

FISCAL NOTE
Requested by Legislative Council
04/17/2019

Amendment to: SB 2211

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$0	\$0	\$0	\$0
Expenditures			\$0	\$2,750,000	\$0	\$0
Appropriations			\$0	\$0	\$0	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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).*

Senate Bill 2211 is relating to the determination of the ordinary high water mark; to sovereign lands, determining the ordinary high water mark; the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams; to provide a contingent appropriation.

- 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 65th Legislative Assembly's adoption of Senate Bill 2134 (SB 2134), codified as N.D.C.C. ch. 61-33.1, provided for the determination of the ordinary high water mark (OHWM) for certain stretches of the Missouri River. The bill directs the North Dakota Industrial Commission (NDIC) to determine the delineation of the OHWM of the US Army Corp of Engineers (USACE) survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of Sections 33 and 34, Township 153 North, Range 102 West, McKenzie, Mountrail, and Williams Counties, North Dakota.

On December 17, 2018, the Board of University and School Lands authorized the Commissioner to request proposals for analysis and GIS services for property related to the OHWM Study of the historical Missouri riverbed channel prepared by Wenck Associates, Inc. and adopted by NDIC on September 27, 2018 in Order No. 29129 to determine acreage above and below the OHWM within the following area: the northern boundary of the Fort Berthold Indian Reservation (approximately river mile 1482) to the southern border of Sections 33 and 34, Township 153 North, Range 102 West (just beyond river mile 1564), a distance of approximately 83 river miles.

An engineering firm will be able to provide the Department with the necessary data to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases. Additionally, the Department will provide this information for all property impacted by N.D.C.C. ch. 61-33.1 so that this information is available to operators and the public.

Per the amended language modifying "inundated" to "subject to inundation", the Department cannot determine fiscal impact on revenues without additional information from the State Engineer. The funds in the Strategic Investment and Improvements Fund (SIIF), which includes the amounts generated from leasing the State's sovereign minerals, will likely be impacted if the State is required bonuses, rents and royalties to its lessees.

Per section 7, the additional timeframe for interested parties to bring litigation against the State will result in additional attorney fees.

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.*
- 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.*

SB 2211 will authorize the Board of University and School Lands to hire a qualified engineering and surveying firm to determine acreage above and below the OHWM within the following area: the northern boundary of the Fort Berthold Indian Reservation (approximately river mile 1482) to the southern border of Sections 33 and 34, Township 153 North, Range 102 West (just beyond river mile 1564), a distance of approximately 83 river miles. However, SB 2211 does not provide an appropriation for the costs of contracting with a qualified engineering and surveying firm as the Board has been provided the authority to utilize SIIF funds per N.D.C.C. § 15-08.1-08 as "management of the property".

- 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.*

Section 1 of SB 2211 authorizes the Board of University and School Lands to contract with a qualified engineering and surveying firm to analyze the final review findings and determine the acreage adjustments.

The cost of the survey is not to exceed \$2.0 million. This cost is a fixed price encompassing all work and direct costs for completion of the Deliverables as outlines in Section IV of the request for proposal. Additional costs may need to be negotiated once a firm is selected for expenses such as legal and expert witness fees.

Section 6 of SB 2211 requires \$750,000 be appropriated to reimburse legal expenses as provided in subsection 2, for the biennium beginning July 1, 2019, and ending June 30, 2021.

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