

FISCAL NOTE
Requested by Legislative Council
04/22/2019

Amendment to: HB 1202

- 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						
Expenditures						
Appropriations						

- 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			
Cities			
School Districts			
Townships			

- 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).*

House Bill 1202 creates and enacts a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

- 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.*

Section 2 of House Bill 1202 relates to navigability determinations by the State Engineer. Costs of implementing the navigability determinations, include:

1. Water Commission employee salaries in researching and preparing the navigability determinations;
2. Water Commission's costs of public hearings regarding the preliminary findings, including publishing and advertising costs;
3. Cost of legal challenges to the navigability determinations, which costs would be incurred by both the North Dakota Board of University and School Lands and the State Water Commission. Legal costs could be estimated at \$100,000+ per lawsuit per water body for each agency.
4. For determinations made by the State Engineer before the effective date and not revisited under Section 5 of the bill, those determinations would be vacated resulting in a loss of sovereign land management authority and sovereign land mineral assets by the State. This would include both surface and subsurface acreage, with resulting mineral losses to the State. The amount of these losses cannot be determined at this time.
5. The State of North Dakota may be required to repay bonus and royalties received if a water body previously determined to be navigable by the Water Commission is now found to no longer be navigable or if the Water Commission does not begin the review process within the proposed time frame. The value of this cannot be determined at this time but could be significant.
6. Department of Trust Lands employee salaries to issue refunds and update department records. Potentially an additional FTE will be needed to carry out any asset adjustments.
7. Once a water body is determined navigable, the State would need to conduct ordinary high water mark surveys for leasing purposes.
8. The Water Commission could incur additional project costs. For example, if the Red River is determined to be non-navigable, the Sheyenne Water Supply Project could incur additional costs of \$20 million dollars for increased easements, surveys, and title work.

These costs are unknown at this time but are anticipated to be significant.

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 Department cannot determine the impact on revenues at this time; however, the loss of future revenue from any reduction in ownership of sovereign land mineral assets, including hydrocarbons, may be significant.

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.*

The Department cannot determine the impact on expenditures until the navigability determinations are made, but expenditures are anticipated to be significant. The expenditures resulting from the implementation of HB 1320 will likely include costs associated with technical and legal expenditures, additional staffing, and collaboration with the Water Commission to determine navigability and ordinary high water mark which could result in the need for additional FTE for the Water Commission.

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.*

Continuing appropriation authority (N.D.C.C. sections 15-05-19 and 15-07-22) is used for pending authority to manage, preserve, and enhance the value of the SIIF; it is unknown if this same authority can be used for any expenditures used for this bill.

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