Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1458

Introduced by

Representatives Skarphol, Drovdal, Froseth, Kreun, Nathe, Thoreson

A BILL for an Act to create and enact chapter 17-09 and section 57-51-15.1 of the North Dakota Century Code, relating to establishment of an energy infrastructure development office and grant program and an energy infrastructure development fund for deposit of certain oil and gas gross production tax revenues; to amend and reenact sections 21-06-10 and 57-51-15 of the North Dakota Century Code, relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to provide an appropriation; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 17-09 of the North Dakota Century Code is created and enacted as follows:

17-09-01. Energy infrastructure development office - Appointment of director - Staff.

The energy infrastructure development office is established within the office of the legislative council, the director of which must be appointed by and serve at the pleasure of the legislative management. The director must be knowledgeable in matters of state and local government and infrastructure development. The salary of the director must be set by the legislative management within the limits of legislative appropriations.

The director may employ such other persons as may be necessary and fix their compensation within the appropriation made for that purpose. The director may employ a highway engineer, certified public accountant, and certified planner among staff members. The director and staff shall monitor and cooperate with political subdivisions awarded grants to assure proper use and reporting of grant funds.

17-09-02. Powers and duties of energy infrastructure development office director.

The energy infrastructure development office director shall:

1. Develop a plan for infrastructure development assistance through financial grants or other means of providing assistance for counties, cities, and townships in energy infrastructure development areas.
2. Establish procedures and prescribe forms for political subdivisions to use in making application for and using grant funds as provided in this chapter.
3. Make and administer grants to counties, cities, and townships as provided in this chapter and chapter 57-51 and within the limits of available funds. In determining the amount of grants for which political subdivisions are eligible, the amount of funds available and revenue to which such political subdivisions will be entitled from property taxes and local, state, and federal sources must be considered.

17-09-03. Guidelines on energy infrastructure development grants.

Grants distributed by the energy infrastructure development office must be used by grantees to meet energy infrastructure development needs. All grant applications and presentations to the energy infrastructure development office must be made by an appointed or elected government official.

17-09-04. Energy infrastructure development grant fund - Continuing appropriation.

The moneys accumulated in the energy infrastructure development grant fund are provided as a continuing appropriation and must be allocated for distribution through grants as provided by this chapter and chapter 57-51 through the energy infrastructure development office to cities, counties, and townships to meet energy infrastructure development needs.

SECTION 2. AMENDMENT. Section 21-06-10 of the North Dakota Century Code is amended and reenacted as follows:

21-06-10. Moneys received through leasing of lands acquired by United States for flood control distributed to counties for schools and roads.

The state treasurer shall pay the moneys allocated to the state under 33 U.S.C. 701(c)(3) to the counties entitled to receive them in proportion to the area of the land in the county acquired by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) as that area bears to the total of these federal lands in the state. A county receiving an allocation under this section ~~shall disburse the moneys received as follows:~~

~~1.~~ ~~One-half must be paid to the school districts in the county which have lost land subject to taxation because of the acquisition of lands by the United States for which~~

~~compensation is being provided under 33 U.S.C. 701(c)(3) in proportion to the area of these federal lands in each district as that area bears to the total of such lands in all of the school districts in the county. If, however, all of the land in a district has been acquired by the United States, that district's proportionate share of the funds allocated under this subsection must be paid into the county tuition fund and expended according to the law governing that fund.~~

~~2.~~ ~~One-quarter must be paid to the county for road purposes to be expended as the county commissioners shall determine.~~

~~3.~~ ~~The final quarter must be allocated among the organized townships, if any, which have lost land subject to taxation because of land acquisitions by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) and the county for road purposes in proportion to the area of these lands in each township as that area bears to the total area of these federal lands in the county. The county must be allocated a similar proportionate share based on the area of these lands in the county not within an organized township.~~

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto~~shall deposit all amounts received in a special federal flood control mineral leasing fund in the county treasury. Amounts in the federal flood control mineral leasing fund may be used by the county and provided through grants to school districts in the county for one-time expenditures or to townships, or for the benefit of unorganized townships for township road and bridge purposes.

SECTION 3. AMENDMENT. Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

57-51-15. Apportionment and use of proceeds of tax.

The gross production tax provided for in this chapter must be apportioned as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall~~:~~

   ~~a.~~ ~~Credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding~~ credit eight million dollars per biennium~~;~~

~~b.~~ ~~Allocate five hundred thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota; and~~

~~c.~~ ~~Credit~~ to the energy infrastructure development grant fund and credit the remaining revenues to the state general fund.

2. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated as follows:

a. The first two million dollars must be allocated to the county.

b. The next one million dollars must be allocated seventy-five percent to the county and twenty-five percent to the state general fund.

c. The next one million dollars must be allocated fifty percent to the county and fifty percent to the state general fund.

d. The next fourteen million dollars must be allocated twenty-five percent to the county and seventy-five percent to the state general fund.

e. All annual revenue remaining after the allocation in subdivision d must be allocated ten percent to the county, fifteen percent to the energy infrastructure development fund, and ~~ninety~~seventy-five percent to the state general fund.

3. The amount to which each county is entitled under subsection 2 must be allocated within the county ~~so the first five million three hundred fifty thousand dollars is allocated~~ under subsection 4 for each fiscal year ~~and any~~for the first three million nine hundred thousand dollars for a county with a population of fewer than three thousand, four million one hundred thousand dollars for a county with a population of three thousand to six thousand, and four million six hundred thousand dollars for a county with a population of more than six thousand. Any amount received by a county exceeding ~~five million three hundred fifty thousand dollars is credited~~the amount to be

allocated under subsection 4 must be allocated by the county treasurer ~~to the county infrastructure fund and allocated~~ under subsection 5.

4. a. Forty-five percent of all revenues allocated to any county for allocation under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and ~~federal-aid~~federal aid road, and county road purposes.

b. Thirty-five percent of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.

~~The countywide allocation to school districts under this subdivision is subject to the following:~~

~~(1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.~~

~~(2) The next three hundred fifty thousand dollars is apportioned seventy-five percent among school districts in the county and twenty-five percent to the county infrastructure fund.~~

~~(3) The next two hundred sixty-two thousand five hundred dollars is apportioned two-thirds among school districts in the county and one-third to the county infrastructure fund.~~

~~(4) The next one hundred seventy-five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.~~

~~(5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:~~

~~(a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.~~

~~(b) Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.~~

~~(c) Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.~~

c. Twenty percent of all revenues allocated to any county for allocation under this subsection must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 5 which totals more than ~~seven hundred fifty~~one thousand dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent. If a city receives a direct allocation under subsection ~~1~~6, ~~the allocation to~~ that city receives no allocation under this subsection ~~is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county~~.

5. a. Forty-five percent of all revenues to be allocated ~~to a county infrastructure fund under subsections 3 and 4~~under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county general fund under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and ~~federal-aid~~federal aid road, and county road purposes.

b. Thirty-five percent of all revenues to be allocated ~~to~~under this subsection must be deposited in the county infrastructure fund ~~under subsections 3 and 4 must be allocated~~for allocation by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs ~~or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads~~. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is ~~designated for allocation under this subdivision and which is~~ unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.

c. Twenty percent of all revenues to be allocated ~~to any county infrastructure fund under subsections 3 and 4~~under this subsection must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 4 which totals more than ~~seven hundred fifty~~one thousand dollars per capita. Once this per capita limitation has been reached, all excess funds to which a city would otherwise be entitled must be deposited instead in that county's general fund. If a city receives a direct allocation under subsection ~~1~~6, ~~the allocation to~~ that city receives no allocation under this subsection ~~is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county~~.

6. From the revenue that would otherwise be deposited in the state general fund under subsections 1 and 2, the state treasurer shall provide, in a single annual payment to each city, in an oil-producing county or county containing an oil refining facility, which has a population of seven thousand five hundred or more, ten million dollars per fiscal year if the city's private covered employment engaged in the mining industry exceeds twelve percent, four million dollars per fiscal year if the city's private covered employment engaged in the mining industry exceeds two percent but does not exceed twelve percent, and two million dollars per fiscal year if the city's private covered employment engaged in the mining industry is measurable but totals two percent or less. For purposes of this subsection, job service North Dakota shall determine the percentage of private covered employment for cities eligible for allocation of funds under this subsection.

7. Within sixty days after the end of each fiscal year, the board of county commissioners of each county that has received an allocation under this section shall file a report for

the fiscal year with the tax commissioner, in a format prescribed by the tax commissioner, showing:

a. The amount received by the county under this section and section 57-51-15.1 in its own behalf, the amount received by the county in federal flood control mineral lease revenue allocations, and the amount received by the county in lease, bonus, or royalty payments from any source and the amount of those funds expended for each purpose to which those funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year; and

b. The amount available in the county infrastructure fund for allocation to or for the benefit of townships ~~or school districts~~, the amount allocated to each organized township ~~or school district~~ and the amount expended from each such allocation by that township ~~or school district~~, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships ~~or school districts~~ which remained unexpended at the end of the fiscal year.

Within sixty days after the time when reports under this subsection were due, the tax commissioner shall provide a report to the ~~legislative council~~energy infrastructure development office compiling the information from reports received under this subsection.

In developing the format for reports under this subsection, the tax commissioner shall consult the energy infrastructure development ~~impact~~ office and at least two county auditors from oil-producing counties.

SECTION 4. Section 57-51-15.1 of the North Dakota Century Code is created and enacted as follows:

57-51-15.1. Energy infrastructure development fund.

Revenue deposited in the energy infrastructure development fund is allocated as follows:

1. Seventy-seven and one-half percent to counties experiencing a need for energy infrastructure development to implement the plan recommendations of the upper great plains transportation institute submitted to the department of commerce in

December 2010. However, a county is ineligible for any funds under this subsection if its current year property tax levies for county road and bridge purposes do not equal or exceed its average property tax levies for county road and bridge purposes for the prior four years.

a. Eighty percent of the funds under this subsection must be allocated directly to counties to fully or partially fund county infrastructure development projects on the basis of contracts let by the county for those projects that have received a prior funding commitment from the energy infrastructure development office. A prior funding commitment may be obtained by the county by filing an application, in a format prescribed by the director, for full or partial funding of a project. Upon filing by the county with the energy infrastructure development office of notice of entering an infrastructure improvement contract in conformity with a prior funding commitment, in a format prescribed by the director, the director may authorize disbursement of funds to the county for the amount of the funding commitment.

b. Twenty percent of the funds under this subsection may be awarded by the energy infrastructure development office as grants to counties to supplement funding under subdivision a. Applications by counties for grant funding under this subsection must be made in a format prescribed by the director. Grants under this subdivision must obtain prior approval from the budget section of the legislative management.

2. Seven and one-half percent may be awarded by the energy infrastructure development office as grants to cities with a population of fewer than seven thousand five hundred to meet energy infrastructure development needs. Grants for city street overlay projects must be given priority among awards under this subsection.

3. Seven and one-half percent to or for the benefit of townships.

a. Two-thirds of the funds under this subsection must be allocated directly to townships, or to the county for the benefit of unorganized townships, in annual payments of five thousand dollars for each township with at least one producing oil or gas well plus an additional three thousand two hundred fifty dollars for each additional ten producing wells, up to a maximum of ten thousand dollars per township. The unexpended amount under this subdivision at the end of the fiscal year must be allocated by the state treasurer among oil-producing counties in proportion to their shares of total oil production in the state and deposited by a recipient county in its county infrastructure fund for use as provided in section 57-51-15.

b. One-third of the funds under this subsection may be awarded as grants by the energy infrastructure development office to townships, or to the county for the benefit of unorganized townships, requiring infrastructure development attributable to oil and gas development activity, including townships that have no production of oil or gas. Applications for township grants under this subdivision must be reviewed by the board of county commissioners, which shall prioritize and make its funding recommendation for each grant application.

4. Seven and one-half percent for statewide rural emergency medical services funding. The state department of health shall establish and update biannually a strategic plan for integrated emergency medical services in this state. The funds available in this subsection are provided as a continuing appropriation to the state department of health to provide state financial assistance for licensed emergency medical services operations in accordance with the department's strategic plan for providing emergency medical services in this state. Up to two million two hundred fifty thousand dollars of the funds appropriated under this subsection are available for allocation without restriction but any funds exceeding that amount must obtain approval of the budget section of the legislative management. This subsection is effective through June 30, 2015.

5. Grant awards under this section may be made over one or more years and may extend beyond the end of a biennium. Grant awards and unexpended grant funds are not subject to section 54-44.1-11.

6. During the fiscal year ending June 30, 2012, all allocations under this section must be made from funds specifically appropriated by the legislative assembly and any amounts deposited in the energy infrastructure development fund under subsection 2 of section 57-51-15 during that fiscal year must be accumulated and may not be expended until after June 30, 2012.

SECTION 5. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $102,000,000, or so much of the sum as may be necessary, to the energy infrastructure development office for the purpose of allocation for energy infrastructure enhancement as provided in section 57-51-15.1, for the first fiscal year of the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $100,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of upgrading collection and use of employment data to correctly identify transportation employees who should be included for statistical purposes in private covered employment engaged in the mining industry, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 7. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.