

Minutes of the  
**EMPOWER NORTH DAKOTA COMMISSION**

August 12<sup>th</sup>, 2014  
ND Tax Department  
8<sup>th</sup> Floor Conference Room Capitol  
600 E Boulevard Avenue  
Bismarck, ND 58505

**Members present:**

Al Anderson, Mark Nisbet, Ron Ness, Dale Niezwaag, John Weeda, David Straley

**Members present via phone:**

Jay Skabo  
Ron Day  
Jason Bohrer

**Ex Officio Members present via phone:**

Julie Voeck  
Sandi Tabor  
Mark Bring

**Others present:**

Justin Dever, Department of Commerce  
Mike Fladeland, Department of Commerce  
Sherri Frieze, Department of Commerce  
Andrea Holl Pfennig, Department of Commerce  
Carlee McLeod, Utility Shareholders of ND  
Jay Hess, Geronimo Energy  
Justin Kringstad, ND Pipeline Authority  
Jolene Vidal, Tax Department  
Jean Schafer, Basin Electric  
Karlene Fine, Industrial Commission  
Ryan Score, Office of State Treasurer  
Vicky Steiner, NDAOGPC

**Others present via phone:**

Todd Kranda – Kelsch, Kelsch, Ruff & Kranda Law Firm  
Lance Gaebe – Department of Trust Lands  
Cory Fong – Odney Advertising  
Mark Scheid – Ulteig/ACEC

**CALL TO ORDER/WELCOME**

Chairman Anderson called the meeting to order at 1:00 p.m. and welcomed Commission members and guests.

**Legislative Proposals – Review and Approve**

Justin Dever discussed the bill drafts:

• **Wind Energy – No bill draft**

This bill draft allows started wind energy projects to receive a 3% assessed value and the existing income tax credit, even if they are not completed by December 31, 2014.

Members discussed changes and revisions to the bill draft.

- Tax Department will provide revised language to accomplish intent of allowing companies to be taxed under section 57-33.2-04

**Motion: It was moved by Ness and seconded by Weeda to approve as adopted with amendments by the Tax Department.**

- **Oil and Gas Development Strategic Planning Authority Bill Draft (15.0220.01000)**  
*Appendix A*

Members discussed changes and revisions to the bill draft. Two additions were noted for inclusion:

- A funding source; similar to the Oil & Gas Research Council
- Legislative Reporting Requirements

**Motion: It was moved by Niezwaag and seconded by Straley to approve with amendments.**

- **Oil & Gas Tax Trigger Mechanism Bill Draft (15.0219.01000)** *Appendix B*

Members discussed changes and revisions to the bill draft.

**Motion: It was moved by Ness and seconded by Nisbet to adopt changes to the bill as amended.**

- **Drill Cuttings Beneficial Use (15.0143.01000)**  
*Appendix C*

Members discussed changes and revisions to the bill draft.

**Motion: It was moved by Weeda and seconded by Straley to approve as adopted.**

**ADJOURNMENT**

The meeting was adjourned unanimously at 2:00 pm

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Al Anderson Chairman	Date
Sherri Frieze Recording Secretary	Date

Introduced by

1 A BILL for an Act to create and enact chapter 17-10 of the North Dakota Century Code, relating  
2 to the oil and gas development strategic planning authority.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 17-10 of the North Dakota Century Code is created and enacted as  
5 follows:

6 **17-10-01. Oil and gas development strategic planning authority.**

7 The oil and gas development strategic planning authority is governed by the industrial  
8 commission. The industrial commission shall appoint a director and the director may hire  
9 employees or contract for services for the completion of the director's duties within the limits of  
10 legislative appropriations.

11 **17-10-02. Oil and gas development strategic planning.**

12 The authority shall develop and maintain a current comprehensive strategic plan to identify  
13 the current and future regional infrastructure needs of counties and communities affected by oil  
14 and gas development through the collection and analysis of information and opinions of state  
15 and local governmental entities and stakeholders involved in and affected by oil and gas  
16 development.

17 **17-10-03. Duties of the director.**

18 The director shall collect information from available resources and through studies directed  
19 by the industrial commission, analyze information from all available sources, and create a  
20 strategic plan to address and prioritize the current and future impacts and infrastructure needs  
21 of the state and counties and communities affected by oil and gas development. The director  
22 shall consult and cooperate with state and local governmental entities, oil and gas industry  
23 representatives, landowners, mineral owners, and other stakeholders involved in and affected

1 by oil and gas development. For the plan, the director must include an analysis of all current  
2 funding, programs, and incentives used to address impacts and infrastructure needs.

3 As directed by the industrial commission, the director shall analyze any changes or  
4 additions to funding, programs, and incentives to meet impacts and infrastructure needs. The  
5 director shall make recommendations to the industrial commission to make the most efficient  
6 use of state and local resources to meet the current and future impacts and infrastructure needs  
7 of the state and counties and communities affected by oil and gas development. The director  
8 may make recommendations for future areas of study and improved gathering of information.  
9 The director shall update the plan and recommendations based on changing conditions.

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 54-44.1 of the North Dakota  
2 Century Code, relating to appropriation of a portion of state oil and gas tax revenue exceeding  
3 forecasted amounts for distribution in the second year of the state biennium to supplement oil  
4 and gas gross production tax funding to political subdivisions; and to provide a contingent  
5 appropriation.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new section to chapter 54-44.1 of the North Dakota Century Code is created  
8 and enacted as follows:

9 **Determination of oil and gas tax revenues exceeding legislative forecast - Allocation.**

10 By March first of each even-numbered year, the tax commissioner shall determine the  
11 amount by which state oil and gas gross production tax and oil extraction tax actual revenues  
12 from taxable events during the period from July first through December thirty-first of the  
13 immediately preceding year exceed the forecasted amount of those revenues as contained in  
14 the legislative forecast prepared at the conclusion of the most recent regular session of the  
15 legislative assembly. The tax commissioner shall certify the amount of state oil and gas gross  
16 production tax and oil extraction tax actual revenues exceeding the legislative forecast as  
17 determined under this section to the state treasurer.

18 If the certified amount of state oil and gas gross production tax and oil extraction tax actual  
19 revenues exceeds the legislative forecast as determined under this section by twenty percent or  
20 more, the state treasurer shall allocate funds provided by legislative appropriation from the  
21 strategic investment and improvements fund among political subdivisions in proportion to the  
22 allocations among political subdivisions under section 57-51-15 for the month in which the  
23 allocation is made.

1        The amount allocated under this section must be distributed in approximately equal monthly  
2 amounts for the period beginning April 1, 2016, and ending June 30, 2017. The amounts  
3 allocated under this section must not be considered as revenue received by political  
4 subdivisions for purposes of chapter 57-51.

5        **SECTION 2. CONTINGENT APPROPRIATION.** If the amount of state oil and gas gross  
6 production tax and oil extraction tax actual revenues exceeds the legislative forecast as  
7 determined under section 1 of this Act, there is appropriated out of any moneys in the strategic  
8 investment and improvements fund in the state treasury, not otherwise appropriated, the sum of  
9 \$200,000,000, or so much of the sum as may be necessary, to the state treasurer for the  
10 purpose of allocation among political subdivisions as provided in section 1 of this Act for the  
11 period beginning April 1, 2016, and ending June 30, 2017.

**BILL NO.**

Introduced by

1 A BILL for an Act to create and enact chapter 23-48, a new subsection to section 57-51.1-01,  
2 and a new subsection to section 57-51.1-03 of the North Dakota Century Code, relating to  
3 licensing of commercial drill cuttings recyclers and an oil extraction tax reduction for delivery of  
4 drill cuttings to a licensed commercial drill cuttings recycler; to amend and reenact subsection 4  
5 of section 38-08-04 of the North Dakota Century Code, relating to definitions; to provide an  
6 effective date; and to provide an expiration date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** Chapter 23-48 of the North Dakota Century Code is created and enacted as  
9 follows:

10 **23-48-01. Licensing of commercial drill cuttings recyclers - Fees.**

11 The state department of health shall license commercial drill cuttings recyclers and  
12 recycling facilities and may charge a license fee established by rule commensurate with the  
13 cost to the department of licensing and facility inspections.

14 **23-48-02. Rules.**

15 The state department of health shall adopt rules under chapter 28-32 governing operations  
16 of commercial drill cuttings recyclers and recycling facilities. The rules must be adopted to  
17 assure compliance with federal and state laws and rules for protection of the state's water and  
18 air and public health in the handling and subsequent use of drill cuttings.

19 **23-48-03. Examination of records and property.**

20 Upon presentation of official credentials, an employee authorized by the state department of  
21 health may:

- 22 1. Examine the premises and facilities and copy books, papers, records, memoranda, or  
23 data of a commercial drill cuttings recycler.

1       2. Enter upon public or private property for the purpose of taking action authorized by this  
2           chapter and rules adopted under this chapter, including obtaining information from any  
3           person, conducting surveys and investigations, and taking corrective action.

4       **23-48-04. Responsibility for cost.**

5       The owner or operator of a commercial drill cuttings recycling facility is liable for the cost of  
6       any inspection and corrective action required by the state department of health.

7       **23-48-05. Causes of action restricted.**

8       Upon delivery of drill cuttings to a licensed commercial drill cuttings recycler or recycling  
9       facility and acceptance of the drill cuttings by the recycler or recycling facility, the well operator  
10       is not liable for any subsequent disposal or reuse of the drill cuttings or any material contained  
11       in the drill cuttings. This chapter does not create any new cause of action for damages on behalf  
12       of third parties for any subsequent disposal or reuse of the drill cuttings or any material  
13       contained in the drill cuttings.

14       **23-48-06. Commercial drill cuttings recycler bond.**

15       As a condition of licensure, the state department of health may require that a commercial  
16       drill cuttings recycler must post a bond payable to the state in a sufficient amount for  
17       remediation of any release or disposal of materials in violation of the rules adopted by the  
18       department.

19       **SECTION 2. AMENDMENT.** Subsection 4 of section 38-08-04 of the North Dakota Century  
20       Code is amended and reenacted as follows:

21       4. To classify wells as oil or gas wells for purposes material to the interpretation or  
22       enforcement of this chapter, to classify and determine the status and depth of wells  
23       that are stripper well property as defined in ~~subsection 8 of~~ section 57-51.1-01, to  
24       certify to the tax commissioner which wells are stripper wells and the depth of those  
25       wells, to recertify stripper wells that are reentered and recompleted as horizontal wells,  
26       and to certify to the tax commissioner which wells involve secondary or tertiary  
27       recovery operations under section 57-51.1-01, and the date of qualification for the  
28       reduced rate of oil extraction tax for secondary and tertiary recovery operations.

29       **SECTION 3.** A new subsection to section 57-51.1-01 of the North Dakota Century Code is  
30       created and enacted as follows:

1           "Drill cuttings" means earth and rock extracted from the wellbore during oil and gas  
2           drilling operations but does not include drilling fluids injected into the wellbore.

3           **SECTION 4.** A new subsection to section 57-51.1-03 of the North Dakota Century Code is  
4 created and enacted as follows:

5           If the well operator causes seventy-five percent or more of the drill cuttings from a well  
6           drilled and completed after June 30, 2015, to be delivered to a licensed commercial  
7           drill cuttings recycler or recycling facility before completion of the well, the first fifty  
8           thousand barrels of oil produced during the first eighteen months after completion is  
9           subject to a reduced tax rate of five percent of the gross value at the well of the oil  
10           extracted under this chapter. If the well operator causes seventy-five percent or more  
11           of the drill cuttings from a well drilled and completed after June 30, 2015, to be  
12           delivered to a licensed commercial drill cuttings recycler or recycling facility before  
13           completion of the well and none of the remaining drill cuttings are deposited in a  
14           reserve pit near the well site, the first fifty thousand barrels of oil produced during the  
15           first eighteen months after completion is subject to a reduced tax rate of four percent  
16           of the gross value at the well of the oil extracted under this chapter. A well eligible for a  
17           reduced tax rate under this subsection is eligible for the exemption for horizontal wells  
18           under subsection 3, if the exemption under subsection 3 is effective during all or part  
19           of the first twenty-four months after completion.

20           **SECTION 5. EFFECTIVE DATE - EXPIRATION DATE .** Section 4 of this Act is effective for  
21 taxable events occurring after June 30, 2015, and before July 1, 2019, and is thereafter  
22 ineffective.