

2023 JOINT POLICY

HB 1546

2023 JOINT STANDING COMMITTEE MINUTES

Policy Committee
Roughrider Room, State Capitol

HB 1546
10/23/2023

A bill relating to the clean sustainable energy authority's fertilizer development incentive program; to provide for retroactive application; and to provide an effective date.

1:45PM Co-Chairman Thomas opened the hearing.

Members Present: Co-Chairman Klein, Senator Clemens, Senator Conley, Senator Elkin, Senator Hogan, Senator Kannianen, Senator Kessel, Senator Larson, Senator Lee, Senator Luick, Senator Patten, Senator Piepkorn, Senator Roers, Senator Wobbema, Co-Chairman Thomas, Representative Anderson, Representative Dobervich, Representative Headland, Representative Heinert, Representative Kasper, Representative Klemin, Representative Koppelman, Representative Longmuir, Representative Louser, Representative Ruby, Representative Schauer, Representative Schneider, Representative Weisz.

Discussion Topics:

- Appropriation
- Nitrogen fertilizer importation
- Regional production
- Electrolysis requirement
- Forgivable loan language, purpose, and conditions
- Reason for retroactive language
- Product of plant being considered
- Other plants in production for same purpose
- NextEra Energy project plans
- State partnership/investment in this project
- Retail partnership plans
- Hydrogen extraction efficiency rate
- Kilowatt charge rate in production
- Environmental Impact, water usage, and power usage
- NextEra company ownership
- Economic potential
- Fertilizer pricing and cost of importing
- Scarcity effect
- Product cost concerns
- NextEra business plan availability
- Oxygen production as a by-product
- Estimated total construction cost for NextEra Energy
- Bank of North Dakota business loan process

- Amendments Proposed
- Natural Gas status in the state
- Effect on coal and natural gas entities
- Allowing for source competition
- Certainty of a plant being built
- Clean Sustainable Energy Council purpose

1:45PM Christopher Joseph, Senior Counsel, Legislative Council introduced and explained the bill and fiscal note. #28061

1:49PM Doug Goehring, Agriculture Commissioner. Testified in favor of the bill. #28051

2:11PM Julie Voeck, NextEra Energy. Introduction of John DiDonato.

2:11PM John DiDonato, Vice President, NextEra Energy. Testified in favor of the bill. #28069

2:36PM Garrett Goldfinger, Project Director of Hydrogen Development, NextEra Energy. Testified in favor of the bill. #28052

3:09PM Co-Chairman Thomas recessed.

3:20PM Co-Chairman Thomas reconvened the hearing.

3:21PM Kelvin Hullet, Chief Business Development Officer, Bank of North Dakota. Verbal testimony on the bill.

3:40PM Co-Chairman Thomas recessed.

4:44PM Co-Chairman Thomas reconvened the hearing.

4:44PM Mark Bring, Ottertail Power Company. Testified in favor of the bill.

4:48PM Matt Purdue, Government Relations Director, North Dakota Farmers Union. Testified in support of the bill. #28070

4:50PM Connie Ova, Former Development Director, Jamestown Stutsman Development Cooperation and Spiritwood Energy Cooperation. Testified in support of the bill.

4:53PM Representative Novak, District 33. #28048 for testimony and #28049 for proposed amendments.

5:07PM Jason Bohrer, Lignite Energy Council. Testified in favor of proposed amendment.

5:22PM Jean Schaeffer, Basin Electric Power Cooperative. Testified in favor of the proposed amendment.

5:26PM Representative S. Olson, #28050 for proposed amendment.

5:32PM Senator Lee moved to vote on rejecting both proposed amendments.

5:33PM Senator Conley seconded the motion.

5:36PM Senator Lee withdrew motion.

5:36PM Senator Conley seconded the motion.

5:37PM Co-Chairman Thomas closed the hearing for the day and will reconvene the next day.

Additional written testimony:

Brenda Elmer, Executive Director, ND Corn Growers Association #28022
Doug Sharbono, Citizen #28046

Carie Winings, Committee Clerk

2023 JOINT STANDING COMMITTEE MINUTES

Policy Committee Roughrider Room, State Capitol

HB 1546
10/24/2023

A bill relating to the clean sustainable energy authority's fertilizer development incentive program; to provide for retroactive application; and to provide an effective date.

9:30AM Co-Chairman Thomas opened the reopened the hearing.

Members Present: Co-Chairman Klein, Senator Clemens, Senator Conley, Senator Elkin, Senator Hogan, Senator Kannianen, Senator Kessel, Senator Larson, Senator Lee, Senator Luick, Senator Patten, Senator Piepkorn, Senator Roers, Senator Wobbema Co-Chairman Thomas, Representative Anderson, Representative Dobervich, Representative Headland, Representative Heinert, Representative Kasper, Representative Klemin, Representative Koppelman, Representative Longmuir, Representative Louser, Representative Ruby, Representative Schauer, Representative Schneider, Representative Weisz.

Discussion Topics:

- Amendment
- Grant amount
- Clean sustainability
- Amending Century Code
- Fertilizer method
- Technology of electrolysis
- Legislative intent
- Council Flexibility
- Free Market Competition
- Industrial Commission

9:34AM Senator Lee withdrew tabled motion.

9:34AM Representative Heinert presented an amendment. #28068.

9:36AM Representative Heinert moved amendment.

9:37AM Representative Schauer seconded the motion.

9:47AM Representative Heinert withdrew.

9:48AM Representative Schauer seconded.

9:49AM Representative Klemin presented an amendment. #28054

9:49AM Representative Klemin moved amendment 23.1168.01004.

9:50AM Representative Heinert seconded.

9:54AM Roll call vote:

Senators	Vote	Representatives	Vote
Senator Jerry Klein	N	Representative Paul Thomas	Y
Senator David Clemens	Y	Representative Dick Anderson	Y
Senator Cole Conley	N	Representative Gretchen Dobervich	N
Senator Jay Elkin	N	Representative Craig Headland	N
Senator Kathy Hogan	N	Representative Pat Heinert	Y
Senator Jordan Kannianen	N	Representative Jim Kasper	Y
Senator Greg Kessel	N	Representative Lawrence Klemin	Y
Senator Diane Larson	N	Representative Ben Koppelman	Y
Senator Judy Lee	N	Representative Donald Longmuir	Y
Senator Larry Luick	N	Representative Scott Louser	Y
Senator Dale Patten	N	Representative Dan Ruby	Y
Senator Merrill Piepkorn	N	Representative Austen Schauer	Y
Senator Kristin Roers	N	Representative Mary Schneider	Y
Senator Michael Wobbema	Y	Representative Robin Weisz	N

Motion Failed 13-15-0. (House 11-3-0 Senate 2-12-0)

9:56AM Representative Heinert moved amendment 23.1168.01005

9:56AM Representative Schauer seconded.

10:04AM Roll call vote:

Senators	Vote	Representatives	Vote
Senator Jerry Klein	N	Representative Paul Thomas	N
Senator David Clemens	Y	Representative Dick Anderson	Y
Senator Cole Conley	N	Representative Gretchen Dobervich	N
Senator Jay Elkin	N	Representative Craig Headland	N
Senator Kathy Hogan	N	Representative Pat Heinert	Y
Senator Jordan Kannianen	N	Representative Jim Kasper	Y
Senator Greg Kessel	N	Representative Lawrence Klemin	Y
Senator Diane Larson	N	Representative Ben Koppelman	Y
Senator Judy Lee	N	Representative Donald Longmuir	Y
Senator Larry Luick	N	Representative Scott Louser	N
Senator Dale Patten	N	Representative Dan Ruby	Y
Senator Merrill Piepkorn	N	Representative Austen Schauer	Y
Senator Kristin Roers	N	Representative Mary Schneider	N
Senator Michael Wobbema	N	Representative Robin Weisz	N

Motion failed 9-19-0. (House 8-6-0 Senate 1-13-0)

10:07AM Representative Anderson proposed amendment to remove Pg 2 line 24 and 25 and add language in Novak amendment.

10:09AM Representative Anderson moved Representative Novak amendment #28049

10:11AM Representative Ruby seconded.

10:30AM Roll call vote:

Senators	Vote	Representatives	Vote
Senator Jerry Klein	N	Representative Paul Thomas	N
Senator David Clemens	Y	Representative Dick Anderson	Y
Senator Cole Conley	N	Representative Gretchen Dobervich	N
Senator Jay Elkin	N	Representative Craig Headland	N
Senator Kathy Hogan	N	Representative Pat Heinert	Y
Senator Jordan Kannianen	Y	Representative Jim Kasper	Y
Senator Greg Kessel	N	Representative Lawrence Klemin	Y
Senator Diane Larson	N	Representative Ben Koppelman	Y
Senator Judy Lee	N	Representative Donald Longmuir	N
Senator Larry Luick	Y	Representative Scott Louser	N
Senator Dale Patten	Y	Representative Dan Ruby	Y
Senator Merrill Piepkorn	N	Representative Austen Schauer	N
Senator Kristin Roers	Y	Representative Mary Schneider	Y
Senator Michael Wobbema	N	Representative Robin Weisz	N

Motion failed 12-16-0. (House 7-7-0 Senate 5-9-0)

10:32AM Senator Lee moved a Do Pass.

10:32AM Representative Weisz seconded.

10:48AM Roll call vote:

Senators	Vote	Representatives	Vote
Senator Jerry Klein	Y	Representative Paul Thomas	Y
Senator David Clemens	N	Representative Dick Anderson	N
Senator Cole Conley	Y	Representative Gretchen Dobervich	Y
Senator Jay Elkin	Y	Representative Craig Headland	Y
Senator Kathy Hogan	Y	Representative Pat Heinert	Y
Senator Jordan Kannianen	Y	Representative Jim Kasper	N
Senator Greg Kessel	Y	Representative Lawrence Klemin	Y
Senator Diane Larson	Y	Representative Ben Koppelman	N
Senator Judy Lee	Y	Representative Donald Longmuir	Y
Senator Larry Luick	Y	Representative Scott Louser	Y
Senator Dale Patten	Y	Representative Dan Ruby	N
Senator Merrill Piepkorn	Y	Representative Austen Schauer	Y
Senator Kristin Roers	Y	Representative Mary Schneider	Y
Senator Michael Wobbema	Y	Representative Robin Weisz	Y

Motion passed 23-5-0. (House 10-4-0 Senate 13-1-0)

Senator Patten and Representative Headland will carry the bill.

10:50AM Co-Chairman Thomas closed the hearing.

Carie Winings, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1546: Joint Policy Committee (Rep. Thomas, Co-Chairman) recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1546 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1546: Joint Policy Committee (Sen. Klein, Co-Chairman) recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1546 was placed on the Fourteenth order on the calendar. This bill affects workforce development.

TESTIMONY

HB 1546



October 23, 2023

Chairman Thomas and Members of the Committee:

Thank you for the opportunity to address this important issue.

The North Dakota Corn Growers Association, the grassroots member association representing the state's 13,000 corn growers at the state and federal levels of government, supports House Bill 1546, legislation to establish and fund the fertilizer development incentive program.

Corn growers have been disproportionately negatively impacted by fertilizer shortages and price spikes. As the world population is expected to exceed nine billion by 2050, fertilizer will be needed more than ever to boost crop production to feed its inhabitants.

North Dakota is at the end of the fertilizer supply chain, which lends itself to greater price volatility, frequent supply shortages, and higher prices for producers. Ammonia is commonly half the price in the U.S. Gulf compared to our part of the country. Incentives to increase in-state fertilizer production will help ensure a more stable and more affordable fertilizer supply.

While we do not endorse any particular company that may consider producing fertilizer in North Dakota, we applaud the state's interest in helping to incent development of a resource we consider critical to agriculture in our state.

Please support a DO PASS motion for this fertilizer development incentive program. Thank you.

Sincerely,

Brenda Elmer
Executive Director

**Do Not Pass Testimony
of Doug Sharbono, citizen of North Dakota
on HB1546
in 2023 Special Session, Sixty-eighth Legislative Assembly of ND**

Dear Chairmen Thomas and Klein and members of the Joint Policy Committee, I am writing as a citizen and believe HB1546 is poor legislation as written and ask for a "Do Not Pass" on it.

North Dakota is an energy and agriculturally rich state. Fertilizer production locally in North Dakota should be a natural win-win, particularly with world unrest that has and can disrupt wholesale supply of fertilizer. I think it would be great to generate it locally, if done correctly.

There are some confounding things with the fertilizer legislation in the past year. Tracking the fertilizer legislation has been exceedingly difficult. It was previously amended into various omnibus bills at the last minute and transferred from bill to bill. Testimony on the \$125,000,000.00 appropriation has not really been readily available until now. This lack of scrutiny and debate for this appropriation amount is troubling.

There has been a wild-eyed penchant to throw all our eggs in one technological basket. With the specified delivery method of electrolysis in the legislation, a process not yet used on a widespread industrial basis, we are gambling that this will work. I do not think it is prudent that the North Dakota citizen should be forced to take a \$125,000,000.00 gamble. That is an irresponsible sum of money to be spent on an industrially unproven method.

Furthermore, electrolysis is an expensive form of energy used to create fertilizer. Hydrogen creation is roughly twice the cost through electrolysis than through the use of natural gas using the Haber Process. It seems silly in a state where under the force of law, we are endeavoring to capture natural gas at the well head, that we instead look for more expensive and untested production methods for the manufacture of fertilizer. We should be good stewards and use the waste products that we create in oil extraction. Electrolysis does not contribute to this good stewardship.

Please do NOT pass HB1546 for the benefit of our citizens in North Dakota. Good stewardship demands killing this bill in its current form.

Thank you,
Doug Sharbono
1708 9th St S
Fargo, ND 58103

October 23, 2023

Testimony for Anna Novak, HB1546

Good afternoon, Mr. Chairman and members of the committee.

For the record, my name is Anna Novak, Representative from District 33. You should have in front of you an amendment to HB1546, which was prepared for me by Legislative Council. I am really amazed by our team up there and how quickly they have been able to get things organized for the special session. I don't think they ever rest! Thank you to the legislative council staff in the room today!

I've had conversations with farmers within the legislature and throughout the state, and it's become obvious to me that they need access to more fertilizer, and that the costs of fertilizer are a real problem for those working in the agriculture industry. As a state, we have a history of reinvesting state funds into our critical industries, and certainly - agriculture is one of those critical industries.

Because of the surplus of state funds derived from the fossil fuels industry specifically, North Dakota is in a good financial position to incentivize the production of fertilizer and help our farmers. I fully support dangling the financial carrot of a grant, forgivable loan or whatever you'd like to call it to spur investment in the state for fertilizer production.

However, I believe we should not discriminate against any feedstock for the production of fertilizer, as the bill currently reads – which is why I'm offering the amendment. The farmers in North Dakota don't necessarily care how fertilizer is produced. So, if it can be produced in a way other than by the electrolysis of water, potentially at a lower cost and a faster turnaround time, it seems to me that this is what is in the best interest of the state as a whole. The Clean Sustainable Energy Authority now can and will vet each project appropriately. I'm not well-versed in the process of electrolysis of water so it's possible that the production of fertilizer using this method might make the most sense. The amendment I'm proposing doesn't exempt that method from applying for funding through the Clean Sustainable Energy Authority. It simply doesn't discriminate against other feedstocks – like coal, natural gas or even nuclear - from being considered. Government should never be in the business of choosing winners and losers, like what was initially proposed.

The amendment I'm proposing also allows the grant or forgivable loan to be used to expand an existing facility. It's a very real possibility that an already existing facility might be able to dramatically increase the fertilizer produced if they receive funds from this program to expand. Sometimes it's cheaper to expand than start from scratch! As a result, our state dollars might go further with an example such as this.

The bills introduced by the ND state legislature typically solve a problem by creating a goal or solution. I believe that we as legislators need to ask ourselves if the goal of this bill is to earmark funds for a specific project OR if it's to get fertilizer to our farmers as quickly and in the most economical way possible. If you agree that it should be the latter, I encourage you to adopt the amendment I'm proposing. With that, I'll stand for any questions. Thank you.

23.1168.01001
Title.

Prepared by the Legislative Council staff for
Representative Novak
October 23, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1546

Page 2, line 21, after the underscored semicolon insert "and"

Page 2, line 23, remove "; and"

Page 2, remove line 24

Page 2, line 25, remove "electrolysis of water"

Page 2, line 26, after "construction" insert "or expansion"

Page 2, line 26, replace the second "the" with "a"

Renumber accordingly

23.1168.01002

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1546

Introduced by

Legislative Management

1 A BILL for an Act to amend and reenact section 54-63.1-04 of the North Dakota Century Code,
2 relating to the clean sustainable energy authority's fertilizer development incentive program; to
3 provide for retroactive application; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 54-63.1-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-63.1-04. Clean sustainable energy authority - Duties - Report.**

- 8 1. The authority shall make recommendations to the commission for program guidelines,
9 including eligibility criteria for entities to receive funding under this chapter.
- 10 2. The nonvoting technical advisors shall develop a process to review and evaluate
11 projects to determine the technical merits and feasibility of any application, including
12 potential benefits of the development of low-emission technology, the expansion of the
13 development of the state's natural resources or energy production, and the
14 contribution to the economic diversity in the state.
- 15 3. The authority may develop a loan program or a loan guarantee program under the
16 clean sustainable energy fund. The Bank of North Dakota shall administer the loan
17 program or loan guarantee program. The interest rate of a loan under this program
18 may not exceed two percent per year. The maximum term of a loan under this section
19 must be approved by the commission based on a recommendation from the authority.
20 The Bank shall review applications for loans or loan guarantees and shall consider the
21 business plan, financial statements, and other information necessary to evaluate the
22 application. To be eligible for a loan or loan guarantee, an entity shall agree to provide
23 the Bank of North Dakota with information as requested. The Bank of North Dakota
24 may develop policies for loan participation with local financial institutions.

- 1 4. The authority shall make recommendations to the commission for grant awards, loan
2 approvals, or other financial assistance to provide funding to support research,
3 development, and technological advancements for the large scale development and
4 commercialization of projects, processes, activities, and technologies that reduce
5 environmental impacts and increase sustainability of energy production and delivery in
6 accordance with this chapter. Any projects, processes, activities, and technologies
7 selected by the commission for funding must have been recommended by the
8 authority, must demonstrate feasibility based on a technical review conducted by the
9 nonvoting technical advisors of the authority, must have other sources of financial
10 support, and must achieve the priorities and purposes of the program. At the request
11 of the authority, the Bank of North Dakota shall provide a recommendation regarding
12 the economic feasibility of a project, process, activity, or technology under
13 consideration by the authority. The Bank shall review the business plan, financial
14 statements, and other information necessary to provide a recommendation.
- 15 5. The authority shall develop a fertilizer development incentive program, including
16 guidelines to provide loan forgiveness. Funding for the fertilizer development incentive
17 program under this subsection is limited to one hundred twenty-five million dollars.
- 18 a. To be eligible for the fertilizer development incentive program:
- 19 (1) The fertilizer production facility must be located within the state;
20 (2) The owner of the fertilizer production facility must be an entity domiciled in
21 the United States or Canada;
- 22 (3) The fertilizer production facility may not be owned or controlled in whole or
23 part, directly or indirectly, by a person that is a citizen of, operates a
24 principal office in, or is owned by or closely affiliated with a country listed in
25 15 CFR 7.4(a);
- 26 (4) The owner must borrow money under a program administered by the Bank
27 of North Dakota; and
- 28 ~~(4)~~(5) The fertilizer production facility must use hydrogen produced by the
29 electrolysis of water.
- 30 b. Upon completion of the construction of the fertilizer production facility, the
31 authority shall forgive the loan and shall use fertilizer development incentive

1 funding to repay any outstanding amount borrowed, as certified by the Bank. The
2 authority shall request an appropriation from the strategic investment and
3 improvements fund or other funding sources to provide fertilizer development
4 incentive funding to repay any outstanding amount borrowed.

5 6. The authority may consult with any other state agency necessary to carry out the
6 purposes under this chapter.

7 ~~6.7.~~ Each biennium, the authority shall provide a written report to the legislative
8 management regarding its activities and the program's financial impact on state
9 revenues and the state's economy.

10 **SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to July 1, 2023.

11 **SECTION 3. EFFECTIVE DATE.** This Act becomes effective immediately upon its filing with
12 the secretary of state.

COMMISSIONER
DOUG GOEHRING



ndda@nd.gov
www.nd.gov/ndda

NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

Testimony on HB 1546
Doug Goehring
Agriculture Commissioner

Joint Policy Committee
68th Legislative Assembly (2023-2025) – Special Session
Monday, October 23, 2023, 11:35 a.m.
Roughrider Room, State Capitol

Chairman Thomas, Senator Klein, and committee members, I am Doug Goehring, Agriculture Commissioner.

I am here this morning to testify in favor of HB 1546 – relating to the clean sustainable energy authority's fertilizer development incentive program.

I support this program that will advance North Dakota value-added agriculture.

North Dakota currently imports more than half the nitrogen fertilizer we use. This program will encourage development of regional production creating a more stable fertilizer supply that will reduce our dependance on foreign sources.

Additionally, HB 1546 will support a resilient, stable, and secure supply of ammonia for agriculture and hydrogen production for emerging energy projects.

Chairman Thomas, Chairman Klein, and committee members, thank you for your consideration of HB 1546. I will respectfully stand for any questions.

Testimony of Garrett Goldfinger
NextEra Energy
2023 North Dakota Legislature Special Session - Policy Committee
October 23, 2023

Mr. Chairman and members of the committee, for the record my name is Garrett Goldfinger. I serve as Director of Hydrogen Development for NextEra Energy Resources. I have worked to develop and build energy projects for the past 15 years, focusing on bringing new technologies to market including LNG, gas and oil-fired power plants, and nuclear power.

I'd like to thank you for the opportunity to speak before you to support legislation that will create a fertilizer post-production incentive enabling the development of an electric fertilizer manufacturing plant here in North Dakota.

NextEra Energy Resources is currently developing such a fertilizer plant using advanced electrolyzer technology that would bring North Dakota significant benefits, including major infrastructure investments and stability to the agricultural supply chain.

North Dakota has a wealth of untapped electric resources and currently exports half of the electricity generated in the State. Electrolyzer projects allow the State to realize critical economic benefits by adding load to the grid, relieving transmission congestion, providing revenues to in-state electric utilities, and providing grid resiliency and reliability. All this while unlocking the massive economic potential of North Dakota's robust and diverse energy resources.

This project will use advanced electrolyzer technology, efficiently using electricity to convert water into hydrogen. That hydrogen is then combined with nitrogen from the air and synthesized into ammonia, serving as the base building block for downstream fertilizer products, such as urea.

This technology only requires electricity and water as feedstocks and does not require natural gas. The unique nature of this process allows the facility to be sited in the heart of North Dakota's highest corn yield counties, which have the highest demand for fertilizer and insufficient access to natural gas resources.

Support and interest from both the agriculture and electric power industries, as well as the local community, highlights confidence in feasibility of the project and the economic growth it will provide.

Over the past 6 months, NextEra Energy Resources has spent millions of dollars in project development including funding grid studies, securing land positions, and advancing engineering design. All this highlights **our** belief in the feasibility of this project.

We have secured multiple site options where we are currently conducting permitting, transmission, water, wastewater, and engineering studies. These sites stand in close

proximity to one another, each with unique advantages, ensuring efficient development and multiple pathways to project construction.

We have engaged in early discussions with localities and agencies to ensure there is sufficient capacity to support the water and wastewater requirements for this project without impacting the needs of other industries or communities.

NextEra Energy Resources has also explored load studies with local electric suppliers for seamless integration into North Dakota's electric infrastructure and framework.

The benefits of this project to North Dakota cannot be understated.

Providing a secure and in-state supply of nitrogen fertilizer would create cost and supply stability in North Dakota, inviting further fertilizer production investment in the state with potentially billions of dollars of total investment in the sector.

North Dakota is also not the only underserved State in the Upper Midwest lacking in-state fertilizer production. This opportunity can provide the initial investment to catalyze electric fertilizer manufacturing growth in the State, flipping the State from a net importer to a net exporter of fertilizer to the region.

Given the diverse energy resources in the State and geological sequestration potential, this program is a strong compliment to proposed blue hydrogen projects out West. Passing this bill will catalyze electric fertilizer projects, complementing other programs targeting natural-gas fertilizer production and driving significant economic growth as part of an "all of the above" energy diversification strategy. This strategy will keep North Dakota agriculture cost-competitive while reducing carbon intensity.

This type of electric fertilizer project will be fundamental in lowering the carbon footprint of the agriculture industry while providing potential benefits to renewable diesel and ethanol plants by serving to lower the total carbon intensities of North Dakota biofuels. This would position North Dakota as not just a national leader in clean energy agricultural practices, but a global leader.

Therefore, I humbly ask the committee to support the proposed legislation for a fertilizer post-production incentive program focused on scaling electrolyzer technology in the State.

Through this legislation, which would enable the development of electric fertilizer projects, North Dakota would build on its position as a leader in energy and establish the State as a leader in the hydrogen economy.

Thank you for your time and consideration of such a critically important program.

23.1168.01004
Title.

Prepared by the Legislative Council staff for
Representative Klemin
October 23, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1546

Page 2, line 26, after the underscored period insert "The funds from the loan may not be disbursed to the owner until the construction is certified to be complete and the fertilizer production facility is operating.

c."

Renumber accordingly

Introduced by

Legislative Management

1 A BILL for an Act to amend and reenact section 54-63.1-04 of the North Dakota Century Code,
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3 provide for retroactive application; and to provide an effective date.

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- 8 1. The authority shall make recommendations to the commission for program guidelines,
9 including eligibility criteria for entities to receive funding under this chapter.
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11 projects to determine the technical merits and feasibility of any application, including
12 potential benefits of the development of low-emission technology, the expansion of the
13 development of the state's natural resources or energy production, and the
14 contribution to the economic diversity in the state.
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16 clean sustainable energy fund. The Bank of North Dakota shall administer the loan
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18 may not exceed two percent per year. The maximum term of a loan under this section
19 must be approved by the commission based on a recommendation from the authority.
20 The Bank shall review applications for loans or loan guarantees and shall consider the
21 business plan, financial statements, and other information necessary to evaluate the
22 application. To be eligible for a loan or loan guarantee, an entity shall agree to provide
23 the Bank of North Dakota with information as requested. The Bank of North Dakota
24 may develop policies for loan participation with local financial institutions.

- 1 4. The authority shall make recommendations to the commission for grant awards, loan
2 approvals, or other financial assistance to provide funding to support research,
3 development, and technological advancements for the large scale development and
4 commercialization of projects, processes, activities, and technologies that reduce
5 environmental impacts and increase sustainability of energy production and delivery in
6 accordance with this chapter. Any projects, processes, activities, and technologies
7 selected by the commission for funding must have been recommended by the
8 authority, must demonstrate feasibility based on a technical review conducted by the
9 nonvoting technical advisors of the authority, must have other sources of financial
10 support, and must achieve the priorities and purposes of the program. At the request
11 of the authority, the Bank of North Dakota shall provide a recommendation regarding
12 the economic feasibility of a project, process, activity, or technology under
13 consideration by the authority. The Bank shall review the business plan, financial
14 statements, and other information necessary to provide a recommendation.
- 15 5. The authority shall develop a fertilizer development incentive program, including
16 guidelines to provide loan forgiveness. Funding for the fertilizer development incentive
17 program under this subsection is limited to one hundred twenty-five million dollars.
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20 (2) The owner of the fertilizer production facility must be an entity domiciled in
21 the United States or Canada;
22 (3) The owner must borrow money under a program administered by the Bank
23 of North Dakota; and
24 (4) The fertilizer production facility must use hydrogen produced by the
25 electrolysis of water.
- 26 b. The funds from the loan may not be disbursed to the owner until the construction
27 is certified to be complete and the fertilizer production facility is operating.
- 28 c. Upon completion of the construction of the fertilizer production facility, the
29 authority shall forgive the loan and shall use fertilizer development incentive
30 funding to repay any outstanding amount borrowed, as certified by the Bank. The
31 authority shall request an appropriation from the strategic investment and

1 improvements fund or other funding sources to provide fertilizer development
2 incentive funding to repay any outstanding amount borrowed.

3 6. The authority may consult with any other state agency necessary to carry out the
4 purposes under this chapter.

5 ~~6-7.~~ Each biennium, the authority shall provide a written report to the legislative
6 management regarding its activities and the program's financial impact on state
7 revenues and the state's economy.

8 **SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to July 1, 2023.

9 **SECTION 3. EFFECTIVE DATE.** This Act becomes effective immediately upon its filing with
10 the secretary of state.



North Dakota Legislative Council

Prepared for the Legislative Management

LC# 25.9135.01000

October 2023

SUMMARY OF REENACTMENT OF PROVISIONS RELATING TO THE CLEAN SUSTAINABLE ENERGY AUTHORITY - LC# 23.1152.01000

This memorandum describes the bill draft [23.1152.01000], which reenacts Section 51 of Senate Bill No. 2015 (2023) ([appendix](#)) relating to the Clean Sustainable Energy Authority.

SECTION 1

Section 1 reenacts Section 51 of Senate Bill No. 2015, which requires the Clean Sustainable Energy Authority to develop a fertilizer development incentive program. The program must include guidelines to provide loan forgiveness with funding under the program limited to \$125 million. To be eligible for the program, a fertilizer production facility must be located within the state; the owner of the fertilizer production facility must be an entity domiciled in the United States or Canada; the owner must borrow money under a program administered by the Bank of North Dakota; and the fertilizer production facility must use hydrogen produced by the electrolysis of water.

SECTION 2

Section 2 provides the Act applies retroactively to July 1, 2023.

SECTION 3

Section 3 provides the Act becomes effective immediately upon its filing with the Secretary of State.

ATTACH:1

SECTION 51. AMENDMENT. Section 54-63.1-04 of the North Dakota Century Code is amended and reenacted as follows:

54-63.1-04. Clean sustainable energy authority - Duties - Report.

1. The authority shall make recommendations to the commission for program guidelines, including eligibility criteria for entities to receive funding under this chapter.
2. The nonvoting technical advisors shall develop a process to review and evaluate projects to determine the technical merits and feasibility of any application, including potential benefits of the development of low-emission technology, the expansion of the development of the state's natural resources or energy production, and the contribution to the economic diversity in the state.
3. The authority may develop a loan program or a loan guarantee program under the clean sustainable energy fund. The Bank of North Dakota shall administer the loan program or loan guarantee program. The interest rate of a loan under this program may not exceed two percent per year. The maximum term of a loan under this section must be approved by the commission based on a recommendation from the authority. The Bank shall review applications for loans or loan guarantees and shall consider the business plan, financial statements, and other information necessary to evaluate the application. To be eligible for a loan or loan guarantee, an entity shall agree to provide the Bank of North Dakota with information as requested. The Bank of North Dakota may develop policies for loan participation with local financial institutions.
4. The authority shall make recommendations to the commission for grant awards, loan approvals, or other financial assistance to provide funding to support research, development, and technological advancements for the large scale development and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and increase sustainability of energy production and delivery in accordance with this chapter. Any projects, processes, activities, and technologies selected by the commission for funding must have been recommended by the authority, must demonstrate feasibility based on a technical review conducted by the nonvoting technical advisors of the authority, must have other sources of financial support, and must achieve the priorities and purposes of the program. At the request of the authority, the Bank of North Dakota shall provide a recommendation regarding the economic feasibility of a project, process, activity, or technology under consideration by the authority. The Bank shall review the business plan, financial statements, and other information necessary to provide a recommendation.
5. The authority shall develop a fertilizer development incentive program, including guidelines to provide loan forgiveness. Funding for the fertilizer development incentive program under this subsection is limited to one hundred twenty-five million dollars.
 - a. To be eligible for the fertilizer development incentive program:
 - (1) The fertilizer production facility must be located within the state;
 - (2) The owner of the fertilizer production facility must be an entity domiciled in the United States or Canada;
 - (3) The owner must borrow money under a program administered by the Bank of North Dakota; and
 - (4) The fertilizer production facility must use hydrogen produced by the electrolysis of water.

- b. Upon completion of the construction of the fertilizer production facility, the authority shall forgive the loan and shall use fertilizer development incentive funding to repay any outstanding amount borrowed, as certified by the Bank. The authority shall request an appropriation from the strategic investment and improvements fund or other funding sources to provide fertilizer development incentive funding to repay any outstanding amount borrowed.
- 6. The authority may consult with any other state agency necessary to carry out the purposes under this chapter.
- 6-7. Each biennium, the authority shall provide a written report to the legislative management regarding its activities and the program's financial impact on state revenues and the state's economy.

23.1168.01005
Title.

Prepared by the Legislative Council staff for
Representative Heinert
October 24, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1546

Page 2, line 26, after "facility" insert "and upon certification the facility is operating"

Page 2, line 27, replace "and" with "or a portion of the loan in an amount equal to ten percent, up to a maximum of one hundred twenty-five million dollars, of the construction costs of the facility. The authority"

Renumber accordingly

Testimony of John DiDonato
NextEra Energy
2023 North Dakota Legislature Special Session - Policy Committee
October 23, 2023

Introduction

Mr. Chairman and members of the Policy Committee, for the record my name is John DiDonato. I serve as National Vice President, Renewable Development and Origination at NextEra Energy Resources. I have worked on projects in North Dakota for over 20 years, resulting in NextEra's current investment in the state of nearly \$4 billion.

I'd like to thank you for the opportunity to support legislation for a fertilizer manufacturing project in North Dakota through a post-production incentive.

NextEra Energy has corporate goals to advance hydrogen projects. The company has plans to invest \$20 B of capital in a pipeline of hydrogen projects around the country through the end of the decade.

The fertilizer project NextEra is advancing in the state would provide significant benefits to North Dakota agricultural and energy industries.

Project Rationale and Scope:

The project would tap North Dakota's vast surplus electricity resources, which have historically been exported out of the state, representing an untapped economic potential.

Advanced electrolyzer technology is at the project's core, efficiently using electricity to convert water into high-value hydrogen.

Hydrogen production is paired with the synthesis of ammonia from atmospheric nitrogen, serving as a versatile base compound for downstream fertilizer products (potentially including urea and UAN).

The project has garnered significant interest from the agriculture community, electric suppliers and the local community, signaling confidence in its feasibility and potential for economic growth.

Key Points to Highlight:

There are a few key areas that I would like to highlight.

1. Economic Benefits:

The project will provide positive economic benefits including job growth and local investment. The project is expected to create new, well-paying jobs, including dozens of specialist positions, as well as the opportunity to develop local STEM programs. The

project will procure power from North Dakota utility companies or electric co-ops, enabling investment in the grid and providing substantial revenues.

A stable local fertilizer supply will provide price stability and predictability for local agricultural producers leading to economic prosperity within the state.

2. Resiliency and Sustainability:

The project repositions North Dakota as a leader in resilient and sustainable agricultural practices and clean energy, reinforcing its reputation as a forward-thinking state.

3. Power Utilization:

The electric power for the project will be provided by both renewables and electric power produced by North Dakota electric providers. The project will be capable of reducing electric consumption at peak demand times, offering substantial benefits to the state's electric grid, enhancing grid stability and resilience.

Legislative Landscape:

I'd like to describe the legislative history of the bill.

The incentive program for a fertilizer facility was introduced in HB 1369 on January 13, 2023. The bill was referred to House Appropriations. A hearing was held in the House Appropriations Committee on January 23. The House unanimously defeated the bill because legislators decided to move the fertilizer incentive program to the Department of Commerce budget.

The fertilizer incentive program was then moved to HB 1018 – the Department of Commerce budget. The committee hearing was held on the bill on March 17, 2023, in the Senate Appropriations Committee.

It was legislative leadership's decision to then integrate the program into OMB bill. This was a strategic move aimed at harmonizing various legislative considerations.

The legislative decisions made on the path of this program were primarily influenced by broader legislative considerations rather than NextEra Energy's preferences.

Conclusion:

I would request committee support for the proposed legislation for the fertilizer post production incentive program, underlining its potential to stimulate economic growth and invigorate the agricultural sector.

The fertilizer project has the ability to build on North Dakota's position as a leader in energy and establish the State as a leader in the hydrogen economy, offering a sustainable, resilient, and prosperous future.

Thank you for your time and willingness to consider this important program as a potential catalyst for a brighter future for North Dakota.



Testimony in Support of HB 1546
Joint Policy Committee
October 23, 2023

Chairman Thomas and members of the committee,

Thank you for the opportunity to testify in support of House Bill No. 1546. My name is Matt Perdue; I am the Government Relations Director for North Dakota Farmers Union. I am delivering this testimony today on behalf of a coalition of nine agricultural organizations.

North Dakota's farmers and ranchers use over 700,000 metric tons of fertilizer annually.¹ Our state's current nitrogen production capacity is only half that demand, leaving our state's farmers to rely heavily on fertilizer produced outside the state. Moreover, nitrogen demand is growing. From 1987 to 2017, nitrogen use in North Dakota increased by 143%.² Global demand for ammonia is also expected to increase by 40% by 2050 to meet higher food demand for a growing world population.³

Our organizations support HB 1546, because it will strengthen the resilience of North Dakota agriculture. Over the last several years, global supply chain disruptions have caused fertilizer prices to skyrocket. From late 2021 through early 2023, nitrogen fertilizer prices were more than double the five-year average. While the markets slowly calmed through much of 2023, they have recently spiked due to low water levels on the Mississippi River, challenges with rail delivery and global conflicts.⁴

¹ Falcone, J.A. (2020). *Estimates of county-level nitrogen and phosphorous from fertilizer and manure for approximately five-year periods from 1950 to 2017 for the conterminous United States*. U.S. Geological Survey. Retrieved from <https://www.sciencebase.gov/catalog/item/5ebad56382ce25b51361806a>.

²*Id.*

³ International Energy Agency. (2021). *International Energy Agency*. Retrieved from <https://iea.blob.core.windows.net/assets/6ee41bb9-8e81-4b64-8701-2acc064ff6e4/AmmoniaTechnologyRoadmap.pdf>.

⁴ Dehlinger, K. M. (2023, Oct. 18). *DTN Retail Fertilizer Trends*. DTN/Progressive Farmer. Retrieved from <https://www.dtnpf.com/agriculture/web/ag/crops/article/2023/10/18/retail-anhydrous-fertilizer-price-16>.