund.

Senate Bill No. 2214 provides that when the Industrial Commission acquires property through the exercise of eminent domain, the acquisition must be done subject to NDCC Chapter 32-15.

Senate Bill No. 2077 provides that the North Dakota Pipeline Authority and pipeline facilities built by the authority are subject to Public Service Commission jurisdiction with respect to violations of pipeline safety standards.

Legislative Council

House Bill Nos. 1028 and 1462* creates an Energy Development and Transmission Committee of the Legislative Council to study each facet of the energy industry. The committee expires August 1, 2011.

House Bill No. 1462* requires the Energy Development and Transmission Committee of the Legislative Council to study the impact of a comprehensive energy policy for the state. The bill also provides that the committee may study the taxation of shallow gas to reduce energy costs.

Senate Bill No. 2178* directs a study to be done by the interim Taxation Committee of the allocation of oil and gas tax revenues to or for the benefit of political subdivisions.

Department of Commerce

House Bill No. 1462* requires the Department of Commerce to convene an Energy Policy Commission for the purposes of developing a comprehensive energy policy. The Energy Policy Commission is required to report to this committee.

Public Service Commission

House Bill No. 1193 includes hydroelectric energy within the definition of renewable electric and recycled energy for purposes of renewable electricity and recycled energy credit trading.

House Bill No. 1315 requires commercial electric generation facilities to comply with the standards of the National Electric Safety Code.

House Bill No. 1317* authorizes the Public Service Commission to adopt rules governing the decommissioning of a commercial wind energy conversion facility.

House Bill No. 1221 provides for expedited cost recovery for public utilities to comply with federal environmental mandates on existing electricity generating stations.

Senate Bill No. 2031 provides for expedited rate recovery for public utilities to recover jurisdictional capital and operating costs for new or modified electric transmission facilities.

House Bill No. 1506 establishes a state renewable and recycled energy objective that 10 percent of all electricity sold at retail within the state by the year 2015 be obtained from renewable energy and recycled energy sources with special provisions for hydroelectric facilities and renewable electricity and recycled energy credits. The bill includes hydroelectric power within the types of renewable and recycled energy that qualify for tax credits. However, the electricity generated must be from a hydroelectric facility with an inservice date of January 1, 2007, or later. The bill provides that the state renewable and recycled energy objective may be met through the purchase and retirement of renewable energy and recycled energy certificates representing credits from an in-state or out-of-state facility. The bill requires retail providers to report annually to the Public Service Commission on progress in meeting the state renewable and recycled energy objective.

Office of Management and Budget

House Bill No. 1462* requires the Office of Management and Budget and the State Board of Higher Education to develop guidelines for biobased procurement programs.

Bank of North Dakota

House Bill No. 1014* provides that a biodiesel production facility or ethanol production facility that receives an interest rate buydown from the Biofuels PACE fund is not eligible to receive interest buydown from the PACE fund for the same project during the same biennium. In addition, this bill appropriates $4.2 million from the general fund to the Biofuels PACE fund.

Senate Bill No. 2180 amends the Biodiesel PACE fund program, renaming the fund the Biofuels PACE fund; temporarily expanding the program to include assistance to biofuel retailers and grain handling facilities; expanding the program to include assistance to ethanol production facilities and livestock operations; removing the program references to community involvement in program applications; providing the fund is not subject to the turnback provisions of NDCC Section 54-44.1-11; and authorizing the Bank of North Dakota to transfer unobligated money between the Biodiesel PACE fund and the PACE fund.

Other Bills

House Bill No. 1014* provides that notwithstanding any other provision of law, the Industrial Commission, Department of Mineral Resources, Public Service Commission, or any other state entity that approves a carbon sequestration or storage project must give priority to an operation located in this state for the expected life of the operation.

House Bill No. 1020 includes an appropriation of $700,000 for biomass research and education.

House Bill No. 1060* removes the $250,000 cap on the abandoned oil and gas well plugging and site reclamation fund and establishes the geophysical, geothermal, subsurface minerals, and coal exploration fund. The bill provides that the geophysical, geothermal, subsurface minerals, and coal exploration fund is to be used to pay costs and expenses incurred by the Industrial Commission to satisfy unfulfilled obligations imposed on persons regulated by the commission. The bill provides that the geophysical, geothermal, subsurface minerals, and coal exploration fund is capped at $500,000 with any additional money collected deposited in the general fund. The bill became effective on April 13, 2007.

House Bill No. 1511 provides that the Industrial Commission may place wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. The bill provides that a well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six months. The bill provides that if none of the three conditions is met, the commission may require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. The bill provides that after a well has been in abandoned-well status for one year, the well's equipment, all well-related equipment at the well site, and salable oil at the well site are subject to forfeiture by the commission. The bill also provides that after a well has been in abandoned-well status for one year, the single-well bond, or any other bond covering the well if the single-well bond has not been obtained, is subject to forfeiture by the commission.

House Bill No. 1229 requires a drilling permit applicant to provide notice to the owner of any permanently occupied dwelling located within one-quarter mile of the proposed oil or gas well. The bill provides that unless waived by the owner or if the Industrial Commission determines that the well location is reasonably necessary to prevent waste or to protect correlative rights, the commission may not issue a drilling permit for an oil or gas well that will be located within 500 feet of an occupied dwelling. The bill also provides that if the commission issues a drilling permit for a location within 500 feet of an occupied dwelling, the commission may impose such conditions on the permit as the commission determines reasonably necessary to minimize impact to the owner of the dwelling.

Senate Bill No. 2156 includes a clean renewable energy bonds (CREBs) as an evidence of indebtedness to be issued by a political subdivision and allows a political subdivision to be a qualified borrower under federal CREBs law.

Failed Legislation

House Bill No. 1458, which failed to pass the Senate, as introduced would have created a goal of increasing use of hydrogen produced from renewable and coal resources.

Senate Bill No. 2374, which failed to pass the Senate, as introduced would have appropriated $750,000 to the State Treasurer to make biodiesel incentive payments to counties equal to 10 percent of a county's total diesel fuel bill if the county uses 5 percent B100 biodiesel fuel as part of total fuel used.

Senate Bill No. 2408, which failed to pass the Senate, as introduced would have provided an increase of 10 percent in transportation grants to school districts that use at least 5 percent B100.

House Bill No. 1496, which failed to pass the House, as introduced would have prohibited the Public Service Commission from increasing electric rates as a result of actions taken by other states in environmental regulation that exceeds the regulation of the federal government.

Senate Bill No. 2141, which failed to pass the House, as introduced would have created sales and use tax exemptions for material used to construct waste heat electric generation facilities.

SUMMARY OF STUDIES, INCENTIVES, FUNDING, AND TAX REDUCTION TO PROMOTE ENERGY DEVELOPMENT

The following is a list of legislative changes during the last legislative session contained in the preceding bills which promoted energy development in this state. These changes are organized by the following categories of funds and funding, governmental entities and priorities, and taxes:

Funds and funding:

1. Expanded the Biofuels PACE interest rate buydown.
2. Increased funding to the lignite research fund.
3. Created the geophysical, geothermal, subsurface minerals, and coal exploration fund.
4. Increased cap on the abandoned oil and gas well plugging and site reclamation fund.
5. Created the geologic data preservation fund.
6. Created the biomass incentive and research fund.
7. Provided funding for biomass research and education.
8. Increased funding to the oil and gas research fund from the oil and gas gross production tax.
9. Created the renewable energy fund.

Programs and incentives:

1. Created a biomass incentive program.
2. Encouraged the State Board of Higher Education to create a biomass energy center.
3. Created expedited rate recovery for new transmission facilities.

Governmental entities and priorities:

1. Created the Renewable Energy Council to recommend expenditures from the renewable energy development fund by the Industrial Commission.
2. Created the Energy Policy Commission.
3. Created the Energy Development and Transmission Committee.
4. Made a priority to have carbon sequestration in this state.
5. Created the North Dakota Pipeline Authority.

Taxes:

1. Reduced property tax for wind generation facilities.
2. Created a sales tax exemption for materials to process natural gas and oil.
3. Reduced over time to eliminating the sales tax and natural gas and fuels used for heating.
4. Extended and expended a sales tax exemption for certain power plant equipment.
5. Extended gross production tax exemption for shallow gas wells for the first 24 months of operation.
6. Increased agriculture business investment tax credits and expanded these tax credits to include biofuels production facilities.
7. Expanded income tax credits to install geothermal, solar, and wind devices to include biomass and made these tax credits tradable and transferable.
8. Reduced the oil extraction tax.
9. Allowed for agreements to collect and administer oil and gas taxes on the Fort Berthold Reservation.

The following is a list of other programs and efforts that may relate to the preceding measures or are in law to promote energy development:

1. Research funding to universities.
2. Ethanol production incentives from the ethanol production incentive fund administered by the Office of Renewable Energy and Energy Efficiency of the Department of Commerce.
3. Lignite Research Council.
4. Lignite Vision 21.
5. North Dakota Transmission Authority.
6. Sales tax exemptions for carbon dioxide used for enhanced recovery, for biodiesel fuel equipment for sales facilities, and hydrogen used for an engine or cell.
7. Income tax credit to produce biodiesel.

SHALLOW GAS TAXATION

A shallow gas gross production tax exemption was created in 2003 by House Bill No. 1145. The legislative history reveals that the purpose of the exemption was to generate activity in the drilling of shallow gas wells, especially coal bed methane gas wells. The fiscal note on the bill stated that the overall fiscal impact was an expected reduction in gross production tax revenues totaling $400,000 for the 2003-05 biennium.

The gross production tax on gas is an annually adjusted flat rate per 1,000 cubic feet on all nonexempt gas produced in the state. Before 1991 the tax was 5 percent of the gross value. The annual adjustments are made according to the average producer price index for gas fuels. Rates through June 30, 2007, are:

Time Period	Tax Rate
July 1, 2002 - June 30, 2003	$.0824
July 1, 2003 - June 30, 2004	$.0615
July 1, 2004 - June 30, 2005	$.1037
July 1, 2005 - June 30, 2006	$.1215
July 1, 2006 - June 30, 2007	$.1640
July 1, 2007 - June 30, 2008	$.1428

Exempt from the tax is gas used on the lease for production purposes and the royalty interest in gas produced from a state, federal, or municipal holding and from an American Indian holding within the boundary of a reservation.

Shallow gas produced during the first 24 months of production from and after the first date of sales from a shallow gas zone after June 30, 2003, is exempt from gross production tax. Initially, this exemption was ineffective for gas wells completed or recompleted after June 30, 2007. However, the June 30, 2007, limitation was removed in 2007 by House Bill No. 1279. The legislative history reveals there was some concern with the fiscal note. The fiscal note stated that by continuing the 24-month exemption, revenues to the permanent oil tax trust fund are expected to decrease by $1.1 million in the 2007-09 biennium. As for counties, most of the current shallow gas wells are located in a county that will reach the gross production gas cap so the county revenues will not be reduced by making the exemption permanent. However, new activity may occur in other counties and these counties would have to wait until the end of the 24-month exemption to receive any gross production tax revenue.

The legislative history reveals the 24-month exemption resulted in a sevenfold increase in the number of wells in production. Testimony indicated that the increased activity was a result of the tax exemption and the fiscal note was based on an assumption that the drilling that was encouraged by the current shallow gas would be in a single geological formation from one field in southwestern Bowman County. There was hope that the extension of the exemption would encourage companies to explore shallow gas in eastern North Dakota.

REPORTS

The Legislative Council delegated to the Energy Development and Transmission Committee the responsibility to receive five reports during the interim.

Under NDCC Section 49-24-13, the North Dakota Transmission Authority is required to deliver a written report on its activities to the Legislative Council each biennium.

Under NDCC 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.

In 2007 House Bill No. 1462, Section 6, the Department of Commerce is required to convene an Energy Policy Commission for the purpose of developing a comprehensive energy policy. The Energy Policy Commission is required to report to the Legislative Council during the 2007-08 interim on the progress and the results of the North Dakota energy independence initiative, the name of the Energy Policy Commission's study.

Under NDCC Section 57-40.6-11, the Division of State Radio is to report annually to the Legislative Council on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines. Under Section 57-40.6-10, the governing body with jurisdiction over an emergency 911 telephone system is to designate a governing committee. The governing committee is to hire a 911 coordinator and provide for the operation of a 911 system subject to particular requirements of this section, i.e., the standards and guidelines.

Under NDCC Section 57-40.6-12, the Public Safety Answering Points Coordinating Committee is to provide by November 1 of each even-numbered year to the Legislative Council a report on income, expenditures, and status of the emergency services communication system. The information for the report is provided for by the cities and counties that have a telephone exchange access service and wireless service fee. Under Chapter 57-40.6, a governing body of a city or county may provide for a resolution, subject to the vote of the electors, for the imposition of a fee up to $1 per month per telephone access line and wireless access line for providing an emergency services communication system, and in the case of wireless, enhanced 911 service. The Public Safety Answering Points Coordinating Committee is composed of one member appointed by the North Dakota 911 Association, one member appointed by the North Dakota Association of Counties, and one member appointed by the Adjutant General to represent the Division of State Radio.

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.

ATTACH:1