

CHAPTER 54-17.5 LIGNITE RESEARCH, DEVELOPMENT AND MARKETING

54-17.5-01. Declaration of findings and public purpose.

The legislative assembly finds and declares that North Dakota's lignite industry produces approximately thirty million tons of lignite annually, contributing to our state's and nation's energy independence by generating electricity for more than two million people in the northern great plains region and by producing synthetic natural gas from coal that heats three hundred thousand homes and businesses in eastern states, which is equivalent to over twenty thousand barrels of oil per day. The legislative assembly further finds and declares that North Dakota's lignite industry generates over twenty-eight thousand direct and indirect jobs for North Dakota, nearly three billion dollars in annual business volume, and over one hundred three million dollars in annual tax revenue. The legislative assembly further finds and declares that it is an essential governmental function and public purpose to assist with the development and wise use of North Dakota's vast lignite resources by supporting a lignite research, development, and marketing program that promotes economic, efficient, and clean uses of lignite and products derived from lignite in order to maintain and enhance development of North Dakota lignite and its products; support educational activities relating to the lignite industry; preserve and create jobs involved in the production and utilization of North Dakota lignite; ensure economic stability, growth, and opportunity in the lignite industry; and maintain a stable and competitive tax base for our state's lignite industry for the general welfare of North Dakota. The legislative assembly further finds and declares that development of North Dakota's lignite resources must be conducted in an environmentally sound manner that protects our state's air, water, and soil resources as specified by applicable federal and state law.

54-17.5-02. Lignite research council - Compensation - Appointment of members.

The industrial commission shall consult with the lignite research council established by executive order in matters of policy affecting the administration of the lignite research fund. Section 44-03-04 does not apply to members of the council appointed by the governor.

54-17.5-03. Priority projects, processes, and activities.

In evaluating applications for funding from the lignite research fund for North Dakota's lignite research, development, and marketing program, the industrial commission and lignite research council shall give priority to those projects, processes, or activities that will preserve existing jobs and production, which will create the greatest number of new jobs and most additional lignite production and economic growth potential in coal-producing counties or those counties with recoverable coal reserves, which will attract matching private industry investment equal to at least fifty percent or more of the total cost, and which will result in development and demonstration of a marketable lignite product or products with a high level of probability of near term commercialization. For marketing applications, priority must be given to those projects, processes, or activities that develop baseline information, implement specific marketing strategies, and otherwise contribute to the effective marketing of lignite and its products. For reclamation applications, priority must be given to those projects, processes, or activities that will reduce unnecessary regulatory costs and assist in effectively reclaiming surface mined land to its original or better productivity as soon as possible. Any projects, activities, or processes selected by the commission for funding must achieve the priorities and purposes of the program, must have undergone technical review and be determined to have technical merit, must have generated matching private industry investment, and must have received a favorable lignite research council recommendation.

54-17.5-04. Industrial commission powers.

The industrial commission is hereby granted all powers necessary or appropriate to carry out and effectuate the purposes of this chapter, including the power:

1. To make grants or loans, and to provide other forms of financial assistance as necessary or appropriate, to qualified persons for research, development, and

- marketing projects, processes, or activities directly related to lignite and products derived from lignite.
2. To make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter, including the authority to contract for the administration of the lignite research, development, and marketing program.
 3. To issue evidences of indebtedness as authorized in this chapter and to borrow money in an amount not to exceed six million dollars 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 by section 54-17.5-05.
 4. To receive and accept aid, grants, or contributions of money or other things of value from any source to be held, used, and applied to carry out the purposes of this chapter, subject to the conditions upon which the aid, grants, or contributions are made, including aid, grants, or contributions from any department, agency, or instrumentality of the United States for any purpose consistent with the provisions of this chapter.
 5. To issue and sell evidences of indebtedness in an amount or amounts as the commission may determine, plus costs of issuance, financing, and any evidences of indebtedness funded reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purpose of funding research, development, and marketing projects, processes, or activities directly related to lignite and products derived from lignite.
 6. To refund and refinance its evidences of indebtedness from time to time as often as it is advantageous and in the public interest to do so, and to pledge any and all income and revenues derived by the commission under this chapter or from a project, process, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness.

54-17.5-05. Evidences of indebtedness.

1. Evidences of indebtedness issued by the industrial commission under this chapter are payable solely from:
 - a. Appropriations by the legislative assembly from moneys in the lignite research fund.
 - b. Revenues or income that may be received by the commission from lignite projects, processes, or activities funded under this chapter with the proceeds of the commission's evidences of indebtedness.
 - c. Revenues or income received by the commission under this chapter from any source.
2. Not later than July fifteenth of each year preceding the biennial session of the legislative assembly, the industrial commission shall submit to the office of the budget a request for the amount required to be appropriated from the lignite research fund to pay debt service on outstanding evidences of indebtedness during the following biennium.
3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and are not debt of the state or of any officer or agent of the state within the meaning of any statutory or constitutional provision. The evidences of indebtedness must be executed by the manual or facsimile signature of a member or members of the commission and the manual signature of a designated authenticating agent. Any evidences of indebtedness bearing the signature of a member of the commission in office at the date of signing are valid and binding for all purposes notwithstanding that before delivery the person has ceased to be a member of the commission.
4. The industrial commission shall establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:

- a. All moneys appropriated by the legislative assembly to the commission for the purpose of the reserve fund.
 - b. All proceeds of evidences of indebtedness issued under this chapter required to be deposited in the reserve fund by the terms of any contract between the commission and the holders of its evidences of indebtedness or any resolution of the commission concerning the proceeds of its evidences of indebtedness.
 - c. Any lawfully available moneys of the commission which it may determine to deposit in the reserve fund.
 - d. Any moneys from any other source made available to the commission for deposit in the reserve fund.
5. Moneys in the reserve fund may be expended only to pay the principal of and interest on evidences of indebtedness, including payment of any premium required to be paid when evidences of indebtedness are redeemed prior to maturity, and sinking fund installments as the same become due and payable.
 6. Moneys in the reserve fund may only be withdrawn in conformity with the terms of any contract between the commission and the holders of its evidences of indebtedness or any resolution of the commission concerning the proceeds of its evidences of indebtedness.
 7. The industrial commission must include in its biennial request to the office of the budget the amount, if any, necessary to restore the reserve fund to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution described in subdivision b of subsection 4. The legislative assembly may appropriate such amount from the lignite research fund to the commission for deposit in the reserve fund. If sufficient moneys are not available in the lignite research fund, the legislative assembly may appropriate any amount necessary out of any moneys in the general fund or any special funds in the state treasury not otherwise appropriated.

54-17.5-06. Access to commission records.

1. Materials and data submitted to, or made or received by, the commission, to the extent that the commission determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the commission or receiving commission services under this chapter are subject to section 44-04-18.4.
2. A person or entity must file a request with the commission to have material designated as confidential under subsection 1. A request to have material designated as confidential is exempt as defined in section 44-04-17.1. The request must contain any information required by the commission, and must include at least the following:
 - a. A general description of the nature of the information sought to be protected.
 - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
 - c. An explanation of why the information is not readily ascertainable by proper means by other persons.
 - d. A general description of any person or entity that may obtain economic value from disclosure or use of the information, and how the person or entity may obtain this value.
 - e. A description of the efforts used to maintain the secrecy of the information.
3. Any information submitted under subsection 2 is confidential. The commission shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the commission determines the information is either not relevant or not a trade secret, the commission shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.
4. The names or identities of independent technical reviewers on any project or program and the names of individual lignite council members making recommendations are confidential and may not be disclosed by the commission.