

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on December 4, 2017 beginning at 4:00 p.m.
Governor's Conference Room
State Capitol

Present: Governor Doug Burgum, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: Leslie Oliver, Governor's Office
Pat Nagel, Housing Finance Agency
Other attendees are listed on the attendance sheet available in the Commission files
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at 4:00 p.m. and the Commission took up Housing Finance Agency business.

Mr. Pat Nagel, Housing Finance Agency CFO, discussed the appointment of a Public Hearing Representative for the December 6, 2017 public hearing for the proposed issuance of Housing Finance Program Revenue Bonds in the amount of \$416,000,000 and ratification of the publication of the Notice of Public Hearing. (A copy is available in the Commission files.)

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission appoints Jolene Kline, Housing Finance Agency Executive Director, as the Industrial Commission's Public Hearing Representative for the December 6, 2017 public hearing on the proposed issuance of Housing Finance Program Revenue Bonds in the amount of \$416,000,000 and further that the Commission ratifies the publication of the Notice of Public Hearing. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Housing Finance Agency business, Governor Burgum adjourned the meeting at 4:04 p.m. and took up Department of Mineral Resources business.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary

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Agriculture Commissioner Doug Goehring

Also

Present: Leslie Oliver, Governor's Office
Lynn Helms, DMR
Bruce Hicks, DMR – Oil and Gas Division
Ed Murphy, DMR – Geological Survey
Other attendees are listed on the attendance sheet available in the Commission files
Members of the Press

Governor Burgum called the Department of Mineral Resources portion of the Industrial Commission meeting to order at 4:04 p.m. after completion of Housing Finance Agency business.

Mr. Lynn Helms, Department of Mineral Resources Director, presented proposed Order 28537 in Case 26062 - approval of new rules and amendments to the "General Rules and Regulations of Crude Oil and Natural Gas" codified as Article 43-02 N.D.A.C.

Mr. Bruce Hicks, Oil and Gas Division Assistant Director, reviewed the timetable and the hearing process that had taken place regarding these proposed amendments. He indicated that if everything stays on schedule as outlined, the final rules would be effective on **April 1, 2018** with the exception of the Royalty Owner Statement rules which are proposed to be effective **July 1, 2019**. He noted that they had received comments from 49 different commenters and went through 420 pages of written comments and transcripts of oral comments.

Mr. Helms and Mr. Hicks provided the Commission with a summary document that listed the proposed 2018 rule amendments (30 rules were impacted); the number of comments received; subsequent modification after consideration of comments (9 of the 30 rules) and the action taken by staff in preparing their final recommendation. (A copy of the summary and the proposed amendments to the rules are available in the Commission files.)

Mr. Hicks highlighted the following rules where modifications had been made based on comments received during the comment period and discussed each of the amendments and the reason for the amendment and modification:

- 43-02-03-14.2 - Oil and Gas Metering Systems
- 43-02-03-15 - Bond and Transfers of Wells
- 43-02-03-28 - Safety Regulation (Withdrawn)
- 43-02-03-30.1 - Leak and Spill Cleanup
- 43-02-03-33 - Notice of Intention to Plug Well
- 43-02-03-34.1 - Reclamation of Surface
- 43-02-03-49 - Oil Production Equip, Dikes and Seals
- 43-02-03-53.3 - SHF Construction & Operation Requirements
- 43-02-06-01 - Royalty Owner Information Statement (withdrawal for one part and modification on two parts)

There was considerable discussion regarding the amendments to the Royalty Owner Information Statement--the standardization that is being proposed--the costs to industry to make the computer modifications in order to provide the information on the royalty statement--timing of the implementation of this rule (the reason for the delay is the potential of legislative action which could require industry to modify their computer systems two times)--staff indicated that they would provide reports on any royalty statement revisions that may be made by the industry prior to July 1, 2019--North Dakota is the cutting edge state in regulating royalty statement information--

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves Order 28537 in Case 26062 - approval of new rules and amendments to the “General Rules and Regulations of Crude Oil and Natural Gas” codified as Article 43-02 N.D.A.C. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously. (A copy of Order 28537 with the appendix is available in the Commission files.)

Mr. Ed Murphy presented the Geological Survey quarterly report with a focus on the SB 2156 interim committee proposal regarding High-Level Radioactive Waste Disposal. (A copy of the report is available in the Commission files.) The report included information as follows:

- Wilson M. Laird Core and Sample Library
- Geological Survey Subsurface Studies
- Inyan Kara Formation
- Rare Earth Project
- High-Level Radioactive Waste Disposal
- Regulatory Programs
- Publications this Quarter
- Presentations this Quarter

In regards to the High-Level Radioactive Waste Disposal issue, Mr. Murphy outlined the proposed role of the Industrial Commission, the flow chart and timeline. There was a detailed discussion about the concept Mr. Murphy will present to the interim committee. A suggestion was made to add the Department of Agriculture to the proposed High-Level Radioactive Waste Advisory Council. It was noted that this proposal is in its early stages. Mr. Murphy indicated he would keep the Commission updated on his discussions with the interim committee. No action was required by the Commission.

Being no further Department of Mineral Resources business, Governor Burgum adjourned the meeting at 5:15 p.m. and took up Oil and Gas Research Program business.

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Present: Leslie Oliver, Governor's Office
Eric Hardmeyer, BND
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Members of the Press

Governor Burgum called the Oil and Gas Research Program portion of the Industrial Commission meeting to order at 5:15 p.m. after completion of Department of Mineral Resources business.

Ms. Karlene Fine, Industrial Commission Executive Director, made a request to transfer funds from the Oil and Gas Research Fund to the Pipeline Authority Fund as follows:

RE: OGRP/PA Transfer

Funding for the Pipeline Authority comes from the Oil and Gas Research Program. I am requesting, for cash flow purposes, authority to transfer \$50,000 from the Oil and Gas Research Fund to the Pipeline Authority Fund effective immediately. I am anticipating that the Oil and Gas Research Council will be recommending to the Commission at their next meeting a transfer of \$325,000 for the 2017-2019 biennium. (The \$325,000 amount is 3.25% of the funding that is available to the Oil and Gas Research Program in the biennium.) However, until the Council makes their recommendation funding is needed in the Pipeline Authority Fund to pay regular monthly bills. The law *does not require* the Commission to get a recommendation from the Oil and Gas Research Council on transfers but it has been the practice of the Commission to receive a recommendation from the Council on the allocation of the Oil and Gas Research Program funds.

In order to meet cash flow needs, I would request authority to transfer \$50,000 from the Oil and Gas Research Fund to the Pipeline Authority Fund.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission authorize the Industrial Commission Executive Director/Secretary to transfer \$50,000 from the Oil and Gas Research Fund to the Pipeline Authority Fund. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Being no further Oil and Gas Research Program business, Governor Burgum adjourned the meeting at 5:16 p.m. and took up Bank of North Dakota business.

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Also

Present: Leslie Oliver, Governor's Office
Melanie Gaebe, Agriculture Department
Eric Hardmeyer, Bank of North Dakota
Todd Steinwand, Bank of North Dakota
Kirby Evanger, Bank of North Dakota
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Members of the Press

Governor Burgum called the Bank of North Dakota portion of the Industrial Commission meeting to order at 5:16 p.m. following completion of Oil and Gas Research Program business.

Mr. Eric Hardmeyer, Bank of North Dakota President, presented a new report - BND Loan Portfolio & Administered Program Assets. (A copy of the report is available in the Commission files.) He indicated this was developed in response to a request for information to help understand what the Bank's core programs/assets are versus what are administered program related assets.

Mr. Hardmeyer reviewed the report and noted that the pie chart on the left shows the Bank's on-balance sheet loan portfolio of \$4.92 billion of loans. That is broken down into two categories -- one category would be the core lending activity made up of about \$2.5 billion in commercial, agricultural, and residential loans -- market driven loans that have no real economic program element to it. These include bank participation loans where local banks have asked the Bank to purchase a portion of a loan for a number of reasons such as a legal lending limit or a concentration of credit issue, etc. That would also be the case for the agricultural loans. In regards to the residential loans, the Bank has purchased 30-year mortgages from North Dakota banks and holds those loans. All these loans are assets of the Bank.

In response to a question, Mr. Hardmeyer stated that there is nothing that would prevent the Bank from selling the residential loan portfolio for a premium because there is an active market for those mortgages if there was a need for liquidity.

The second category in the pie chart are the Mission-Driven Loan Programs which include the commercial group - PACE, Match, School Construction, State Institutions, Political Subdivisions and Accelerated Growth (Business Development); agriculture group - Beginning Farmer, AgPace, Farm Financial Stability; and Student Loans - BND Deal, BND Deal One and BND Federal Student Loans. He reviewed the dollar amount of loans in each of the categories. He noted that the \$271 million of BND Federal Student Loans would be sold in January.

The pie chart on the right side of the report adds in the Off-Balance Sheet BND Administered Programs -- School Construction Assistance (previously administered by State Trust Lands), Western Area Water Supply (these are the loans that are not on the Bank's balance sheet -- Resource Trust Fund loans), Infrastructure Revolving Loan Fund, Medical Facility Infrastructure, Community Water, Home Rebuilders, etc. that total \$537 million. In response to a question, Mr. Hardmeyer stated that these are primarily legislative directed loan program/funding.

In response to a question regarding why some programs are off balance sheet, Mr. Hardmeyer stated that those programs are primarily legislative-driven programs with loan terms that you would not generally see in a bank--long term low interest rates of 2% and 1% with, in some cases, very little collateral.

Governor Burgum discussed the issues the State Water Commission is dealing with in regards to water funding. He asked that the Bank provide a separate report on the Bank's water portfolio -- whether the loans are held on-balance sheet or off-balance sheet. Mr. Hardmeyer indicated that in the Bank's proposed Strategic Plan they discuss a more collaborative effort with other agencies in regards to this type of financing.

Governor Burgum expressed a need to have a more planned approach for infrastructure financing -- whether it is for replacement or new. If the State had the appropriate information it could do a better job in selecting the best financing strategy. Mr. Hardmeyer indicated that the Bank is looking at those issues in administering the Infrastructure Revolving Loan Fund. Financing happens in many different forms. Is the borrower following the path of least resistance just because this Fund is the cheapest or are there other financing options available? The universe is huge for infrastructure needs and this Fund has a very small amount of funding compared to what is needed. The Bank is looking at how it can play a more impactful role of identifying what the gaps are and then the Legislature can determine how big the fund should be. There is a lot of work to be done with meeting infrastructure needs. Governor Burgum pointed out that the Department of Transportation has a multi-year look forward of when they think they are going to be doing things and there is no equivalent plan for water needs.

The Commission thanked Mr. Hardmeyer for the new report.

Mr. Hardmeyer presented the non-confidential Bank of North Dakota Advisory Board September 21 and 28, 2017 meeting minutes.

Governor Burgum closed the meeting at 5:36 p.m. pursuant to North Dakota Century Code 6-09-35 to discuss the following items listed on the agenda under Bank of North Dakota confidential business:

- Consideration of Bank of North Dakota Loan Applications
- Presentation of BND Advisory Board confidential September 21 and 28, 2017 meeting minutes.

Individuals present during the confidential session in addition to the Industrial Commission members were:

Leslie Oliver, Governor's Office
Melanie Gaebe, Agriculture Department
Eric Hardmeyer, Bank of North Dakota
Todd Steinwand, Bank of North Dakota
Kirby Evanger, Bank of North Dakota
Karlene Fine, Industrial Commission

Following the confidential portion of the meeting, the Commission reconvened in non-confidential session at 6:24 p.m. Governor Burgum stated that during its executive session the Commission considered Bank of North Dakota loan applications and **it had been moved and seconded that the Bank of North Dakota be authorized to participate in loans identified as Attachments 8 - 11. In non-confidential session, on a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.**

Being no further Bank of North Dakota business, Governor Burgum adjourned the meeting at 6:25 p.m. and the Commission took up Administrative business.

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A handwritten signature in blue ink that reads "Karlene Fine". The signature is written in a cursive, flowing style.

Karlene Fine, Executive Director and Secretary

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Members of the Press

Governor Burgum called the Administrative portion of the Industrial Commission meeting to order at 6:25 p.m. after completion of Bank of North Dakota business.

Ms. Karlene Fine, Industrial Commission Executive Director/Secretary, discussed with the Commission the compensation level for the North Dakota Mill President/General Manager Vance Taylor and provided background information on his compensation over the past four years. She presented her recommendation for State Mill President/General Manger compensation for 2017 as follows:

RE: Vance Taylor Compensation

Fiscal Year 2017 was another good year for the State Mill. Profits were \$9,719,164; an increase from the prior year's profits of \$9,336,618.

When Vance Taylor was hired by the Industrial Commission his compensation package included an annual bonus opportunity based on performance—up to 30% of base salary. Thirty percent of his base salary would be \$73,757 (Vance's base salary for FY 2017 was \$245,856.)

The Commission has previously determined that the 30% bonus payment be determined with 20% based on what had been distributed to Mill employees under the gain sharing plan and 10% based on other criteria—achieving goals outlined in the strategic plan, etc.

The gain sharing payout for FY 2017 for Mill employees was 15.50% as compared to 14.86% the prior year. The FY 2017 gain sharing payment was 4% for certain criteria and 11.50% based on profits. The maximum amount under this portion of the compensation plan would be \$49,171. All the criteria goals were met and profits were up from the prior year. Based on the gain sharing payout portion, it is my recommendation that Vance receive the amount of \$47,174.

As to the remaining 10% of his 30% bonus potential (\$24,586), Vance and the Mill achieved a number of goals that were established by the Commission last year in the Mill's strategic plan— shipments were up over the prior year, G-Mill expansion was completed with it being placed into full operation, work was nearly completed on Phase 1 of the High Speed Receiving System, engineering work began on Phase II, discussions were started on the land purchases needed for Phase II, and the Mill's budget and the additional FTE positions were approved by the Legislature. It is my recommendation that he receive the maximum amount under this portion of the bonus potential. Fiscal Year 2017 was a very busy year for the Mill with the construction projects in addition to maintaining milling operations. Vance is doing a very good job at the Mill. In total I am recommending he receive a bonus of \$71,760 for FY2017.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Industrial Commission Executive Director/Secretary and authorize a bonus for the North Dakota Mill President/General Manager Vance Taylor for FY 2017 in the amount of \$71,760. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine noted that his overall compensation is lower than what is currently being paid in the milling industry and the Commission will be provided with more information on that topic at a future meeting.

Ms. Fine also provided the Commission members with a copy of the Industrial Commission July 1, 2015 - June 30, 2017 Biennial Report that had recently been completed and distributed as required by law.

Ms. Fine also provided an update on the medical status of her assistant, Ms. Campbell. The Commission extended their best wishes.

In response to a question, Ms. Fine stated that now that they have an indication of how long Ms. Campbell will be out she will try to find some temporary support to come into the office. She stated that the past few weeks have been very busy with the completion of the biennial report, the sale of the North Dakota Building Authority bonds, and the Outdoor Heritage Fund Grant Round 10. She stated that she will make every effort to keep up with the workload. The Commission members encouraged her to get temporary staff as needed.

Ms. Fine also reported that the application period closed on the Deputy Executive Director/Secretary job announcement. There were 26 applications that were accepted. She is beginning the review of the applications. Her timetable is to have a recommendation to the Commission in January.

Being no further Administration business, Governor Burgum adjourned the meeting at 6:39 p.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary