Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1031

Introduced by

Legislative Management

(Energy Development and Transmission Committee)

A BILL for an Act to amend and reenact sections 24-02-37 and 57-51-15 of the North Dakota Century Code, relating to oil and gas production tax funding for the state highway fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-37 of the North Dakota Century Code is amended and reenacted as follows:

24-02-37. State highway fund - Priorities for expenditure - Use of investment income. The state highway fund, created by law and not otherwise appropriated and allocated, must be applied and used for the purposes named in this section, as follows:

1. Except for investment income as provided in subsection 3 <u>and oil and gas production tax from section 57-51-15</u>, the fund must be applied in the following order of priority:
   a. The cost of maintaining the state highway system.
   b. The cost of construction and reconstruction of highways in the amount necessary to match, in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota.
   c. Any portion of the highway fund not allocated as provided in subdivisions a and b may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.
2. All funds heretofore appropriated or hereafter appropriated or transferred to the department, whether earmarked or designated for special projects or special purposes or not, must be placed or transferred into a single state highway fund in the office of the state treasurer and any claims for money expended by the department upon warrants prepared and issued by the office of management and budget and signed by

the state auditor under this title must be paid out of the state highway fund by the state treasurer; provided, however, that the commissioner shall keep and maintain complete and accurate records showing that all expenditures have been made in accordance with legislative appropriations and authorizations.

3. The state treasurer shall deposit the moneys in the state highway fund in an interest-bearing account at the Bank of North Dakota. The state treasurer shall deposit eighty percent of the income derived from the interest-bearing account in a special interest-bearing account in the state treasury known as the special road fund. The special road fund may be used, within the limits of legislative appropriation, exclusively for the construction and maintenance of access roads to and roads within recreational, tourist, and historical areas as designated by the special road committee. A political subdivision or state agency may request funds from the special road fund by applying to the committee on forms designated by the committee. The committee may require the political subdivision or state agency to contribute to the cost of the project as a condition of any expenditure authorized from the special road fund. Any moneys in the fund not obligated by the special road committee by June thirtieth of each odd-numbered year must be held for an additional two years after which the funds revert to the state highway fund.

4. Oil and gas production tax deposited in the state highway fund under section 57-51-15 must be ~~accounted for separately to be used in any manner to provide for major improvements and construction of highway corridors impacted by energy development with a priority~~used for consideration in expanding to four lanes ~~for~~ United States highway 85. These moneys are not subject to section 54-44.1-11.

SECTION 2. AMENDMENT. Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

57-51-15. (Effective for taxable events occurring through June 30, 2015) Gross production tax allocation.

The gross production tax must be allocated monthly 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. Allocate to each hub city a monthly amount that will provide a total allocation of three hundred seventy-five thousand dollars per fiscal year for each full or partial percentage point of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota;

b. Allocate to each hub city school district a monthly amount that will provide a total allocation of one hundred twenty-five thousand dollars per fiscal year for each full or partial percentage point of the hub city's private covered employment engaged in the mining industry, according to data compiled by job service North Dakota;

c. Credit revenues to the oil and gas impact grant fund, but not in an amount exceeding two hundred forty million dollars per biennium;

d. <u>Credit the state highway fund, but not in an amount exceeding seventy-five million dollars per biennium;</u>

<u>e.</u> Credit four percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding fifteen million dollars in a state fiscal year and not in an amount exceeding thirty million dollars per biennium;

~~e.~~<u>f.</u> Credit four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding five million dollars in a state fiscal year and not in an amount that would bring the balance in the fund to more than seventy-five million dollars; and

~~f.~~<u>g.</u> Allocate the remaining revenues under subsection 3.

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 five million dollars is allocated to the county.

b. Of all annual revenue exceeding five million dollars, twenty-five percent is allocated to the county.

3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota

and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.

4. For a county that received less than five million dollars of allocations under subsection 2 in the most recently completed state fiscal year, revenues allocated to that county must be distributed by the state treasurer as follows:
    a. Forty-five percent must be distributed to the county treasurer and credited to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and 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 state treasurer no less than quarterly to school districts within the county, excluding consideration of and allocation to any hub city school district in the county, on the average daily attendance distribution basis, as certified to the state treasurer by the county superintendent of schools.
    c. Twenty percent must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. A hub city must be omitted from apportionment under this subdivision. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. 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.
5. For a county that received five million dollars or more of allocations under subsection 2 in the most recently completed state fiscal year, revenues allocated to that county must be distributed by the state treasurer as follows:
    a. Sixty percent must be distributed to the county treasurer and credited to the county general fund. However, the allocation to a county under this subdivision

must be credited to the state general fund if in a taxable year after 2012 the county is not levying a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.

b. Five percent must be apportioned by the state treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis for kindergarten through grade twelve students residing within the county, as certified to the state treasurer by the county superintendent of schools. However, a hub city school district must be omitted from consideration and apportionment under this subdivision.

c. Twenty percent must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. A hub city must be omitted from apportionment under this subdivision. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. 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.

d. Three percent must be apportioned no less than quarterly by the state treasurer among the organized and unorganized townships of the county. The state treasurer shall apportion the funds available under this subdivision among townships in the proportion that township road miles in the township bear to the total township road miles in the county. The amount apportioned to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.

e. Three percent must be allocated by the state treasurer among the organized and unorganized townships in all the counties that received five million dollars or more of allocations under subsection 2 in the most recently completed state fiscal year. The amount available under this subdivision must be allocated no less than quarterly by the state treasurer in an equal amount to each eligible organized and unorganized township. The amount allocated to unorganized townships under this subdivision must be distributed to the county treasurer and credited to a special fund for unorganized township roads, which the board of county commissioners shall use for the maintenance and improvement of roads in unorganized townships.

f. Nine percent must be allocated by the state treasurer among hub cities. The amount available for allocation under this subdivision must be apportioned by the state treasurer no less than quarterly among hub cities. Sixty percent of funds available under this subdivision must be distributed to the hub city receiving the greatest percentage of allocations to hub cities under subdivision a of subsection 1 for the quarterly period, thirty percent of funds available under this subdivision must be distributed to the hub city receiving the second greatest percentage of such allocations, and ten percent of funds available under this subdivision must be distributed to the hub city receiving the third greatest percentage of such allocations.

6. Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:

a. The county's statement of revenues and expenditures; and

b. The amount allocated 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 fifteen days after the time when reports under this subsection were due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

(Effective for taxable events occurring after June 30, 2015) Gross production tax allocation. The gross production tax must be allocated monthly 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. 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;
   b. Credit revenues to the oil and gas impact grant fund, but not in an amount exceeding one hundred million dollars per biennium;
   c. Credit the state highway fund, but not in an amount exceeding seventy-five million dollars per biennium;
   d. Credit four percent of the amount available under this subsection to the North Dakota outdoor heritage fund, but not in an amount exceeding fifteen million dollars in a state fiscal year and not in an amount exceeding thirty million dollars per biennium;
   ~~d.~~e. Credit four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding five million dollars in a state fiscal year and not in an amount that would bring the balance in the fund to more than seventy-five million dollars; and
   ~~e.~~f. Allocate the remaining revenues under subsection 3.
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 is allocated to the county.
   b. Of the next one million dollars, seventy-five percent is allocated to the county.

c. Of the next one million dollars, fifty percent is allocated to the county.

d. Of the next fourteen million dollars, twenty-five percent is allocated to the county.

e. Of all annual revenue exceeding eighteen million dollars, ten percent is allocated to the county.

3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.

4. 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 5 for each fiscal year and any amount received by a county exceeding five million three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 6.

5. 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 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. 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, the allocation to that city 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. a. Forty-five percent of all revenues allocated to a county infrastructure fund under subsections 4 and 5 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 road, and county road purposes.

b. Thirty-five percent of all revenues allocated to the county infrastructure fund under subsections 4 and 5 must be allocated 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 allocated to any county infrastructure fund under subsections 4 and 5 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. If a city receives a direct allocation under subsection 1, the allocation to that city 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.

7. Within thirty days after the end of each calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the calendar year with the commissioner, in a format prescribed by the commissioner, including:

a. The county's statement of revenues and expenditures; 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 fifteen days after the time when reports under this subsection were due, the commissioner shall provide the reports to the legislative council compiling the information from reports received under this subsection.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events beginning after June 30, 2015.