

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/05/2017**

Bill/Resolution No.: SB 2134

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2015-2017 Biennium |             | 2017-2019 Biennium |                 | 2019-2021 Biennium |                |
|-----------------------|--------------------|-------------|--------------------|-----------------|--------------------|----------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds     | General Fund       | Other Funds    |
| <b>Revenues</b>       |                    |             |                    | \$(212,961,857) |                    | \$(30,374,301) |
| <b>Expenditures</b>   |                    |             |                    |                 |                    |                |
| <b>Appropriations</b> |                    |             |                    |                 |                    |                |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

|                         | 2015-2017 Biennium | 2017-2019 Biennium | 2019-2021 Biennium |
|-------------------------|--------------------|--------------------|--------------------|
| <b>Counties</b>         |                    |                    |                    |
| <b>Cities</b>           |                    |                    |                    |
| <b>School Districts</b> |                    |                    |                    |
| <b>Townships</b>        |                    |                    |                    |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill defines sovereign minerals within Missouri River reservoirs as the former river channel depicted in federal surveys. The State has already leased minerals within the estimated high water mark of the pre-lake river, so the bill would cause the return of revenues and loss of future royalties.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill would sever the public's ownership of the bed of the Missouri River from its ownership of the minerals beneath it. N.D.C.C. ch. 61-33 defines sovereign land to include beds and islands lying within the ordinary high watermark of navigable lakes and streams and assigns management of the oil, gas and related hydrocarbons to the Board of University and School Lands. The bill would change the method the Board has used lease sovereign oil and gas acres, which revenue is deposited into the Strategic Investment and Improvements Fund. The Board historically leased these types of minerals to the estimated ordinary high water mark of the Missouri River as it existed prior to inundation.

The bill would apply U.S. Army Corps of Engineers' river surveys prior to inundation by Lakes Sakakawea and Oahe as depicting the state's sovereign mineral boundary. Because the method the Board has used to lease the State's oil and gas rights differs markedly from the area of the historic river depicted by the federal surveys, substantial mineral acres would be surrendered to the federal government and to private title claims. The State would return revenue on an estimated 710 mineral leases involving 40,000 acres and relinquish future royalty revenue. The impact includes the return of bonus, rent, and royalty already collected; escrowed royalties that are anticipated to be collected; and estimated lost future royalties based upon 2015-2016 production and prices.

The State Engineer manages the islands and the bed of navigable waters and all other minerals therein.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The bill would have a negative revenue impact on the Strategic Investment and Improvements Fund, which collects the proceeds of all sovereign mineral leasing.

There is an acreage difference between the federal river survey and estimated historic ordinary high watermark as identified by the Board of University and School Lands' contractor in a 2010 investigation.

From the SIIF, the State would repay revenue it has collected on 710 mineral leases involving an estimated 40,000 acres along 164 river miles, and also relinquish future royalty revenue.

The impact includes the return of \$90,021,514 of bonus and rent; the repayment of \$63,548,383 royalties collected and anticipated through FY 2017; and the forfeiture of claim to \$29,017,659 of presently escrowed royalty.

Additionally, based upon FY 2015 and 2016 average level prices and production, the estimated impacts on future royalty revenue would be a reduction of \$30,374,301 in each of the next two biennia.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures related to additional legal or FTE expenses were not estimated.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No anticipated impact on present biennium appropriations.

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**Date Prepared:** 01/10/2017

| Revenues                 |            |            |                         |                       |              |
|--------------------------|------------|------------|-------------------------|-----------------------|--------------|
| Projected Future Periods |            |            |                         |                       |              |
|                          | Received   | Escrowed   | Total Estimated Revenue | % Impact by Bill 2134 | lost revenue |
| Phase II**               | 40,094,698 | 7,996,013  | 48,090,711              | 56.20%                | 27,028,308   |
| Phase IV***              | 813,373    | 5,384,133  | 6,197,506               | 53.99%                | 3,345,993    |
|                          | 40,908,071 | 13,380,146 | 54,288,217              |                       | 30,374,301   |

| Royalties Collected |             |                                 |             |                       |                  |
|---------------------|-------------|---------------------------------|-------------|-----------------------|------------------|
|                     | Received    | Anticipated FY 2017 Collections | Revenues    | % Impact by Bill 2134 | returned revenue |
| Phase II            | 100,492,181 | 10,023,675                      | 110,515,856 | 56.20%                | 62,112,963       |
| Phase IV            | 2,455,366   | 203,343                         | 2,658,709   | 53.99%                | 1,435,420        |
|                     | 102,947,547 | 10,227,018                      | 113,174,565 |                       | 63,548,383       |

| Royalties Escrowed |                 |  |            |                       |                          |
|--------------------|-----------------|--|------------|-----------------------|--------------------------|
|                    | Escrow Received | Anticipated FY 2017 Escrow Collections | Revenues   | % Impact by Bill 2134 | lost anticipated revenue |
| Phase II           | 19,939,778      | 2,332,171                              | 22,271,949 | 56.20%                | 12,517,450               |
| Phase IV           | 28,991,598      | 1,570,372                              | 30,561,970 | 53.99%                | 16,500,209               |
|                    | 48,931,376      | 3,902,543                              | 52,833,919 |                       | 29,017,659               |

\* % Impact from Bonus WKS

\*\* Phase II (between Hwy 85 and Hwy23)

\*\*\* Phase IV (between Hwy 23 and Garison Dam)

|                                   |
|-----------------------------------|
| <b>Potential Bonus Repayments</b> |
|-----------------------------------|

|              | Affected Tracts | Total Bonuses &<br>Rents Collected | % impact by<br>SB 2134 | potential bonus<br>repayment |
|--------------|-----------------|------------------------------------|------------------------|------------------------------|
| Phase II     | 392             | \$ 119,993,395                     | 56.20%                 | \$ 67,439,601                |
| Phase IV     | 318             | 41,826,605                         | 53.99%                 | 22,581,912                   |
| <b>Total</b> | <b>710</b>      | <b>\$ 161,820,000</b>              | <b>55.63%</b>          | <b>\$ 90,021,514</b>         |

| Phase II (between Hwy 85 and Hwy 23) |               |
|--------------------------------------|---------------|
| Assigned Fund Value -                |               |
| Phase II                             | 78,600,382.00 |
| Acres between State                  |               |
| and Corps Historic River             | 22,144.37     |
| Value Per Acre                       | 3,549.45      |
| Change in Acres if bill 2134         | (19,000)      |
| Value Per Acre                       | 3,549.45      |
| Estimated At Risk Amount             | (67,439,601)  |

| Phase IV (between Hwy 23 and dam) |          |
|-----------------------------------|----------|
| Estimated OHWM Survey             | 38996.45 |
| As Adjusted Bill 2134             | 17942.52 |
| Change                            | 21053.93 |
| % Change                          | 53.99%   |