

2011 HOUSE FINANCE AND TAXATION

HB 1046

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB1046
January 10, 2011
12681

☐ Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A BILL relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes; to provide a continuing appropriation; to provide a penalty; and to provide an effective date.

Minutes:

Senator Cook: Sponsored the bill. Support. Thanked staff at the tax department for the work on this bill. As you know, there will probably be some potash exploration in North Dakota in the coming years. I think it's very important that when we go home for the sake of the people that are going to be doing it that we have a tax in place. This bill is the vehicle that will hopefully allow us to work through the policies and determine what that tax should be. There are a lot of issues. We certainly discussed them during the interim with people from the industrial commission and tax department and the industry. Where do you put the tax, do you put it at the mine site, do you put it at the end of where the potash is actually produced, how do you distribute the taxes. So there are some issues that I think we need to work through. I look forward to your involvement with this and putting a good bill to go over to the Senate and the Governor. Again with that, I think potash is coming. It's important for the industry that before they come and make an investment they know what the policy is. I just want to remind you back in the industry when the first oil well was created there was no oil tax. It created a great burden on the oil industry. After the first interim when the oil was discovered and started to be drilled for there was an interim committee where the oil industry and the counties worked together to come up with what is now the production tax. We mirrored that approach so that we didn't make that same mistake again as we brought this tax bill forward to you today.

Mr. John Walstad, Legislative Council: Explained the bill. I'm not for or against this bill. The bill basically sets up framework for taxing potash production in North Dakota. There is by administrative rule, some governments for production, processing, reclamation, and such things that were adopted by the industrial commissioner a number of years ago. Those rules will probably be reviewed and updated but as Senator Cook said there is nothing in law that allows for taxation of potash and byproducts taken by the earth in this state. That's what the bill sets up. The first section of the bill relates to a property tax exemption. There is already an exemption in place for oil and for coal which will be taxed when it's separated from the earth. There's a number added here to do the same for potash. The second section of the bill creates a sales tax exemption for potash that is

taxable under this new chapter of law created by this bill. Then section three creates the chapter that would tax potash and by products. If you flip over to page 3 on line 3 this is the section that imposes the tax. This imposes a 4% tax on potash. In subsection 1 right below that the tax calculation is based on a ton of potash times the potash tax rate times the average annual price of potash. The average price is determined by a producer price index and it's calculated for a calendar year and beginning this July that average price is \$357.10 a ton. The section right below that beginning on line 18 imposes a similar 4% tax on byproducts. In the definition of byproducts, beginning on page 1 running into page 2 it's a long list of byproducts. I have no idea what some of those things are and I have no idea what some of those things exist underground in North Dakota but if they get dragged to the surface they will be taxed if they're sold. The other significant part of this is the allocation on page 4 lines 22-26. The interim committee was concerned was that this not be reviewed as revenue measure for the state and what was plugged in was that 80% of the revenue is to be devoted to reducing individual income tax rate at the state level. No explanation here on how that's to be done but that's what the provision does. 20% is to be allocated among producing counties in proportion to the production in the county compared to the production in the state. So if one county has 100% of the production that county gets 100% of this 20% share of revenue. The rest of the bill is administrative stuff; refunds, liens, interest in penalties, late payments, etc. I won't run through that. If there are any questions from the committee I can answer them.

Vice Chairman Craig Headland: From my recollections at the interim committee hearings we talked about the possibility of some of this extra revenue going to the legacy fund. But that isn't part of this bill?

Mr. Walstad: That is correct. It was discussed during the interim. I think several of the members of the committee felt that some of the money should be set aside on a permanent basis. It could be deposited in the legacy fund. It was created in the constitution that is that fund takes the share of oil revenue but there's nothing preventing the legislature from putting additional funds into that fund and getting that constitutional protection but it was not included in the bill.

Representative David Rust, District 2: Please refer to attached testimony (#1).

Mr. Larry Severson, President of NDTOA: I'd like to state that we support being prepared for the damage that might be done to the local infrastructure and we'd like to support Representative Froseth's amendments.

Mr. Ted Hawbaker, Portal, North Dakota: I live right in the middle of the land that Dakota Salts has leased or is trying to lease in that area. I am in favor of taxing this industry so I guess in that form I'm in favor of that but I'm not in favor of the way this bill does it. 4% is way too small in that if we're going to tax oil and gas 11% let's tax potash at 11% also. If the industry doesn't want to proceed then we can lower it but it would be real hard to raise that. I really feel that it needs to be taxed similar to the other products that are being produced in the area. Dakota Salts admit that most of the money to support this is from China so they'll make sure the sale of those products is FOB China so you'll be less the tax on the freight that the cost is so that's some real concerns in the bill. I just can't believe that you would not tax the processing facilities when you do tax the natural gas facility in

Burke County, its buildings and facilities are taxed. Grain elevators are taxed, agriculture businesses are taxed, I'm sure Dakota Growers durum processing facility is taxed and that's local money. Counties levy those taxes and that would be money to come back and help the local communities. I just can't believe that that's being considered. On their satellite plans where they would be drilling the actual wells and then piping it to the plant, the land would still be taxed. Me, as a surface owner but not a mineral owner, because those have been severed years ago on a large portion of the land up there. Now I would be paying the tax on that land their using, just like in oil and gas. We're forced to pay the property tax on that land that someone else uses and we have no use for along with the area around it that is basically rendered useless because of the water that runs off when you have those paths or all that gravel and don't absorb the water so all that runs off in the agriculture land. So if you have a 5 acre pad we've really lost about 10 acres of production. We have to pay the tax on that. So at a minimum they should be paying tax on their facilities. To me that whole paragraph should be gone. Those are some of my main concerns there. Another concern is in doing this too fast. I realize it's nice to set things up for them so they know what they're dealing with but they have said themselves there will be no production for three to five years because it's going to take that long to get things in place. Most of their leases are 10 and 20 years from what I'm understanding from some of the landlords that still own some minerals and so on. I guess there's some time; we could lower those rates if need be but it's hard to raise them. They should be set high to start with like an extraction tax and so on. I understand the industrial commission will regulate it and hopefully we can have those regulations in place. But the industrial commission has more work in front of it that it can handle at this point with oil and gas so its going to cost the state. They are going to need to hire people to regulate this industry too so setting too low of a tax may be burdensome. (Showed some pictures of a salt pile over 100 feet high and covers about 250 acres). So we definitely have some environmental concerns. I have a quote; Dakota Salts is owned 100% by Serious Corporation in London. A quote from their CEO in their 2009 report, "We've been working closely with North Dakota government to finalize and appropriate operating and taxation regime for potash exploration and production within the state. We've developed an excellent working relationship with the governmental officials and stakeholders and have been pleased with the enthusiasm and cooperation we have received to date. We are hopeful that we will be able to have appropriate relations in place within the next legislative session." It sounds to me like a little bit like the fox in the hen house so that has a concern. I think it's more important that we do this right than do it fast.. Hopefully it can be done right. Thank you very much for your time.

Ms. Janet Cron, Tax Director in Burke County: Opposition. I serve on the zoning committee and we've found that we have oranges and apples. When we tried to zone when they were doing a test well we were told it was under the industrial commission. Like an oil well the attorney general calls our state's attorney and said you have no zoning rights. The zoning permit was coming from the industrial commission. When I see how you're going to tax it then it's not oil anymore. Now it's something all of its own life. We're not going to tax according to your bill. We tax the local gas plant just as any other county who has a processing plant taxes. They generate a lot of money for our county and it still seems that they buy the gas so I don't know what the problem is. If this company wants to come and be a good neighbor, put up a facility and then it's time to pay the piper, pay for the infrastructure. Right now they pay to put in a test well and they had mud all over the

state highway. It froze on it and no one made an effort to even scrape it off. They need to show us that they're going to be a good neighbor. We have real problems with the environmental; the coal across the line in Canada and we breathe their air. Now we have clouds that are containing salt. Not all of it is processed so it comes down on your vehicles, your tractors and your fields and leaves a little white. We need to have some answers before we move forward with potash. I would like to propose the question that what if they put the processing plant across the line in Canada? Now what happens? Is it all free? Who knows what they can and will do if they don't have parameters? You will put the processing plants, you will have pipelines. And then we had the concern that you will have the original meetings that they were going to put all the waste back down in the hole. And if they inject that we won't have any of that, that's the new technology. We're concerned about not leaving us with a mess when it's done. There's going to be transportation of the oil water. Now what's going to happen? We need some help back with the county and the township. I don't feel it's right for our townships. There should be some way that they get their money directly from a bill that would come out of this committee. We've got lots of oil and farmland and we don't want to lose it to someone else's fortune. Thank you.

Representative Glen Froseth: Neutral testimony. I represent the counties where just about all the potash deposits lie. We're talking about four counties in North Dakota that could be vastly affected by the potash development. The development might be 3-5 years away but I think we have to start the process of forming tax policy and hopefully, the regulations will follow that take care of the problems that were mentioned. First off I think we have to keep those four counties that are in the potash region whole. We don't want to make the same mistake that was made 50-55 years ago when oil development started; there wasn't enough income to go back to the oil producing counties in areas that could handle infrastructure damage. I've had a set of amendments prepared for this bill. If you look at page 3 line 4 the first proposal is to raise that 4% tax back to 5% like it was in the original draft in our interim committee. On page 4 where it describes the distribution of tax money 20% goes to the counties and 80% to the state, we have no idea what kind of tax revenue this potash might generate. Hopefully, it will generate a lot of revenue. They say there's trillions of dollars worth of deposits out there and in the multi trillions of dollars worth. If that's the case then there should be enough money to keep the counties whole from the damage. The amendment will pay the first \$1 million of each mining site or spacing unit back to the county. After the counties receive the million dollars the next step in the allocation will be for the first three calendar years the county will receive 70% and the state 30%. The next three years after that the county will receive 60% and the state will receive 40%. For the next two years after that it's an even 50-50 split between the county and the state. For the next two years after that again the county receives 40% and the state receives 60% and after that the county will end up receiving 30% and the state 70%. That would transpire over a 10 year period. Hopefully that would be enough revenue for the counties to repair and restore the infrastructure and maintain their services to their taxpayers. Also, to ensure that the county has some revenues to spend for other needs the county treasurer shall deposit 10% of the revenue received by the county into a special potash impact grant fund for the county. And from this impact grant fund that they may issue grants to counties in the township for different things they made need if it be load equipment or infrastructure repairs. Also, an important part of this would be on page 12 after line 7 insert the wording on the industrial commission shall adopt and maintain rules for potash mining, environmental protection and reclamation. Environmental protection and

reclamation rules at a minimum must establish a high degree of protection for surface owners; surface and underground water productive capacity of soils, public health and safety, and public participation of public officials and members of the public and counties in which potash mining will be conducted. I've heard some comments from some of the people who testified that there should be serious consideration in drafting amendments for this bill.

Representative Steven L. Zaiser: In terms of the original bill and/or amendments, were these tax rates and some of the regulatory things that were supposed to be undertaken, were they taken from other states bills, etc.?

Representative Glen Froseth: Yes, in the interim committee we used some of the guidelines from the state of Michigan, Utah, and some other states that do potash. We also looked at uranium but we didn't do anything with uranium at this time.

Representative Steven L. Zaiser: In terms of the impacts you identified those in generalities, do some of the other states specify addressing certain kinds of impacts?

Representative Glen Froseth: I'm not sure. We didn't go into the specifications in other states.

Mr. Lynn Helms, Director of Mineral Resources: I would like to offer myself to answer questions from the committee and make a few comments in response to testimony that you heard. With your permission let me start by saying we really should think of this potash resource more like we think of natural gas and oil. Potash as it arrives at the surface in a solution mining well has zero value. It will have to be transported through a pipeline to a processing facility. They're planning to use the Bellplain mine. But more likely the Hershey mine in Michigan, which is the newest potash processing facility in the country, as a model for construction of this plant. It has no value until it's been processed at that plant and then leaves that plant in a rail car as you heard probably to go to Asia to be processed into fertilizer for growing of rice. Although there's an increasing need for potash fertilizer here in this country and certainly a great opportunity of value added. So it's much more like natural gas than it is like oil. It has no value at the well site whatsoever. It has to go to a processing facility and be recovered from the brine that comes out of the well through that process. That processing facility is going to be a major plant constructed and will probably employ around 100 people in full-time jobs. Many of you are familiar with the Hardy Salt plant that operated in Williston, North Dakota from about 1963 through 1983 and it would be something along the lines of this plant. With regards to the salt pile we have already informed Dakota Salts that North Dakota law does not allow for storage of salt on the surface like that. They are going to be forced to reinject it as a brine into either the Dakota or the Broom Creek formations. That's what our current mining solutions apply too. Lastly, our rules were last updated in 1986 so we need to update. We did a major overhaul with regards to uranium mining but we have yet to do that for this type of mining. In appropriations we are asking for a person to be dedicated to solution mining alone as a full time employee with the Department of Mineral Resources. It will get adequate regulatory attention and we will be updated our rules. With regard to the timing, they've drilled one exploration well. The Corps is currently at a lab in Saskatchewan and being evaluated. The results looked promising. They plan to drill two more before the rig leaves the state so

they can outline some 50,000 acres or so that they think is prospective in southern Burke County. They plan to have a pilot mining well in operation in approximately two years and then in three to five years to into full scale mining with construction of facility similar to what you see in Hershey Michigan.

Vice Chairman Craig Headland: You mentioned we don't allow for surface storage of some of the byproducts like salt, so if the solution comes out with the potash in it has to be piped to a processing plant, how are they going to return the salt byproduct back to the disposal area? I think we were told they were going to put it back down the hole.

Mr. Helm: That's a really good question. In the process that they're using in Hershey, Michigan, 90% of the water is recycled. Only about 10% of the water is lost in the processing. 90% of it travels from the potash beds back to the plant back to the potash beds and around and around. They use in this process oil field brine. The potash beds are encased in hundreds of feet of sodium chloride, table salt beds. They want a brine that already contains a lot of sodium chloride, like oil field water, so that it will preferentially dissolve potash and leave the sodium chloride behind. That is a big difference from what you see at Bellplane, where they are not using salt water they are using fresh water so they dissolve and inordinate amount of sodium chloride and bring that to the surface with the process. So they're going to start with a sodium chloride saturated brine, which will preferentially dissolve the potassium chloride. When it comes to the plant they're going to drop the potassium chloride out. Nine barrels out of ten will go back to the well to redissolve potassium chloride. The rest is going to be lost in the process; moisture that's left in the potash from the drying and cooling. There will be a small lined pond at the facility because you need some make up water and you have to be able to truck water in and out. But the disposal of brine from that pond will be by reinjection into the Dakota formation or the Broom Creek.

Representative Lonny B. Winrich: What is the potential for contamination of ground water and so on from this reinjection of the brine solution?

Mr. Helm: It's very, very low. This is a process that has been regulated under the safe drinking water act and the underground injection control processes in North Dakota since 1983. Our agency currently has primacy for these disposal wells; they'd be a class three disposal well. We currently operate 300 of them across the state and there is no known case of contamination. These wells are pressure tested every five years. They have three layers of steel and two layers of concrete between the ground water and reinjected brine. The mining wells are going to be constructed the same way.

Mr. Doug Graupe, Divide County Commissioner: We are one of the counties, at least the eastern half of our county, is involved in the potash development. I agree with what was being said about Burke County. I support Representative Froseth's amendments. I think the facility should be taxed. The county always has the option of forgiving say five years of a production facility. To have this huge facility in a county and not allowing the tax is unheard of in North Dakota. I don't know of any other facilities that are not taxed at all.

Mr. Dave Sellie, Burke County Commissioner: I would like to support the county people who have come to speak today. You want to picture your tractor parked overnight within three miles of that salt and having it white.

Chairman Wesley R. Belter: No further testimony. Closed bill on HB1046.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1046
January 24, 2011
#13317

☐ Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes; to provide a continuing appropriation; to provide a penalty; and to provide an effective date.

Minutes:

Refer to attached testimony #1A and B

Representative Glen Froseth: Presented amendments. See attached testimony #1.

Representative Shirley Meyer: I have a question on the first \$1 million of allocated it's just the acreage of where the potash is mined, the plant, or what are you thinking there?

Representative Glen Froseth: Each potash mining site will be just like one oil well site. They go horizontal. In what I understand is they go horizontal 9,000 feet deep and then they go the same as a horizontal oil well probably go out two miles. Apparently they can mine a cavern of about 300 feet in circumference from that shaft. This tax will pertain to each one of those sites. As new sites come on the new tax structure continues so they'll have a continuous flow of revenue coming from each minable site. I read some place where they might have as many as four, five, or six sites drilled in one year's time. That seems pretty aggressive to me. I don't think that will happen to begin with anyway.

Representative Shirley Meyer: But the first million goes to where they set the drilling unit on that county?

Representative Glen Froseth: It will be the first million from that site and then it goes to that county. All this pertains to the county where it's being mined from.

Representative Dave Weiler: The tax on this is 4% and at one time I had heard that you tried to change that back to 5%, is that correct?

Representative Glen Froseth: It's in the amendment. Another component in this is that the money will go back to the county as the county must establish an impact grant fund. This amount deposited in the county potash impact grant fund must be allocated through grants by the Board of County Commission for the benefit to the county or townships. Grants may also be awarded to the county on behalf of unorganized townships. Grants

may be awarded on the basis of applications for funding to offset potash development impact. 10% of the money that the county receives goes into this grant fund. Refer to testimony #1 B.

Chairman Wesley R. Belter: That property tax would be the same as the property tax that we allow on things like gas plants?

Representative Glen Froseth: Yes. Gas plants pay tax in lieu of property taxes. This would be similar. It would be up to the county if they wanted to offer total exemption.

Representative Dwight Wrangham: In looking at the first amendment the 01, if I understood this correctly we don't know what kind of dollars we will be looking at from this. We don't know how long this will be before the production might start. I'm wondering if we need to go into the details of allotting x percent to the state and the first million to the county and so forth or if there won't be time for that later on when we actually have some figures to work with. As I recall the reason for going ahead and getting this potash chapter in place so was for those who were going to produce the potash would know what their tax costs would be. I question whether we need to go into dividing this up. The downside I see from that is some expected dollars that entities might see coming and they may be totally different; we may be way off. If we're way off it's always harder to change things.

Representative Glen Froseth: My response to that would be certainly we don't know how much income or production to expect from each site but this is a tax angle. I think we should spell out some parameters to be used. They say this is three to five years down the road so maybe by next session they can easily be adjusted. I would like to see some basic parameters put in here to see the distribution of tax dollars. Burke County isn't really anxious to see this coming as they are concerned about the damage and the by product and how it's going to be handled. There are a lot of questions and a lot of uncertainties about what kind of infrastructure and land damage that could happen with potash.

Chairman Wesley R. Belter: From my perspective I think it's probably okay to introduce these proportions of how the taxes are going to be divided from the perspective of the county. It would seem to me that we want to encourage this type of development but if we leave it completely open if I were a county I would be a little reluctant knowing the experience they have gone through with the oil industry and the amount of damage that has taken place and the cost involved in their road structures that maybe the counties would like to see something put in place. At least it could get debated on this session on the House side. I think it's something we should probably look at.

Representative Lonny B. Winrich: Would you explain this property tax thing again please? What tax is in lieu of what and so on?

Representative Glen Froseth: Page 4 starting on line 6 it deals with potash and by product taxes in lieu of other taxes. The paragraph in the original bill makes the property of the developing company tax exempt. The state is telling the county that property is tax exempt. We don't do that for gas plants or other energy producing facilities; we leave that to the taxing entity to allow them to offer a tax exemption if they choose. It just removes that tax exemption clause.

Representative Lonny B. Winrich: That's the first sentence of that paragraph that you are removing?

Representative Glen Froseth: Remove that whole paragraph, line 6 through 12.

Representative Lonny B. Winrich: But then the sentence that your inserting says the payment of the taxes under this chapter must be in full and in lieu of all ad valorem taxes by the state, counties, cities, towns, townships, school districts, and other municipalities, upon any property rights attached to or inherent in the right to producing potash and potash byproducts. It sounds to me like your again prohibiting the assessment of ad valorem taxes on all those things.

Representative Glen Froseth: The way I interpret is that the county, cities, townships, school districts are the entities that determine if they are going to levy the property tax and what level.

Donnita Wald, General Counsel and Special Assistant Attorney General: The bill says the plant and mining facility and satellite facilities will be taxed by the state centrally assessed property. The reason for that was that there was not a lot of expertise like with a lot of those big plants that are operating in western North Dakota. What that says is those will be centrally assessed however, the land underneath it and extending out will be taxed and can be taxed like any other property within the taxing district. My understanding of the amendment is that the 4% or 5%, whichever the case may be, would constitute the full taxes that the plant would be paying and the potash and byproducts tax would be in lieu of everything else. That's how I understand the amendment to be. So the only revenue from the potash mining would be from the tax that is imposed on the potash.

Chairman Wesley R. Belter: The physical plan would be subject to property tax but that's not what this amendment says, is that correct?

Donnita Wald: That's not what I believe this amendment says.

Representative Glen Froseth: I think we'll have to have this amendment redrafted.

Representative Patrick Hatlestad: Would you say that the existing statement already allows for a county to assess a property tax? The existing one on the original bill on lines 6-12?

Donnita Wald: As written right now it allows the county to assess tax on a real property beneath the plant not the plant itself and all the real property extending from the plant.

Representative Glen Froseth: My intent was the well, the machinery that mines the potash, that's exempt because the taxes are in lieu of property taxes. Just like on an oil well; 11 ½% tax includes the value of the machinery that drills the hole and produces the well. If they have a processing plant then that's taxed and that's what my intent was. The processing plant was not supposed to be exempt from local taxes. They are talking about

building a processing plant that processes potash into a fertilizer. That processing plant should be taxed by the county.

Donnita Wald: I'm not sure that your amendment does that. We were involved with the drafting of this and from what we understood the processing plant would be in Bourke County but at some point in time they would finger out and start drilling using some of the wells that have already been drilled by the oil companies and their attempt to pull oil out of the ground. I thought there were some changes that were made in the interim committee in respect to how those particular pieces would be taxed. I can check with Marcy as to what was changed.

Vice Chairman Craig Headland: Is the processing plant going to be mobile?

Donnita Wald: No. They push brine solution down into the well and the brine comes back up. The brine carries it through a pipe all the way to the processing plant which will always be in Bourke County. They do what they do there and get some water out and use some of the water in addition to the potash there is some other byproducts that come with it.

Representative Glen Froseth: That facility will be a permanent site. The machinery that digs the hole and excavates the potash is just like an oil well, its moveable and it goes all over. We don't tax the oil industry or the oil well.

Donnita Wald: I'm not sure at least I wasn't told that they would be bringing rigs in and drilling new holes all over the place. My understanding was that they were going to use some of the wells that were already out there.

Representative Glen Froseth: That equipment is not taxed as property tax in the oil industry either. The processing plant is taxed.

Donnita Wald: That's correct but is that assessed by the state board?

Representative Glen Froseth: I don't think so.

Representative Dave Weiler: You are going to have the amendments redrafted? The interim tax committee spent a lot of time on this. When this came to us there was some discussion and there was a lot of testimony on the tax rate. It was concluded that the general tax from state to state is somewhere between 3 and 5%. We had determined that because there is none of this going on in the state right now that we would tax this at 4% to encourage this production as the Chairman previously stated. I don't believe that being on the high end of the tax rate is business friendly and not encouraging and so I would hope that when you redraft these that you may reconsider going back to 4%.

Representative Glen Froseth: I don't think I'll reconsider this because I feel this is a commodity that is found nowhere else. It's a commodity in big demand. It's a London based company that is going to Minot and they told us it would be shipped to China so why should we give it away. Who knows, what's 5% equate to compared to oil taxes? One person from Bourke County said we should tax at 11 1/2% the same as we do oil. I don't know if 5% equates to 11 1/2 % in oil or not. No one knows at this point. Two years from

now if you think 5% is too high you can amend it to 4% or 2 ½% or whatever but right now it's pretty hard to go up on taxes if you start off too low. In the interim committee there wasn't a lot of time discussing that because the person from Dakota Salts testified and said it was too high and made a motion to lower. It took five minutes and it was lowered so I don't think we're out of line by leaving it at least at 5% to start with, it should probably go higher.

Chairman Wesley R. Belter: No further discussion. We will wait for Representative Glen Froseth to get his amendments drafted.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1046
January 25, 2011
#13403

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Committee Clerk Signature

Mary Bruckner

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Donnita "Dee" Wald, Legal Counsel for Office of State Tax Commissioner: This morning I was asked about the amendment that Representative Froseth proposed to make the potash plant subject to taxation and all the other machinery and equipment that goes along with that. After looking all of the lines and removing the line and removing the language, on page 4 line 9 and all subsequent to that, we determined that the amendment does indeed to what Representative Froseth intended. It makes this exemption and real property taxation the same as gas production tax. I apologize for misreading the amendment before.

Representative Glen Froseth: This then will allow the processing facilities to be taxed but it does not give the county the right to exempt the tax, does it?

Dee Wald: No, it doesn't give them the right to exempt it.

Representative Glen Froseth: Not the actual drilling equipment that drills the hole?

Dee Wald: You are correct.

Representative Glen Froseth: At one point I thought maybe we should allow the county to give that tax exemption if they chose but this is probably fine to do it this way.

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HB 1046
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Minutes:

See attached amendment #1.

Representative Glen Froseth: Distributed and reviewed amendments. Please refer to attached amendment #1.

Representative Scot Kelsh: Does this keep the tax rate at 4%?

Representative Glen Froseth: Yes.

Vice Chairman Craig Headland: Do we have any idea how long it takes to generate the first \$1 million?

Representative Glen Froseth: That's one thing we really don't know. There are so many things we don't know about the potash industry. It could possibly be three to five years down the road before any physical mining will take place. We really don't know how much value can come from one location. I visited with Mr. Helms about it and he said it could be huge. It could be as much as 1.6 million tons excavated from one mining site. That could have a value of \$500 million. I've heard before that the value of potash in North Dakota is between \$14 and 16 trillion.

Vice Chairman Craig Headland: In that first year if they generate \$500 million...

Representative Glen Froseth: That wouldn't be the first year it would be the total from one mining site. I don't know how long it would take them to mine out one site.

Vice Chairman Craig Headland: It seems like it's awfully heavily weighted towards the counties and if we're talking about a huge number like that what are they going to do with all that money?

Representative Dave Weiler: I think there are a lot of questions over this still. This is an issue we have studied over the interim. I don't think it's complete and I don't think we know enough yet and I would like to see this issue to be continued to be studied on over the next interim. We keep hearing there is nothing that's going to happen in the next three to five years and if that's true then let's give this another interim and see if there is anymore tweaking can be done to whatever bill comes out of this session. I would just hope that when the time comes and if we further amend this and to add a study for the 2011-13 interim that maybe we continue to study this issue a little bit more.

Representative Glen Froseth: This is a new industry with a lot of unknowns. I feel that why wouldn't we want to keep the counties whole from any damage that is occurring like what is in the oil patch. This can be changed two years from now if it isn't the right numbers but I think if we look back to when oil was first starting to develop in the late 40s and 50s there were a lot of mistakes made. Those mistakes have not been corrected yet today. I don't think we want to repeat those same mistakes.

Representative Steven L. Zaiser: I would wholeheartedly concur with Representative Glen Froseth comments. I think being proactive is less expensive and more effective in terms of utilization of money than being reactive.

Chairman Wesley R. Belter: I agree with Representative Weiler and that we should look at this in the upcoming interim. I would ask if Representative Froseth would like to move his amendments and then we should amend on a study.

Representative Glen Froseth: I don't think we can kill this bill because this is the only framework we have to work with potash and production and distribution of funds. I would certainly be open to amending it and further study it in the next biennium. **I will move the amendments and further amend that we include potash development in the interim study.**

Representative Patrick Hatlestad: Seconded.

Representative Dave Weiler: Just to be clear that the language in the legislative interim that they shall study this.

A voice vote was taken: MOTION CARRIED.

Vice Chairman Craig Headland: I respect with Representative Froseth has done here and I agree with it for the most part but I really believe that it's weighted too much to the county. Would there be any interest in further amending it and just getting rid of A and then move directly to B and then carry things forward? It would give a little bit more of the revenue to the state, not a lot though.

Representative Glen Froseth: Representative Headland asked what the county is going to do with all that money, what is the state going to do with all that money?

Vice Chairman Craig Headland: We can give it back to everybody.

Representative Glen Froseth: I think the counties have to be guaranteed they are going to be kept whole from any damages or any destruction to the surface or infrastructure. If that figure isn't right after two or four years it can be changed.

Representative Dave Weiler: I tend to agree with Representative Headland. I know that Representative Froseth and his committee have done a lot of work on this but when you make the comment that if this isn't correct we can come back in two or four years and decrease the amount to counties, I believe that in two or four years it's going to be a lot easier to come in and increase the amount than it is to decrease. We all know how this happens and how this works. It's just a lot harder because there are going to come in beaten down the doors and I would just like to start out at a lower percentage and if it needs to be increased we can do that. I think it's near impossible to decrease that amount of money because there will be more needs created out of these monies than you could possibly imagine. I would support Representative Headland's idea.

Vice Chairman Craig Headland: I was going to move to further amend this bill to eliminate A out of subsection 2 and then just renumber accordingly.

Representative Dave Weiler: Seconded.

Representative Shirley Meyer: We do have the advantages as we live out there and once again I'm comparing this to oil when the impacts happen they happen so fast and they are so intense that when you're behind the curve if we could have had more monies...I would disagree with you when you say it's easy to get more impact dollars back to the county, no it's not. We've been fighting since 2007. If we would have had the funding like this amendment would have helped us with and had these monies up front we would have been able to fix our roads at that time. We didn't have the money so we couldn't fix them. Now rather being able to repair them we have to replace them at three to four times the cost. We still don't have the money out there that we need. People ask what we're going to do with all that money that the Governor proposed of \$958 million; quite frankly we need twice that much just to keep our roads and bridges intact so we can keep hauling oil trucks. We need to keep increasing money to the general fund that we can give to everybody. I really hope we can defeat this second amendment.

Representative Roscoe Streyle: I think we need to keep in context so this is three counties and not 15 or 20 and there is no talk that I've heard of 20,000 wells. It could be substantial but it is nowhere near the amount of oil and it's only three counties. There's not potash in the whole western half. So I would agree with the amendment.

Representative Dwight Wrangham: As we've all agreed there is a lot of unknown in this as we move forward and I think there is a strong desire to give the counties even more. There's also a strong desire to be careful that we don't do something that we're not going to be able to correct if it's not right. Given the fact that the study is going to be asked for and hopefully done, I think eliminating A is a very reasonable compromise to move the bill forward.

Representative Lonny B. Winrich: I'm not sure what the amendment means by simply eliminating subparagraph A under paragraph 2 because the other sections just don't read

correctly if you that. Is your intent simply to move all those percentages up so that it starts with a 60-40 distribution rather than a 70-30 distribution?

Vice Chairman Craig Headland: That would be my intent. I know it might take a little bit of wording changes. It's a little more difficult than just renumbering.

Representative Patrick Hatlestad: Are you going to eliminate the first \$1 million?

Vice Chairman Craig Headland: That stays.

Representative Bette Grande: The amendment isn't that difficult all you do is on B just take off "after the allocation" under subsection A and then renumber.

Chairman Wesley R. Belter: Does everybody understand what is taking place here with the Headland motion?

Voice vote taken to approve of the Headland amendment: MOTION CARRIED.

Representative Bette Grande: Motion for DO PASS AS AMENDED.

Representative Patrick Hatlestad: Seconded.

A roll call vote was taken: YES 14 NO 0 ABSENT 0

Representative Glen Froseth will carry HB 1046.

FISCAL NOTE
Requested by Legislative Council
04/20/2011

Amendment to: Engrossed
HB 1046

1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engrossed HB 1046 with Conference Committee Amendments imposes a new tax on potash and byproducts associated with potash production, provides for a legislative study, and provides a statement of legislative intent.

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 fiscal impact of this bill cannot be determined as it is not known if or when taxable potash production will occur or how many tons may be produced. Potential tax collections will depend on the timing of potash production (in the 2011-13 biennium or beyond), the amount of production, value of byproducts that are sold, the value of potash at the time production occurs, and the value of taxable property. All of these are currently unknown.

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.*

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 is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
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Phone Number: 328-3402

Date Prepared: 04/20/2011

FISCAL NOTE
Requested by Legislative Council
04/01/2011

Amendment to: Engrossed
HB 1046

1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations					(\$2,000,000)	\$2,000,000

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engrossed HB 1046 with Senate Amendments imposes a new tax on potash and byproducts associated with potash production, provides for a legislative study, and provides an 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 fiscal impact of this bill cannot be determined as it is not known if or when taxable potash production will occur or how many tons may be produced. Potential tax collections will depend on the timing of potash production (in the 2011-13 biennium or beyond), the amount of production, value of byproducts that are sold, the value of potash at the time production occurs, and the value of taxable property. All of these are currently unknown.

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.*

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 is also included in the executive budget or relates to a continuing appropriation.*

Section 4 of the bill appropriates up to \$2 million from the state general fund to a special account within the impact grant fund, during the 2013-15 biennium.

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	04/01/2011

FISCAL NOTE
Requested by Legislative Council
02/10/2011

Amendment to: HB 1046

1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engrossed HB 1046 imposes a new tax on potash and byproducts associated with potash production, and provides for a legislative study.

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 fiscal impact of this bill cannot be determined as it is not known if or when taxable potash production will occur or how many tons may be produced. Potential tax collections will depend on the timing of potash production (in the 2011-13 biennium or beyond), the amount of production, value of byproducts that are sold, the value of potash at the time production occurs, and the value of taxable property. All of these are currently unknown.

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.*

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 is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/11/2011

FISCAL NOTE

Requested by Legislative Council
12/15/2010

Bill/Resolution No.: HB 1046

1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1046 imposes a new tax on potash and byproducts associated with potash production.

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 HB 1046 exempts the sale of potash and byproducts from sales tax when the potash or byproducts are subject to the new production taxes imposed in this bill.

Section 3 of HB 1046 imposes a 4% tax on potash and byproducts. The provisions of the bill distribute 80% of any revenue in a manner that reduces individual income tax rates, and 20% among the producing county (ies).

The fiscal impact of this bill cannot be determined as it is not known if or when taxable potash production will occur or how many tons may be produced. Potential tax collections will depend on the timing of potash production (in the 2011-13 biennium or beyond), the amount of production, value of byproducts that are sold, and the value of potash at the time production occurs. All of these are currently unknown.

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.*

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 is also included in the executive budget or relates to a*

continuing appropriation.

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/07/2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1046

Page 4, remove line 7

Page 4, line 8, replace "any processing plant, mining facility, or satellite facility producing potash or byproducts." with "The payment of the taxes under this chapter must be in full and in lieu of all ad valorem taxes by the state, counties, cities, school districts, and other taxing districts upon any property rights attached to or inherent in the right to producing potash and potash byproducts; upon producing potash and potash byproducts leases; upon machinery, appliances, and equipment used in and around any well producing potash or potash byproducts and actually used in the operation of the well; and upon any investment in any property."

Page 4, line 9, replace "on which" with "and"

Page 4, line 9, remove "is located"

Page 4, line 11, remove "nor excise taxes upon the sale of"

Page 4, line 12, remove "minerals or byproducts at retail"

Page 4, replace lines 22 through 26 with:

- "1. The first one million dollars of the taxes collected under this chapter from production within each spacing unit must be allocated to the county in which the spacing unit is located. If a spacing unit is located in more than one county, the first one million dollars of the taxes collected under this chapter from production within that unit must be allocated among the counties on the basis of the acreage of the spacing unit within each county. Amounts allocated to the county under this subsection must be deposited by the county treasurer in the county road and bridge fund.
2. After the allocation under subsection 1 has been made, revenue from taxes collected from production within each spacing unit must be allocated as follows:
 - a. For the first calendar year, seventy percent to the producing county and thirty percent to the state general fund.
 - b. For the first calendar year after the allocation under subdivision a is completed, sixty percent to the producing county and forty percent to the state general fund.
 - c. For the first calendar year after the allocation under subdivision b is completed, fifty percent to the producing county and fifty percent to the state general fund.
 - d. For the first calendar year after the allocation under subdivision c is completed, forty percent to the producing county and sixty percent to the state general fund.
 - e. After the allocation under subdivision d is completed, thirty percent to the producing county and seventy percent to the state general fund.

f. Before deposit of revenue allocated to the state general fund under this subsection, the state treasurer shall deduct thirty percent of that revenue and deposit that amount in the legacy fund.

3. The county treasurer shall deposit ten percent of the revenue received by the county under subsection 2 in a special potash impact grant fund for the county.

57-65-07.1. County potash impact grant fund - Grants - Reports.

Amounts deposited in the county potash impact grant fund under section 57-65-07 must be allocated through grants by the board of county commissioners to or for the benefit of the county or townships or cities within the county. Grants also may be awarded to the county on behalf of unorganized townships in the county. Grants may be awarded on the basis of applications for funding to offset potash development impact. Grants under this section may be awarded to grantees only to meet initial impacts affecting basic governmental services and directly necessitated by potash development impact."

Page 12, after line 7, insert:

"57-65-19. Powers of industrial commission.

The industrial commission shall adopt and maintain rules for potash mining, environmental protection, and reclamation. Environmental protection and reclamation rules, at a minimum, must establish a high degree of protection for surface owners, surface and underground water, productive capacity of soils, public health and safety, and participation of public officials and members of the public in counties in which potash mining will be conducted."

Renumber accordingly

Date: 2-7-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1046

2003 amendment

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Froseth Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trottier					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE

AYE 13

NAY 1

MOTION CARRIES

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1046

Page 1, line 5, after the first semicolon insert "to provide for a legislative management study;"

Page 4, remove line 7

Page 4, line 8, remove "any processing plant, mining facility, or satellite facility producing potash or byproducts."

Page 4, line 8, after the underscored period insert "The payment of the taxes under this chapter must be in full and in lieu of all ad valorem taxes by the state, counties, cities, school districts, and other taxing districts upon any property rights attached to or inherent in the right to producing potash and potash byproducts; upon producing potash and potash byproducts leases; upon machinery, appliances, and equipment used in and around any well producing potash or potash byproducts and actually used in the operation of the well; and upon any investment in property."

Page 4, line 9, replace "on which" with "and"

Page 4, line 9, remove "is located"

Page 4, line 11, remove "nor excise taxes upon the sale of"

Page 4, line 12, remove "minerals or byproducts at retail"

Page 4, replace lines 22 through 26 with:

- "1. The first one million dollars of the taxes collected under this chapter from production within each spacing unit must be allocated to the county in which the spacing unit is located. If a spacing unit is located in more than one county, the first one million dollars of the taxes collected under this chapter from production within that unit must be allocated among the counties on the basis of the acreage of the spacing unit within each county. Amounts allocated to the county under this subsection must be deposited by the county treasurer in the county road and bridge fund.
2. After the allocation under subsection 1 has been made, revenue from taxes collected from production within each spacing unit must be allocated as follows:
 - a. For the first calendar year, sixty percent to the producing county and forty percent to the state general fund.
 - b. For the first calendar year after the allocation under subdivision a is completed, fifty percent to the producing county and fifty percent to the state general fund.
 - c. For the first calendar year after the allocation under subdivision b is completed, forty percent to the producing county and sixty percent to the state general fund.
 - d. After the allocation under subdivision c is completed, thirty percent to the producing county and seventy percent to the state general fund.

- e. Before deposit of revenue allocated to the state general fund under this subsection, the state treasurer shall deduct thirty percent of that revenue and deposit that amount in the legacy fund.
3. The county treasurer shall deposit ten percent of the revenue received by the county under subsection 2 in a special potash impact grant fund for the county.

57-65-07.1. County potash impact grant fund - Grants - Reports.

Amounts deposited in the county potash impact grant fund under section 57-65-07 must be allocated through grants by the board of county commissioners to or for the benefit of the county or townships or cities within the county. Grants also may be awarded to the county on behalf of unorganized townships in the county. Grants may be awarded on the basis of applications for funding to offset potash development impact. Grants under this section may be awarded to grantees only to meet initial impacts affecting basic governmental services and directly necessitated by potash development impact."

Page 12, after line 7, insert:

"57-65-19. Powers of industrial commission.

The industrial commission shall adopt and maintain rules for potash mining, environmental protection, and reclamation. Environmental protection and reclamation rules, at a minimum, must establish a high degree of protection for surface owners, surface and underground water, productive capacity of soils, public health and safety, and participation of public officials and members of the public in counties in which potash mining will be conducted.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - POTASH MINING TAXATION.

During the 2011-12 interim, the legislative management shall study potash mining and taxation issues. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

VR
2/8/11
182

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1046

Page 1, line 5, after the first semicolon insert "to provide for a legislative management study;"

Page 4, remove line 7

Page 4, line 8, replace "any processing plant, mining facility, or satellite facility producing potash or byproducts." with "The payment of the taxes under this chapter must be in full and in lieu of all ad valorem taxes by the state, counties, cities, school districts, and other taxing districts upon any property rights attached to or inherent in the right to producing potash and potash byproducts; upon producing potash and potash byproducts leases; upon machinery, appliances, and equipment used in and around any well producing potash or potash byproducts and actually used in the operation of the well; and upon any investment in property."

Page 4, line 9, replace "on which" with "and"

Page 4, line 9, remove "is located"

Page 4, line 11, remove "nor excise taxes upon the sale of"

Page 4, line 12, remove "minerals or byproducts at retail"

Page 4, replace lines 22 through 26 with:

- "1. The first one million dollars of the taxes collected under this chapter from production within each spacing unit must be allocated to the county in which the spacing unit is located. If a spacing unit is located in more than one county, the first one million dollars of the taxes collected under this chapter from production within that unit must be allocated among the counties on the basis of the acreage of the spacing unit within each county. Amounts allocated to the county under this subsection must be deposited by the county treasurer in the county road and bridge fund.
2. After the allocation under subsection 1 has been made, revenue from taxes collected from production within each spacing unit must be allocated as follows:
 - a. For the first calendar year, sixty percent to the producing county and forty percent to the state general fund.
 - b. For the first calendar year after the allocation under subdivision a is completed, fifty percent to the producing county and fifty percent to the state general fund.
 - c. For the first calendar year after the allocation under subdivision b is completed, forty percent to the producing county and sixty percent to the state general fund.
 - d. After the allocation under subdivision c is completed, thirty percent to the producing county and seventy percent to the state general fund.

- e. Before deposit of revenue allocated to the state general fund under this subsection, the state treasurer shall deduct thirty percent of that revenue and deposit that amount in the legacy fund.
- 3. The county treasurer shall deposit ten percent of the revenue received by the county under subsection 2 in a special potash impact grant fund for the county.

57-65-07.1. County potash impact grant fund - Grants - Reports.

Amounts deposited in the county potash impact grant fund under section 57-65-07 must be allocated through grants by the board of county commissioners to or for the benefit of the county or townships or cities within the county. Grants also may be awarded to the county on behalf of unorganized townships in the county. Grants may be awarded on the basis of applications for funding to offset potash development impact. Grants under this section may be awarded to grantees only to meet initial impacts affecting basic governmental services and directly necessitated by potash development impact."

Page 12, after line 7, insert:

"57-65-19. Powers of industrial commission.

The industrial commission shall adopt and maintain rules for potash mining, environmental protection, and reclamation. Environmental protection and reclamation rules, at a minimum, must establish a high degree of protection for surface owners, surface and underground water, productive capacity of soils, public health and safety, and participation of public officials and members of the public in counties in which potash mining will be conducted.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - POTASH MINING TAXATION. During the 2011-12 interim, the legislative management shall study potash mining and taxation issues. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

Date: 2-7-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1046

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider further amended

Motion Made By Rep. Headland Seconded By Rep. Weiler

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trottier					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE
AYE

MOTION CARRIES

Date: 2-7-11
Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1046

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Grande Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	✓		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Froseth

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1046: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1046 was placed on the Sixth order on the calendar.

Page 1, line 5, after the first semicolon insert "to provide for a legislative management study;"

Page 4, remove line 7

Page 4, line 8, replace "any processing plant, mining facility, or satellite facility producing potash or byproducts." with "The payment of the taxes under this chapter must be in full and in lieu of all ad valorem taxes by the state, counties, cities, school districts, and other taxing districts upon any property rights attached to or inherent in the right to producing potash and potash byproducts; upon producing potash and potash byproducts leases; upon machinery, appliances, and equipment used in and around any well producing potash or potash byproducts and actually used in the operation of the well; and upon any investment in property."

Page 4, line 9, replace "on which" with "and"

Page 4, line 9, remove "is located"

Page 4, line 11, remove "nor excise taxes upon the sale of"

Page 4, line 12, remove "minerals or byproducts at retail"

Page 4, replace lines 22 through 26 with:

- "1. The first one million dollars of the taxes collected under this chapter from production within each spacing unit must be allocated to the county in which the spacing unit is located. If a spacing unit is located in more than one county, the first one million dollars of the taxes collected under this chapter from production within that unit must be allocated among the counties on the basis of the acreage of the spacing unit within each county. Amounts allocated to the county under this subsection must be deposited by the county treasurer in the county road and bridge fund.
2. After the allocation under subsection 1 has been made, revenue from taxes collected from production within each spacing unit must be allocated as follows:
 - a. For the first calendar year, sixty percent to the producing county and forty percent to the state general fund.
 - b. For the first calendar year after the allocation under subdivision a is completed, fifty percent to the producing county and fifty percent to the state general fund.
 - c. For the first calendar year after the allocation under subdivision b is completed, forty percent to the producing county and sixty percent to the state general fund.
 - d. After the allocation under subdivision c is completed, thirty percent to the producing county and seventy percent to the state general fund.
 - e. Before deposit of revenue allocated to the state general fund under this subsection, the state treasurer shall deduct thirty percent of that revenue and deposit that amount in the legacy fund.

3. The county treasurer shall deposit ten percent of the revenue received by the county under subsection 2 in a special potash impact grant fund for the county.

57-65-07.1. County potash impact grant fund - Grants - Reports.

Amounts deposited in the county potash impact grant fund under section 57-65-07 must be allocated through grants by the board of county commissioners to or for the benefit of the county or townships or cities within the county. Grants also may be awarded to the county on behalf of unorganized townships in the county. Grants may be awarded on the basis of applications for funding to offset potash development impact. Grants under this section may be awarded to grantees only to meet initial impacts affecting basic governmental services and directly necessitated by potash development impact."

Page 12, after line 7, insert:

"57-65-19. Powers of industrial commission.

The industrial commission shall adopt and maintain rules for potash mining, environmental protection, and reclamation. Environmental protection and reclamation rules, at a minimum, must establish a high degree of protection for surface owners, surface and underground water, productive capacity of soils, public health and safety, and participation of public officials and members of the public in counties in which potash mining will be conducted.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - POTASH MINING TAXATION. During the 2011-12 interim, the legislative management shall study potash mining and taxation issues. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 SENATE FINANCE AND TAXATION

HB 1046

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1046

3/8/2011

Job Number 15064

☐ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes

Minutes:

Chairman Cook opened the hearing on HB 1046.

John Walstad, Legislative Council – The bill draft recommended has been amended in the House and is now somewhat different from the introduced version. The bill starts off with a section that is in 57-02-08 its property tax exemptions and the section in current law provides an exemption for coal and oil in place in the earth and subject to taxes under those chapters listed, another one is added here for potash in place in the earth subject to the tax created by this bill draft. The next section is a sales tax exemption so that the potash when extracted, processed, and sold, would not be subject to sales tax. When that potash gets processed into fertilizer and is sold in North Dakota there is a sales tax exemption that applies already for fertilizer sales. The third section creates a new chapter of code. The first section of it is definitions. Page 3, the rate of tax for potash, 4% of an average annual price of potash and that is determined by the US Department of Labor that is prepared annually but for the 12 months beginning in July of this year, that price is tagged at \$357.10. How that dollar amount was arrived at, I'm not sure. The following section imposes 4% also on byproducts of potash extraction. There is a definition that includes a very long list of minerals and elements that most of which I don't even know what they are, but if those things are brought to the surface and sold, a 4% tax applies to them as well. The next significant thing, the top of page 4, what this means is the Federal Government has waived it's right to an exemption from state taxes in the case of mineral interests owned by the Federal Government if the state imposes a tax that is a property tax. We've got a section here like we've got in the oil tax and in the coal tax that any federal potash ownership would be subject to state taxes. The next section, 57-65-05, the payment of the taxes under this chapter is in lieu of property taxes imposed by local government on the mineral interest, the machinery and equipment used around the well for the operation, and investments in the property. However, on page 4 line 12 beginning there, the land and the processing plant, mining facility, or satellite facility is subject to assessment and taxation by the local government entities. The next significant thing at the bottom of page 4, allocation of revenue, beginning on line 24, the first million dollars of taxes per spacing unit,

this is different from our oil tax which is, we look at the first million in the county, this is per spacing unit, each unit would be subject to a separate allocation of tax. So, the first million dollars is allocated to the county and has to go into the county road and bridge fund. On page 5 after that first million dollars, the revenue within the spacing unit again, for the first year, 60% goes to the county, for the second year 50% to the county, for the third year 40% to the county, for the fourth year 30% to the county, and from the states share in sub e on line 11, from the state's share of the tax collection 30% goes to the legacy fund. Money deposited in there, which is not prohibited by the constitution, from any source is okay, once this money goes into the legacy fund it's subject to all of the constitutional limitations that apply there. Which is, none of the money can be spent until 2017, and then there is a 2/3 vote requirement, and a restriction on how much of the principal can be spent by legislative appropriation, and the earning pour over to the state general fund. Then on line 14, County Treasurer shall put 10% of the money received by the county into a county impact fund. Then on line 16 is a section providing for how that impact fund is to be used, grants are awarded by the Board of County Commissioners based on applications, either the county, townships, or cities may apply and receive grants if they are to meet initial impacts affecting basic governmental services directly necessitated by potash development impact. On the last page beginning on line 8, Industrial Commission is to adopt rules for the mining, environmental protection reclamation; the rules at a minimum must establish a high degree of protection for surface owners, surface and underground water, productive capacity of soils, public health and safety, and input from public officials and members of the public. There are a number of concerns about how this industry if unchecked might impact neighboring lands. Then there is a provision for a study that during the next interim one of the interim committees is to study potash mining and tax issues. There was an interim study but it is not expected there will be any production for a few years yet so an interim committee is to continue monitoring developments that might occur.

Representative Froseth – (See attached testimony A in favor of HB 1046) He also handed out testimony B on behalf of Janet Cron.

Representative Rust – (See attached testimony C in favor of HB 1046)

Lynn Helms – (See attached testimony D in favor of HB 1046)

Chairman Cook – The pipe that takes the solution from the well to the plant, is that subject to property tax?

Lynn Helms – No, I do not believe it is. In the oil and gas world it is not.

Marcy Dickerson, tax Department – Oil and gas pipelines are exempt from taxation from the actual well up to the point of sale or first point where it is reasonable and feasible to measure. That's generally at the tank battery. From then on the gathering lines are taxable up to the processing facility or wherever that product is going.

Senator Triplett – Just to be clear here, when you talk about the duplication what you are asking us to do is consider removing from page 13 lines 6 through 11. Is that correct?

Lynn Helms – That is correct.

Senator Triplett – By removing them then we would leave potash facilities subject to exactly the same set of rules regarding subsurface protection, ground water protection, surface water protection as all the rest of the state is subject to, is that correct?

Lynn Helms – That too is correct, yes. I believe if you look at the highlighted sections from 38-12-02 and 43-02-02 you will see all of those things that are being requested on page 13 in those lines are in there.

Senator Hogue – Can you tell us how long it took the Hersey Michigan mine to get up to this annual production of 1.6 million tons per year and can you tell us how long it would take for North Dakota production to get the same?

Lynn Helms – We've been told by industry to anticipate a pilot mining well in approximately 2 years. Then a full mine processing plant similar to Hersey is about 5 years. It takes then roughly a year or so to get up to full production. The Hersey mine, it took then approximately a year to get up to 1.6 million tons per year.

Chairman Cook – In North Dakota, if we get a plant like this, these solution mines are going to be all the way around it I assume. What kind of an area, geographically wise, would we be talking that it would take to take care of one plant? Is it feasible to pipe it 20 miles, 40 miles; is there a limit to how far out you can reach before that plant would need to be built somewhere else?

Lynn Helms – No one has reached that limit yet so we know that it approximates 10 miles and greater. No one has actually reached that limit where they could have a pilot well field out here and pumped the brine back to the main plant. The main plant is the primary expense and that's where the 100 employees are and everything. Our best guess is that across the potash producing area of North Dakota which is 4 counties between Divide and Bottineau that we would have at least 4 of these.

Chairman Cook – The cavern itself, you've got an empty cavern, good for anything?

Lynn Helms – It's left of course full of brine. There are discussions ongoing about using the cavern for carbon dioxide storage. It's 6,000 to 9,000 feet below the earth and it's sealed off from the surface so you could pump CO2 in there at very high pressure and store it basically forever. The more exciting potential use of this is a partnership between the wind industry and this salt mining industry. Either air or carbon dioxide is pumped into these caverns and stored at pressure when there is excess wind energy and then when the wind is not blowing it's released back out and run through turbines to spin generators. So it's like a gigantic earth battery that can stabilize wind energy production. This area of North Dakota has great wind resources but it's too far off the grid to get on the nationwide grid and let the grid absorb the excess power and that sort of thing.

Senator Dotzenrod – On the Hershey plant they've got the 2 silo's there, that's where the potash is stored, is that loaded then on to railcars or if it's still in liquid is it just going through a pipeline or what happens to it after it leaves those silos?

Lynn Helms – The potash stored in those silos is a dried concentrated form so it's in a crystal form.

Chairman Cook – Is it true that potash is used quite considerably in growing rice?

Lynn Helms – That is correct. That is the primary use for it.

Ted Hawbaker, Surface Owner – I have great concerns but for the most part support the tax policy in this bill. I really myself think it's quite low for a product that is an asset that we have here. I'm quite concerned in the pipelines going from the producing wells to the plant. What happens when the rupture or leak.

Vice Chairman Miller asked for testimony opposed to bill HB 1046.

Ben Gerber, Dakota Salts – We are not opposed to having a tax on potash, in fact we would like a tax. We are opposed to the current form of the bill and how it was amended in the House. As a nation we consume 19% of the potash that is produced in the world and we produce only 2.5% so it is an important new industry that we can look at building.

Ben Gerber went on to say his client would be available at the hearing on 3/15/2011 but went on to explain the high points for acknowledging this industry.

Chairman Cook – Since we started the discussion during the interim committee putting together a potash tax it was very important to all of us that anyone that is going to come in to North Dakota to mine potash knew what the tax policy was going to be up front rather than after the fact so they could determine whether it was even profitable for them and if they even wanted to come into our state and mine potash. During the interim we looked at tax policy from other states and I can look at this bill as it is right now and I get the feeling, or would form the opinion that we are going to be considered a high tax state as far as the tax that we impose on potash compared to other states in the country that it's located. I also hear testimony that it's not high enough. To what degree does a tax get to the point where someone like Dakota Salts says sorry we aren't even going to mine it?

Ben Gerber – I will defer that question to my client. We also have to look at; this is a significant investment in the community. It's a \$200 to possibly \$400 million facility to process it; this is not like just putting it in a pipeline and shipping it to Oklahoma. This is creating long term stable jobs, so outside of the drilling rigs where you have those jobs, you are going to have long term employment in this community in these facilities.

Vice Chairman Miller – Can you briefly describe how many jobs you believe would be created temporary, short term, and long term?

Ben Gerber – My client can talk about the employment prospects and what that would bring to the area.

Senator Hogue – Mr. Helms described a timeline of approximately 5 years before we get to a full producing well. Is that consistent with what your client is telling us?

Ben Gerber – That's what we believe. At the very earliest, 5 years off from having a plant operational and running and processing it. Right now there's a test well that was drilled and is still in confidential status which is similar to oil and gas, you have that 6 month period. They are still analyzing the cores that were taken out and what that will mean for the industry as we go down the road.

Vice Chairman Miller – Is there a difference in quality between different potash mines?

Ben Gerber – I know there is a difference, and the way it is mined.

Senator Triplett – Just to be clear here, Dakota Salts is not even considering open pit mining for potash in North Dakota because of the depth is that right?

Ben Gerber – It's below the Bakken. It would be impossible.

Vice Chairman Miller asked for neutral testimony for HB 1046. No one came forward.

Chairman Cook closed the hearing on HB 1046.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1046
3/15/2011
Job Number 15420

☐ Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes

Minutes:

Written Testimony Attached

Chairman Cook opened the hearing on HB 1046.

JT Starzecki, Dakota Salts - Explained who Dakota Salts is in slide presentation, attachment A.

Senator Burckhard – You say the potash is quite a bit deeper in our part of this basin, does that add a lot of extra cost or does that discourage development?

JT Starzecki, Dakota Salts – It certainly plays into the economic model and it does add to the cost.

Senator Hogue – I noticed the Providence of Saskatchewan has a couple of different taxes and one of them is sort of a sliding scale based on the value of the potash that's mined. Is that something that would be workable for your mine?

JT Starzecki, Dakota Salts – How they do it up there is, they basically pay off of an index price. That was certainly something that we spent a lot of time going back and forth on. There are good points and bad points to that.

Senator Hogue – Has your organization or are you aware of anyone who has done more of a big picture look at the tax structure to say, okay, here's the amount for the rate for the severance of the mineral, here's the amount for the corporate income tax that the entity that operates in the state would pay, anything like that or is it just a simple comparing NM severance tax to a proposed North Dakota tax, or a MI severance tax. Do you have any big picture data like that?

JT Starzecki, Dakota Salts – We actually coordinated with the Land Department and with the Tax Department to develop a whole picture.

Senator Dotzenrod – You mention the Hersey mine in MI and the big towers there and you said that's for drying. It sounds like an expensive thing to do if you are going to extract

everything out of the ground as a solution and then get the potash out by drying, are you going to be consuming a lot of energy there?

JT Starzecki, Dakota Salts – A couple of resource related answers, there is definitely an opportunity there for us to consume natural gas as our energy source. In the initial startup of the plant we will have to have a certain amount of quality water but the nice part about this evaporation procedure is that it's a closed loop system so we don't have to continually tax the fresh water supply. So we will actually recapture through evaporation we will recapture the water and so we won't tax your system as much as evaporation ponds would. There would be some opportunity to consume some natural gas but what's more critical is making sure we don't tax the fresh water supply.

Chairman Cook – The bill we have before us puts a 4% production tax on it, it's in lieu of property tax on the well site and the gathering pipes, and then you would be paying property tax on the actual plant its self. Good place for us to be?

JT Starzecki, Dakota Salts – It was a starting point. With what we've learned from the environment, with the cost of doing business, we really need to see that percentage come down. I know that we've submitted an amendment to move the percentage down to 1.75% which would get it more in line with what other potash producing states have.

Chairman Cook – You have an amendment that takes it to 1.75% and then leaves the property tax situation the same is that the way it is?

Ben Gerber, Lobbyist, Dakota Salts – I worked with Vice Chairman Miller and the Tax Department; there are some things we are still working out so we aren't ready to submit it yet. The costs are substantially higher in North Dakota just development wise than they are just to the north in Canada based on what we pay for land. Looking at the business environment it makes sense to come in at this price.

Chairman Cook – Can you tell us how much land you lease from the state?

JT Starzecki, Dakota Salts – 398 acres.

Chairman Cook – And that is leased at what?

JT Starzecki, Dakota Salts – It is leased at \$121 an acre with a 2.5% royalty.

Chairman Cook – You're looking at 4% for a total combined.

JT Starzecki, Dakota Salts – That correct. We need it to be within that range to make this project economically viable.

Chairman Cook – Can a mineral rights owner lease his potash mineral rights to you and his oil mineral rights to an oil company?

JT Starzecki, Dakota Salts – That is correct. We have encouraged co development.

Chairman Cook – Your probably 5 years away at the earliest of ever paying a nickels worth of tax, is that correct?

JT Starzecki, Dakota Salts – I would say that is an accurate statement.

Senator Oehlke – I like to do pluses and minuses on paper when I make a decision and so far everything is on the minus side for North Dakota from your perspective. You've got a high tax rate, the depth of drilling, and the cost of development, why do you want to be here at all? Why not just stay in Canada and other places where it's cheaper already?

JT Starzecki, Dakota Salts – The opportunity to be the first potash producing organization in the state of North Dakota certainly has value to our shareholders and has value to our organization. The proximity to infrastructure is very important, having access to railcars, having access to personnel that have drill field experience, access to pipelines, that's all very important.

Senator Triplett – If you expect the price of potash to continue going up in the future, it seems to me that you could just sit on your leases for a few years, wait for the price to go up and then the agreement that was previously negotiated would work just fine right?

JT Starzecki, Dakota Salts – I would say that's a risk that we are not prepared to take with our shareholders money. We've invested over \$5 million currently if the price upholds where it is it makes it awfully tough to do business.

Senator Triplett – I just mean you could choose to continue working in some other environment as Senator Oehlke just mentioned and come back to North Dakota in 5 years or whenever the price goes up. There's nothing forcing you to start here right now if the economics don't work out exactly right.

JT Starzecki, Dakota Salts – I would say that in theory that could be the case, but because we've invested not only finances but the opportunity to work with everyone here and build relationships, to start over again, we want to see this through.

Senator Triplett – It seemed to me that during the interim there was at least an understanding that this 4 plus 4 was something you were comfortable with and it really disturbs me to see you coming back now and saying no we are starting over. It seems to me that you are starting over in terms of your negotiations with the state.

JT Starzecki, Dakota Salts – I respect your opinion, I would say if you go back and look at the presentations I gave, I made specific recommendations to an all encompassing package that was not nearly as high.

Senator Triplett – Other kinds of taxes like property taxes and income taxes and sales taxes, I sort of get it that we need as a state to be competitive with other states. When it comes to natural resources I don't even think of these as taxes I think of these as the state's share of a resource that is going to be gone once you extract it and so I don't have any concern about being competitive with other states. My concern is that the state of North Dakota takes care of itself and if we aren't getting a satisfactory amount for the resource, I'm comfortable having the resource sit in the ground until the economics work out that we should get our fair share.

JT Starzecki, Dakota Salts – What gage do you use to tell the organization what is fair and what is not? It's an arbitrary number unless you have data from other states that are already producing the mineral to compare that to.

Senator Triplett – Those are arbitrary numbers in those other states as well that they have agreed to for whatever reason. Maybe they have a need in MI where the economy is devastated, for the jobs and tax dollars, if it is so important to them that they are willing to give away their resource, that's fine. We have the luxury in North Dakota right now of not having to give away our resources because we have a pretty powerful economy right now. I don't know why we should give away our natural resources just because the economics don't work out for you at the moment.

Chairman Cook – I think 141 legislators as we move forward with a final tax policy all of us will consider to some degree the tax policy vs. leaving the resources in the ground. In defense of JT I will acknowledge that sitting in the conference room from the beginning as we started working on a tax policy during the interim committee I would say you were very consistent that you were looking at a policy that would deliver 4% total tax and royalty. I've always been somewhat confused with how you have looked at royalty as part of our tax policy but you have been consistent.

Senator Dotzenrod – One of the things that has gone on in North Dakota with the development of the oil industry is that there has been a lot of local affects that the state has had to come back and deal with whether it's enrollment growth in the schools, road and infrastructure and housing and that sort of thing. Do you see in this industry that there is going to be any of those local affects?

JT Starzecki, Dakota Salts – I would say that there is a fairly significant impact to the number of jobs that could come to the state as a result of this project.

Vice Chairman Miller – How many employees are we talking here?

JT Starzecki, Dakota Salts – What I can quote to you is the Hersey mine in MI is a similar structure, similar plant, similar operation that we would be shooting for and they employ a little over 100 people full time. To build the plant they had around 1,000 part time workers come in and out for construction, housing, and transportation kinds of positions.

Senator Oehlke – These caverns that are created, they are available for storage, are you storing anything anywhere now?

JT Starzecki, Dakota Salts – We are not in any storage projects right now.

Carlee McLeod, Deputy Treasurer – (See attached testimony B, neutral on HB 1046)

Chairman Cook closed the hearing on HB 1046.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1046
3/21/2011
Job Number 15762

☐ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1046.

Senator Triplett – Why would we want to do this when we heard that most of the potash goes to China so it doesn't necessarily benefit our folks, when we hear them say that they expect the price of potash to go up substantially over time, we know as we discussed that it's difficult to get people to change taxes after the fact, we studied this during the interim and the committee came to a group conclusion that 5% was reasonable, now it's been reduced to 4% on the House side, I'm comfortable with the 4% but why would we just simply give it away.

Vice Chairman Miller – First off, I think the 5% origin was something that we discussed because the industry wanted to include in that their royalties of which so they meet a maximum of 5%. If we put our tax at 4% then we will be well over that 5% and be closer to 7% because of the royalties they pay. As an industry they view their royalties paid and their taxes all in the same group. That's the reason for the 1.5% and I think by exempting from property taxes if you look into the bill the reason for that is because of the distribution process which is laid out in here. We need to figure out, do we want the locals to assess their own taxes or do we want this distribution formula to work in that manner, how do we want this to all play out? That's something we are going to have a little bit of a conference committee about.

Senator Hogue – I want to speak to the allocation formulas that are in the bill. It seems to me that that whole allocation is totally premature at this point. I won't say industry because we are just talking about 1 company here, but we want to give this company some certainty about where their tax is going to be on a go forward basis but this allocation that's embodied in this bill I think is premature and makes no sense for use to start divvying up this revenue when the company that's planning to come here is not going to generate any revenues for us for 5 years. We don't know what those impacts are going to be to the counties or the schools or the cities so I think we should take all of that out and that can

wait for another day. Even if you don't think it's not good policy to put these allocations in here 5 years before you have revenue to distribute I think from the Senate side if we take them out and you feel strongly, and whoever is on the conference committee, who feels strongly about the rates, putting back what I think are silly premature allocations back in could be a way to help us get where we want to be on the tax rate. I wish we would have an amendment to strip out all the allocations. It just doesn't make any sense at this point.

Chairman Cook – You're right, it is going to be 5 years before we get any revenue.

Senator Dotzenrod – Where is the local revenue that comes from this plant?

Chairman Cook – It would have to come from a stream off of the tax that the state gets, the distribution.

Senator Dotzenrod – So it would be that allocation that is on page 5. There is going to be no assessment on any of the property here the way it looks.

Senator Dotzenrod – These amendments, were these modeled after MI or NM, is that where they come from?

Chairman Cook – Making our tax competitive with NM.

Chairman Cook closed discussion on HB 1046.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1046
3/22/2011
Job Number 15807

☐ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1046.

Donnita Wald, Tax Department went through some proposed amendments.

Senator Dotzenrod – I don't ever recall seeing something coded in like this in this detail. Is there a commodity code or index code that is calculated like on an index that moves and is marketed every so often?

Donnita Wald, Tax Department – The Bureau of Labor and Statistics, it's a number they put out there so you go out and find what the indexing is. We've done that for the gross production taxes, we use the same type of a code to determine a price and it was recommended that we put that number in there so that all of those who are affected would know.

Senator Dotzenrod – Can I assume then that in the future we might be seeing more of these types of codes?

Donnita Wald, Tax Department – It is possible. I know when we were doing the research on potash and some of the other subsurface minerals that are in this state that some do have a commodity code, some do not. When we put this together we thought that would be the easier way to impose the tax.

Senator Dotzenrod – These numbers are compiled and printed and listed by the Bureau of Labor and Statistics?

Donnita Wald, Tax Department – That's correct.

Senator Triplett – It looks to me like these technical corrections are coming as a result of the testimony from Carlee McLeod is that correct? In her testimony she also suggests that we need a definition of the term 'spacing unit'. Did you resolve that issue?

Donnita Wald, Tax Department – What I put in here is what I received from Carlee this morning. She did not indicate anything to me about spacing unit.

Vice Chairman Miller – I think since we are not assessing property we obviously want to include some sort of allocation figure. We probably want to keep it real simple though simply because we don't know yet how much revenue this is going to produce, what kind of impact it's going to produce, and how much it's actually going to need and take and I think the simpler this is the better. In 2 or 4 years we can come back and put that in the right place.

Senator Triplett – I don't disagree with what Vice Chairman Miller is saying in terms of level of detail but I think there at least needs to be some kind of commitment to the counties even if it's in very generalized language because they would be giving up the opportunity to collect property taxes that there will be some kind of reimbursement to them at a level that really honestly reimburses their increased county needs for things like law enforcement and such.

Chairman Cook – As I look at the allocation issue, there is part of me that thinks that the first dollars off the top maybe go to the county for what they are giving up in property tax. This is different than oil though because there is a county out there that is going to get a processing plant. I think we can assume its Burke County and I would say the vast majority of the activity is going to be within a radius of that processing plant. At some point there could be a second processing plant that's years down the road. But I don't look at this as bringing the same amount of impact that oil well drilling does.

Senator Dotzenrod – The thing that concerns me about this bill is there is quite a difference between the amended one and the way the bill came over. It kind of puzzles me that this bill made its trip through the house and didn't really come up any different than what the interim committee did. I would have thought that if there was going to be some significant adjustment in the taxes that we would have seen that.

Chairman Cook closed discussion on HB 1046.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1046
3/23/2011
Job Number 15872

☐ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1046.

Vice Chairman Miller went through the proposed amendments.

Chairman Cook – I'm kind of intrigued with the thought of giving them some money up front because their impact is going to be upfront before there is ever going to be any return, but the only thing I question is not getting it back.

Vice Chairman Miller – I suppose we could have a temporary collection....

Chairman Cook – I don't mind a million dollars a year going to them but I wouldn't mind some of that coming back to pay off that \$2 million.

Vice Chairman Miller – You could designate \$100,000 annually until the debt is repaid or something to that effect.

Senator Triplett – If we have the expiration date for 2017 and we are not expecting them to get started until 2014 there's not going to be a lot of revenue to pay it back in those first few years anyway so it could just be a question pushed forward to the legislature in 2017 to allocate as opposed to making it strict terms of a loan, you just give them less if the legislature is interested in recouping that. Asking someone to pay it back when you don't quite know what the size of the revenue stream in the first couple of years is is a little hard.

Chairman Cook – I think it will be 2016 or 2017 before they see any revenue.

Senator Oehlke – The other thing you could do is keep the tax rate at 4% for a couple years on production until some of that money is recouped and then have it reduced.

Senator Triplett – Following up on Senator Oehlke's comment. Our current impact fund refers pretty specifically to oil and gas producing counties right? Another way of doing it would be to consider amending that bill or suggesting that Natural Resources or whoever has that bill, amend that bill to add potash producing counties in there and since we are on the way apparently toward putting \$100 million into that, then the impact fund could just be used as needed or as the impact starts coming those groups could apply.

Vice Chairman Miller – That is a good idea. I would say some people in oil country will be offended that we are using oil to fund potash development.

Chairman Cook – Same counties.

Senator Oehlke – Did the counties come to us and say hey we need money ahead of time? Did they come and say this is how much it's going to be? Where did this transpire or you just think this would be a good idea?

Vice Chairman Miller – I think it's a good idea, but it's pretty obvious they are going to have an impact right away because as the building starts getting built and equipment starts rolling in they are going to have to have roads and trucks coming in. The initial surge in that area is going to be significant when they start building this thing.

Chairman Cook – All of their impact is going to come before there is ever a nickel of production. They have to build the plant, put in all these pipes and everything, all that's going to be done before there is a nickels worth of tax collected. Afterwards from what I've seen looking at the plant in MI is there is very little impact so when the money starts coming in they've already had their impact.

Senator Triplett – Can you explain to me why you think we need to cater to them to the extent of our side passing a bill that is what the industry wants as opposed to what we collectively might think is appropriate?

Chairman Cook – I think as we determine this process so that we have a tax policy in place before they, and unfortunately they already made a \$5 million investment, but, so that they know what it is. So they have on the table what they would want and the only way they can do it is if someone puts it on the table for them.

Senator Triplett – I don't have a problem with someone putting it on the table for discussion. I do have a problem with the assumption that our committee should pass out per their wishes without us making a decision about what we collectively think is best. It seems to me that this is the table where we as Senators should be making our best guess, and their request is on the table from their testimony so I don't have a problem with, I agree whole heartedly that they need certainty, they need to know what the tax is, that we have an obligation to set a tax, but I disagree that we have an obligation somehow to just as this group around this table say we are going to exceed to their request so that the decision can be made at the conference committee. I would rather that we had an honest decision about what we as Senators think is the right level of tax and maybe it's 4% maybe it's 0 but that it be our decision and not just to say we are doing this because it's what industry wants. I don't think that is our roll.

Chairman Cook – Out of these amendments here, if you wanted to put these in to what you think is the right policy to have in place as we go home what would you change?

Senator Triplett – Probably just the amount, the tax amount. I'm relatively comfortable with Vice Chairman Miller allocation. It's kind of a stab in the dark in terms of the allocation at this point and it can be changed in the future.

Chairman Cook – What do you think the percentage should be?

Senator Triplett – I was comfortable with the 4% that came over from the House.

Senator Hogue – Whether it's our digression or doing what the industry wants I'm going to stop calling it an industry because it's not, it's one player that has decided to see if this works. To me the overall long term policy should be to bait the hook sort of. Let them come here; let them get a tax policy that they think will work. I'm not as concerned with them as I would say, a powerful oil and gas industry that we wouldn't be able to change these rates to what we thought was best because they are going to be 1 player in 1 county and if we don't think that tax rate is high enough in 2 or 4 years we will be able to raise it and I don't think they will be able to stop us from doing that. I would feel differently if it was the oil and gas industry. The other thing is I think we are being duped in to thinking that there are going to be these tremendous impacts out there, there are not. I think this project is more analogous to an ag processing facility than it is the oil and gas industry. This impact notion to me, I reject it, because we don't give impacts when somebody wants to build a corn processing plant in Richardton or a canola processing facility and to me that's what this is. Yes, they are going to extract this potash out of the ground but they are going to bring it to a local centralized collection point and dry it out and then they are going to ship it out just like an ag processing facility does. I think we should as a committee, decide we are going to get away from these impacts. I just don't think it's analogous to oil and gas.

Senator Triplett – To your first point I think baiting them in with a low tax and then increasing it later is really unfair. I would rather set the tax too high and if we decide it's too high lower it later. I think what industry ought to be looking for is certainty in taxation and for us to say yes we will draw you in with a low tax rate and then come back in 2 or 4 years and possibly raise it I think is unfair. Whatever we do we should do and just be done with it. Regarding your second point about the analogy with value added agriculture I had the same thought.

Senator Oehlke – To appropriate \$2 million for something that you said yourself, if a plant is built, we don't know if it's going to be built. I don't know what the impact grant funding process is for potash, can they just call up and say we need that \$2 million now? Or is there a real process where they have to say 'well we've got the contract, it's been signed and everything is ready to go so we want to build these roads'. If it's just accessible because it's \$2 million out there for a county or township or something it seems kind of overboard.

Vice Chairman Miller – I was looking at the original bill and they had some impact language but that was going to be in to the county. They were going to have to dedicate money from the tax they would get into a county impact fund. I guess that's what got my wheels turning a little bit in why I thought doing this ahead of time would be beneficial

because this is going to happen before the tax revenue starts coming in. I think putting it in the energy development impact office is going to allow it to follow a lot of the same standards as what happens today with the oil impact and it also provides a little bit of a barrier there from somebody just spending it all wily nilly. The people in that office know what's appropriate and what's not. The delayed allocation, the delayed appropriation, that gives us time to kind of evaluate in the next 2 years and prepare and we can come back in the next legislative session and make changes if necessary.

Senator Triplett – In addition to the roads, the one impact that those counties that there are going to be able to deal with any better than oil country has is housing. Unless we want construction workers living in person camps as they are in oil country, probably money directed toward housing would be better.

Vice Chairman Miller – I think there will be a lot of people involved, at one particular time, I don't know if there will be that many. At one point you will have a bunch of electricians come in and wire the place, and then you'll have various crews doing different things, a lot of which these crews exist in the oil patch and they will just have to temporarily come up there for a while. The housing concern, there is going to be a need for housing, some temporary housing, yes, but I don't think it's going to be something that they can't manage and prepare for on their own.

Chairman Cook – If we did nothing with subject to property tax, they aren't going to get any property tax off of that plant until basically it's completed. There is going to be no tax revenue coming in. What if we left the tax at 1.5%, took out the \$2 million upfront, and somehow enabled local government to special assess property owners for impact fees, or some sort of impact dollars to fix the road.

Senator Dotzenrod - The legacy fund amount I had been thinking to myself 30% is that what this does? It sounds like the number to the legacy fund is fairly high.

Chairman Cook – It is fairly high.

Chairman Cook closed discussion on HB 1046.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1046
3/29/2011
Job Number 16116

☐ Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1046.

Vice Chairman Miller went through 2 amendments he had drafted for committee consideration.

Chairman Cook – I think there is a general consensus of leaving some of these decisions regarding property tax and special assessing for infrastructure to the locals.

Chairman Cook closed discussion on HB 1046.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1046
3/30/2011
Job Number 16201

☐ Conference Committee

A. B. Hmiker

Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1046.

Vice Chairman Miller offered amendments .03006.

Seconded by **Senator Dotzenrod**.

Senator Triplett – By saying it as an appropriation right now then it becomes money off the table in this biennium which affects everything else that we are trying to accomplish in this biennium so if there isn't a way that we can sort of make a general statement that we think it ought to be appropriated in the next biennium then it would be better not to do it at all I think because there are other priorities for this current biennium that we all have on the table already.

Chairman Cook – I share the same concerns.

Senator Hogue – I wanted to make sure I understood your reason. If we don't have these impacts for 4 or 5 years what's the reasoning for making the appropriation on July 1 of 2011? Is it because this session doesn't appropriate for the next one?

Chairman Cook – That's right.

Senator Hogue – Yet if the money goes into the impact funds I have no doubt that we'll see some applications up there for \$2 million for the impacts that aren't there.

Chairman Cook – The money has to be set aside somehow so that it's dedicated for I would think this particular endeavor.

Vice Chairman Miller – I think it's important to show the counties that are going to be affected that we have some sort of faith that we will back them up and we are not here to put the hammer down on them. I think this is a good gesture. It puts us in a good position.

Senator Triplett – Instead of having no property tax at all would be to use the payments, the production tax concept for the potash it's self but to allow the counties to do property taxation on the facility and the pipelines. That would then give the counties control over what they were doing.

Senator Dotzenrod – I'm looking at page 2 we replaced "state general" with "legacy" and I was kind of surprised, I think this gets to be a little bit of an issue with the members of the Senate. I would tend to think that we may be for the time being should leave that as the general fund rather than legacy. This is not going to be producing the kind of revenue that we've gotten use to from oil and I think that this would probably be more acceptable if at least for the time being that we use the general fund as a receiver of dollars rather than putting anything in the legacy fund.

Vice Chairman Miller – It's all statute, it can be changed any time.

Senator Dotzenrod – Do we have any ideas on dollars? If you imposed a tax of 1% or 2% do we have any rough ideas, what are we talking about that would be the production in terms irrespective of which share goes to the county and what share goes to the state.

Vice Chairman Miller – I think right now if we had a full production plant, 1.5 tons per year at 1.5% tax that would probably generate per biennium somewhere around \$8-\$10 million.

Senator Triplett – On the 1.5% issue, I just want to remind people that what we are doing here at the same time as we are considering potash is that this section of code we are dealing with is talking about lots of mineral byproducts not just potash and the listing is on the bottom of page 1 of the engrossed bill. We do have other things out there that are being explored for that is included in this group.

Senator Hogue – I had no problem starting out with a lower rate and if we need to raise the rate at some point when the mining business picks up and starts to mature I'd think that's a perfectly reasonable response to what we have in front of us. Now we are trying to look in to a crystal ball.

Senator Triplett – The impacts are certainly one thing that has to be considered and impacts being paid out of the taxes isn't an appropriate thing but my notion of how to tax natural resources is that we ought to have a fundamentally different view of it than the taxation that we have on renewable things like income and sales and that sort of thing. This is a nonrenewable resource that the state is allowing these companies to come in and take away and when it's gone it's gone forever. I don't think we ought to use these production taxes as an enticement to get people to come in and take away nonrenewable resources. I think we ought to set a value and say the value to the state for what we are allowing them to take away and permanently deprive the state of is a set fee and it shouldn't have any particular relationship, certainly it should be high enough to cover the impact so that we can use the money to help local folks to recover from the impact but I think it should be greater

than the impacts that we are expecting. The only crystal ball that I think we need to look at is to say, is this tax high enough to at least cover the expected impacts and also to reimburse the state for giving up a valuable natural resource that we don't have to give up. We are not desperate for employment, we are not desperate for cash in the state right now so I don't think we should be saying to the industry please come in and we'll give this resource away at just what we perceive the impacts to be. I think that is the wrong way of looking at it.

Chairman Cook – Ask the clerk to take the roll on amendment .03006. (6-1-0)

Chairman Cook closed discussion for a break.

Chairman Cook opened discussion on HB 1046.

John Walstad, Legislative Council went through amendments .03009.

Vice Chairman Miller – I'm move we reconsider the previous amendment.

Seconded by **Senator Burckhard**.

Chairman Cook – All in favor say yea, opposed? (6-0-1)

Vice Chairman Miller – I'll move the .03009 amendments.

Seconded by **Senator Burckhard**.

Senator Dotzenrod – We have the appropriations in section 4 for the \$2 million, is there any part of this bill or any other part of the law that would set up the procedure by which someone would request money from that or all we have to do is it's in the Energy Development Impact Office and then that would be by its self enough to indicate how it would work from that point on?

John Walstad, Legislative Council – There is no specific statutory provision about potash grant, how the applications made, how the grants are awarded, and how they determine who gets what. I would assume the impact office would use the same perimeters that they have always used but there is nothing statutory for them to look at. They will have to make their own rules as they go.

Senator Dotzenrod – The Energy Development Impact Office has got some years of experience in this business so I'm going to assume that's some blanks we really don't need to fill in, they have gotten to know how to inform and how to process a request when it comes to them.

Chairman Cook – Ask the clerk to take the roll on amendments .03009. (5-1-1)

Vice Chairman Miller – I'll move a Do Pass as Amended and rerefer to Appropriations.

Seconded by **Senator Burckhard**.

Senator Dotzenrod – The only misgivings I have about this bill is that we have in here the rate of 1.5%. I suppose to some degree we are kind of operating in the dark because we don't know how this is going to actually develop from here on out and whose going to be interested, but that to me does seem a little low.

Chairman Cook – Ask the clerk to take the roll. (6-1-0)

Carried by **Vice Chairman Miller**.

Date: 3-30-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1046

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote on amendment 03006

Date: 3-30-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1046

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☒ Reconsider

Motion Made By Senator Miller Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					


Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote to reconsider amendment


3-30-11
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1046

Page 1, line 5, after the second "provide" insert "an appropriation and"

Page 1, line 6, remove "and"

Page 1, line 6, after "date" insert "; and to provide an expiration date"

Page 3, line 4, replace "four" with "one and one-half"

Page 3, line 7, after "potash" insert "is assessed against the sales price of the potash in an arm's-length contract between the taxpayer and the purchaser. If a potash sale or transfer is not the result of an arm's-length contract, the tax"

Page 3, line 10, after "index" insert "(commodity code PCU212391212391)"

Page 3, line 23, remove ", less, when applicable, transportation"

Page 3, remove line 24

Page 3, line 25, remove "point of sale under the contract"

Page 3, line 28, remove ", less, when applicable, transportation costs associated with moving the"

Page 3, line 29, remove "byproducts to the point of sale"

Page 4, line 8, after "upon" insert "the processing plant, mining facility, or satellite facility and any associated pipelines,"

Page 4, line 12, remove "and the processing plant,"

Page 4, line 13, remove "mining facility, or satellite facility"

Page 4, line 19, remove "and city auditor"

Page 4, line 25, replace the first "spacing unit" with "mining permit area"

Page 4, line 25, replace the second "spacing unit" with "mining permit area"

Page 4, line 26, replace "spacing unit" with "mining permit area"

Page 4, line 27, replace "unit" with "area"

Page 4, line 28, replace "spacing unit" with "mining permit area"

Page 4, line 30, replace "road and bridge" with "general"

Page 4, line 30, after the underscored period insert "Five percent of each monthly allocation to counties under this subsection and subsection 2 must be retained by the state treasurer and deposited in the state general fund until a total of two million dollars has been deposited in the state general fund under this subsection."

Page 5, line 2, replace "spacing unit" with "mining permit area"

Page 5, line 3, replace "For the first calendar year, sixty" with "Ten"

2012

Page 5, line 3, remove "and forty percent"

Page 5, line 4, remove "to the state general fund"

Page 5, line 5, remove "For the first calendar year after the allocation under subdivision a is completed."

Page 5, line 6, replace "fifty percent to the producing county and fifty" with "Ninety"

Page 5, remove lines 7 through 23

Page 13, after line 11, insert:

"SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the energy development impact office, or its successor, for the purpose of impact grant funding for potash development-impacted political subdivisions, for the biennium beginning July 1, 2013, and ending June 30, 2015. The appropriation provided by this section must be transferred and deposited in a special account within the impact grant fund and is not subject to section 54-44.1-11. The unexpended portion of this appropriation may be carried over through June 30, 2017. An expenditure may not be made from this appropriation until a building permit has been issued for a potash processing plant in this state."

Page 13, line 17, after "**DATE**" insert "- **EXPIRATION DATE**"

Page 13, line 17, replace "after June 30, 2011" with "from July 1, 2011, through June 30, 2017, and is thereafter ineffective"

Renumber accordingly

Date: 3-30-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1046

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 5 No 1

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

verbal vote to adopt .03009.

Date: 3-30-11
Roll Call Vote # 4

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1046

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1046, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1046 was placed on the Sixth order on the calendar.

Page 1, line 5, after the second "provide" insert "an appropriation and"

Page 1, line 6, remove "and"

Page 1, line 6, after "date" insert "; and to provide an expiration date"

Page 3, line 4, replace "four" with "one and one-half"

Page 3, line 7, after "potash" insert "is assessed against the sales price of the potash in an arm's-length contract between the taxpayer and the purchaser. If a potash sale or transfer is not the result of an arm's-length contract, the tax"

Page 3, line 10, after "index" insert "(commodity code PCU212391212391)"

Page 3, line 23, remove ", less, when applicable, transportation"

Page 3, remove line 24

Page 3, line 25, remove "point of sale under the contract"

Page 3, line 28, remove ", less, when applicable, transportation costs associated with moving the"

Page 3, line 29, remove "byproducts to the point of sale"

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Page 4, line 30, replace "road and bridge" with "general"

Page 4, line 30, after the underscored period insert "Five percent of each monthly allocation to counties under this subsection and subsection 2 must be retained by the state treasurer and deposited in the state general fund until a total of two million dollars has been deposited in the state general fund under this subsection."

Page 5, line 2, replace "spacing unit" with "mining permit area"

Page 5, line 3, replace "For the first calendar year, sixty" with "Ten"

Page 5, line 3, remove "and forty percent"

Page 5, line 4, remove "to the state general fund"

Page 5, line 5, remove "For the first calendar year after the allocation under subdivision a is completed."

Page 5, line 6, replace "fifty percent to the producing county and fifty" with "Ninety"

Page 5, remove lines 7 through 23

Page 13, after line 11, insert:

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Page 13, line 17, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 13, line 17, replace "after June 30, 2011" with "from July 1, 2011, through June 30, 2017, and is thereafter ineffective"

Renumber accordingly

2011 SENATE APPROPRIATIONS

HB 1046

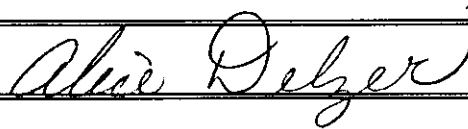
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1046
04-04-2011
Job # 16280

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts ; relating to exemption of minerals subject to in lieu of taxes, to provide for a legislative management study; to provide a continuing appropriation; to provide a penalty; and to provide an effective date.

Minutes:

See attached testimony #1

Chairman Holmberg: Called the committee to order on Monday, April 4, 2011 at 8:00 am in reference to HB 1046. Roll call was taken. All committee members were present. Tad H. Torgerson, OMB and Becky J. Keller, Legislative Council were also present.

Senator Dwight Cook, District 34, Mandan: I am on page 12 of the original bill. Two million dollars is to go to the energy development impact office for the purpose of impact grant funding for potash development for the biennium beginning 2013 to 2015. In the packets you will find a picture of the plant in Michigan the impact is for building a potash plant, and it all happens before the first dollar in tax is ever generated, after that there is little impact. It is wise to have some money to get to the counties before any money is generated to handle the impact and there is a feature in there of five percent per year out of the county allocation until it is paid back. It is for the following biennium.

Chairman Holmberg: It was explained on the floor, this is not dissimilar to what we've done for example in the oil area; they will deal with one agency rather than having a multi taxing authority.

V. Chair Bowman: Will these taxes that the political subdivisions will be receiving be at least as much as if the property tax went directly to them?

Senator Cook: I would guess it would be more. They are going to get a million dollars a year. The two million dollar appropriation cannot be spent until there is a building permit issued for a potash processing plant. I don't think that will happen in the next biennium but in the following biennium and this bill has an expiration date of 2017. If you would turn right above that section with the appropriations, starting on line 24 of page 12, chapter 5765-19, if you are going to amend it take it out.

Benjamin Gerber, Lobbyist for Dakota Salts, LLC, Potash and Energy testified in favor of HB 1046 and presented written Testimony attached # 1. I will direct you to the pictures of the mines, Dakota Salts is looking to invest two hundred to four hundred million dollars in building this facility. It is state of the art. They will drill down and then they can drill horizontally and they use brine and water to dissolve the minerals, they bring them up and they are able to recycle the water, there is very little impact on the water in this area as well as the roads. They can pipe from the mine, from the well mouth to the facility. I spoke with economic development director from Michigan, they haven't had any issues because the roads were built to spec they do have more truck traffic than they would have if there was no facility there but it's not an extreme amount. This area has also seen some oil and gas development.

Chairman Holmberg: Any questions and you live in Bismarck. You do know that one of the issues, the big issue the committee will wrestle with is the language that is in the bill that deals with the appropriation. That can't stand, it will not work. We don't appropriate from the next biennium what we do is we give legislative intent that the next legislature shall consider, that is the language. We could put in language that if this thing comes to pass in the next biennium they have authority to borrow up to two million dollars from the Bank of North Dakota for the development. There will be an amendment to the bill. We will close the hearing of the 62nd legislative session that comes before this committee. I asked Becky to put together an amendment to change that language it wouldn't show up on the budget status for this biennium because the money isn't going to be used this biennium. We will come back when we get the amendment.

The hearing was closed on HB 1046.

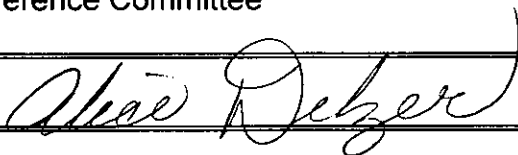
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1046
04-04-2011 p.m.
Job # 16330

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to a sales tax exemption for potash and by products of potash and taxation of potash and byproducts, etc

Minutes:

Discussion

Chairman Holmberg: Called the committee to order on 1046. Tad H. Torgerson, OMB and Becky J. Keller, Legislative Council were also present.

Chairman Holmberg passed the amendment # .03012 out to the committee. It removes a section that shouldn't have been in there and it made it clear how that money would happen about the intent of the legislature that in the next session they would do the money.

Becky J. Keller: It did remove the language regarding the industrial Commission powers and duties and then it did change the appropriation section to a legislative intent.

Chairman Holmberg: It removes the one section that finance and tax will describe on the floor and the funding change.

Senator Christmann: Do these amendments address the concern that I brought up on the floor as I recall they said that the money would go by proportion to the county that has the land and the mine area but if the land and the mine area is along the county line and all the impact is on the other side, does the neighboring county that actually has the impact get anything?

Becky J. Keller: I am not sure about that. I would have to ask Mr. Walstad.

Senator Christmann: We'll be addressing it before we finalize it.

Chairman Holmberg: Isn't it the typical question?

Senator Robinson: Was there any discussion on the level of taxation in this package?

Chairman Holmberg: It is not changed from what was passed the other day, at ½ percent, it started at 4.

Senator Erbele: Moved the amendment. Seconded by Senator Wardner.

V. Chair Bowman: Here you have a situation where you are taking something from the soil, running through a plant and yet the political subdivision where the plant is doesn't the property tax. What's the difference between that scenario and a sugar beet plant? I really question why there is such an inequity; I have a real problem with that. If you compare the two, it's an identical scenario. What makes the state think they should control that without allowing that political subdivision to have a say in it?

Chairman Holmberg: I don't have a direct answer. One is renewable resource the sugar beets, whereas the potash there is a finite amount. I know Trail County has been in fights with Crystal over the past years over the property tax and taxes they pay there.

Senator Christmann: I am going to answer that with more of a question. I am going to compare it to coal. We don't get anything from those power plants. I don't know if there is a plant associated here with the potash. I think we are dealing with the potash below the ground and applying a tax on it. I don't know if it deals with the facility above ground.

Chairman Holmberg: It's a processing thing.

Senator Wardner: I think they were looking at finance and tax to pattern it after oil, but, I am wondering in the oil laws, I am not sure if it says it is in lieu of property tax, so I am not so sure this isn't on the resource itself, and then do a tax on the facilities.

Danita Wald, General Council from the Tax Commissioners Office: The property tax treatment of the plant and the property on which the plant and mining facility is located is on page four, lines six through fifteen and I think you are looking at line thirteen which says, the land must be assessed and taxed as other property within the taxing district in which the property is situated, everything else is in lieu.

Chairman Holmberg: The tax under this chapter is not in lieu of income taxes?

Danita: That is correct and the locals will be taxing the real property underneath the plant. The plant itself is not paying property tax.

V. Chair Bowman: That is my point, you are talking about a four hundred million dollar investment, and you are excluding that community from that investment, and taking it and giving something back to them in lieu of. My question is, are they going to end up on the short end of the stick for the next 30 years? The state would rather have the income than give it to the political subdivision that was impacted. I don't know the policy, who decides these things, not very well thought out.

Danita: The history of the bill, with respect to the policy, as the bill came from the House, all the plant, the property everything was left to the locals to access. The senate finance and tax committee changed that to make only the real property tax by the locals. The allocation of the tax revenue was also changed by the Senate. The Tipple issues, the allocation of the tax under the version you have before you is based on each mining permit are, what a mining

permit area is at this point and time is not clear. The industrial commission as I understand it doesn't have rules on that yet. I don't know whether that would address your concern about the neighboring county impact.

V. Chair Grindberg: I kind of think, in 1993, we had a special session, that passed the payment in lieu of tax program for up to twenty years and that was specifically for the plant in Wahpeton. The local political subdivision taxing entity could negotiate a payment in lieu of for infrastructure. This bill takes that away; the plant should be applying to the local for that twenty year plan and not having it in statute forever. They should file like everybody else. That law is on the books.

V. Chair Bowman: If we didn't vote for the amendment, would that leave that political subdivision with the property tax because you said it was changed from the House version.

Chairman Holmberg: We are not voting on the amendments from finance tax, they are already on the bill.

Becky J. Keller: If you defeat this you go back to the House version.

Chairman Holmberg: There would be no changes to the bill. What is the committees wish? We have a motion for these amendments and a second. It is the finance and tax version, which has that section they don't like and has that section about appropriating money which is not workable.

Senator Robinson: Senator Bowman you asked a good question and I remember that session. I think we'd rather mull it over.

Chairman Holmberg: We will stop and not vote today. We come back tomorrow on the floor at 8:00 a.m. I am assuming we have an afternoon session.

The hearing on HB 1046 was adjourned.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1046
April 5, 2011
Job # 16362

☐ Conference Committee

Committee Clerk Signature

Rose Penning

Explanation or reason for introduction of bill/resolution:

A committee vote the HB 1046 which relates to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts ; relating to exemption of minerals subject to in lieu of taxes, to provide for a legislative management study; to provide a continuing appropriation; to provide a penalty; and to provide an effective date.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee hearing to order on HB 1046 and said it went to a subcommittee of Senator Wardner, Senator Fischer and Senator Warner.

Senator Wardner: The Finance and Tax Committee set up the policy on it and we had some concern about energy impacts and things like that. It was set up and patterned a little bit after the oil & gas taxing policy. We were informed after the hearing that the local political subs can tax the real property which is the land underneath the facility. Other than that, the state gets the money and it may be awhile before it actually takes place but it's a start. They did lower the tax from 4% down to 1 ½ %.

Vote #1 -

Senator Wardner moved amendment # 11.0031.03012.

Senator Fischer seconded.

A Roll Call vote was taken. Yea: 13 Nay: 0 Absent: 0

Vote #2 -

Senator Wardner moved Do Pass as Amended on HB 1046.

Senator Wanzek seconded.

Senator Christmann: I have two rhetorical questions. First of all, if there was a pot of potash setting here in front of us, how many of us would know what it is? Secondly, at one point do we "in lieu of taxes" on something new? Is this because we've deemed these are small rural areas, what could they possibly need the tax revenues from a \$400M plant for, so we'll take it or what are we basing that on when we choose to do that? Would a \$450M shopping center pay their taxes to the state and we give that city the real estate taxes on the ground

underneath it? I just don't know how we choose this. I don't have a concern with this bill, but...

Chairman Holmberg: It's not overly consistent because if you look at the big shopping mall called West Acres, it's in Fargo, but the land is in the West Fargo school district so they pay their school taxes and sales taxes in Fargo. Interesting.

Senator Christmann: It does seem odd that now this we say, "this is ours".

Senator Wardner: I don't have all the answers to that but it's policy that our policy committee made. Those are good questions to ask them. These would be questions for on the floor because I don't know why they did what they did. I'm only assuming, but I don't know that. Usually the Finance and Tax Committee in the Senate goes through things pretty thoroughly and they have a reason. I'm going to trust them at this point, but we can ask questions on the floor.

Senator Bowman: I brought that up yesterday when we were discussing this. The impact is basically in two counties. My concern is Why weren't the two counties in to be a part of this? They're the ones that are going to see a difference in what they're going to receive. Whatever that difference is compared to what the actual valuation of that plant would be could have a major impact on those communities. But after finding out that neither one of them participated in this, if they're not anymore interested than that, then I guess this is the only choice we have. Some day if there's a major impact, they're going to wish they would have been in here at the table. If they would have figured out the mills and figured out the income off that every year and what it brought into their schools and stuff, maybe what they're going to get is going to offset that and it will be a wash but maybe it won't. We won't know that for quite awhile, but because they weren't in and didn't participate, I'll go along with the committee report.

Senator O'Connell: Along with Senator Bowman, I just feel we have the cart in front of the horse again. The locals should be up to it and I don't think we should even put any tax on it for the time being anyway. It should be in the hands of the locals.

Senator Wanzek: I'm not sure which way to go in this debate, but I can't resist the opportunity for those who say farmers never pay any taxes. They'll probably be paying this one.

Senator Warner: First of all, I never actually heard that farmers never paid any taxes. I find myself in agreement with Senator Christmann on this. I don't think we should be running interference with local government. This is an opportunity for them and I don't think we have any business interfering with their ability to make decisions of their own on property tax levies. As far as the state component of this, we can do it at whatever level we want to, but I don't think we should be dictating to the locals that this isn't an option that you have so I'm going to vote against this bill.

A Roll Call vote was taken. Yea: 10 Nay: 3 Absent: 0

The bill goes back to Finance and Tax and Senator Miller will carry the bill.

Date: 4-4-11

Roll Call Vote # _____

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1046Senate APPROPRIATIONS

Committee

☐ Check here for Conference CommitteeLegislative Council Amendment Number 11.0031.03012*the vote was
not taken in this
hearing.*Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Erbele Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg			Senator Warner		
Senator Bowman			Senator O'Connell		
Senator Grindberg			Senator Robinson		
Senator Christmann					
Senator Wardner					
Senator Kilzer					
Senator Fischer					
Senator Krebsbach					
Senator Erbele					
Senator Wanzek					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1046

In lieu of the amendments adopted by the Senate as printed on pages 1044 and 1045 of the Senate Journal, Engrossed House Bill No. 1046 is amended as follows:

Page 1, line 5, remove "an appropriation and"

Page 1, line 6, after "appropriation" insert "and a statement of legislative intent regarding a future appropriation"

Page 1, line 6, remove "and"

Page 1, line 6, after "date" insert "; and to provide an expiration date"

Page 3, line 4, replace "four" with "one and one-half"

Page 3, line 7, after "potash" insert "is assessed against the sales price of the potash in an arm's-length contract between the taxpayer and the purchaser. If a potash sale or transfer is not the result of an arm's-length contract, the tax"

Page 3, line 10, after "index" insert "(commodity code PCU212391212391)"

Page 3, line 23, remove ", less, when applicable, transportation"

Page 3, remove line 24

Page 3, line 25, remove "point of sale under the contract"

Page 3, line 28, remove ", less, when applicable, transportation costs associated with moving the"

Page 3, line 29, remove "byproducts to the point of sale"

Page 4, line 8, after "upon" insert "the processing plant, mining facility, or satellite facility and any associated pipelines;"

Page 4, line 12, remove "and the processing plant,"

Page 4, line 13, remove "mining facility, or satellite facility"

Page 4, line 19, remove "and city auditor"

Page 4, line 25, replace the first "spacing unit" with "mining permit area"

Page 4, line 25, replace the second "spacing unit" with "mining permit area"

Page 4, line 26, replace "spacing unit" with "mining permit area"

Page 4, line 27, replace "unit" with "area"

Page 4, line 28, replace "spacing unit" with "mining permit area"

Page 4, line 30, replace "road and bridge" with "general"

Page 4, line 30, after the underscored period insert "Five percent of each monthly allocation to counties under this subsection and subsection 2 must be retained by the state"

treasurer and deposited in the state general fund until a total of two million dollars has been deposited in the state general fund under this subsection."

Page 5, line 2, replace "spacing unit" with "mining permit area"

Page 5, line 3, replace "For the first calendar year, sixty" with "Ten"

Page 5, line 3, remove "and forty percent"

Page 5, line 4, remove "to the state general fund"

Page 5, line 5, remove "For the first calendar year after the allocation under subdivision a is completed,"

Page 5, line 6, replace "fifty percent to the producing county and fifty" with "Ninety"

Page 5, remove lines 7 through 23

Page 13, replace lines 6 through 11 with:

"SECTION 4. LEGISLATIVE INTENT - IMPACT GRANT FUNDING 2013-15. It is the intent of the sixty-second legislative assembly that the sixty-third legislative assembly will appropriate out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the energy development impact office, or its successor, for the purpose of impact grant funding for potash development-impacted political subdivisions, for the biennium beginning July 1, 2013, and ending June 30, 2015. The appropriation described in this section must be transferred and deposited in a special account within the impact grant fund and is not subject to section 54-44.1-11. The unexpended portion of this appropriation may be carried over through June 30, 2017. An expenditure may not be made from this appropriation until a building permit has been issued for a potash processing plant in this state."

Page 13, line 17, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 13, line 17, replace "after June 30, 2011" with "from July 1, 2011, through June 30, 2017, and is thereafter ineffective"

Renumber accordingly

Date: 4-4-11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1046

Senate APPROPRIATIONS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0031.03012

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Wardner Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-4-11Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1046Senate APPROPRIATIONS Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Wardner Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner		✓
Senator Bowman	✓		Senator O'Connell		✓
Senator Grindberg	✓		Senator Robinson		✓
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 10 No 3Absent 0Floor Assignment F + T Miller

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1046, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1046, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on pages 1044 and 1045 of the Senate Journal, Engrossed House Bill No. 1046 is amended as follows:

Page 1, line 5, remove "an appropriation and"

Page 1, line 6, after "appropriation" insert "and a statement of legislative intent regarding a future appropriation"

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Page 1, line 6, after "date" insert "; and to provide an expiration date"

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Page 4, line 30, replace "road and bridge" with "general"

Page 4, line 30, after the underscored period insert "Five percent of each monthly allocation to counties under this subsection and subsection 2 must be retained by the state"

treasurer and deposited in the state general fund until a total of two million dollars has been deposited in the state general fund under this subsection."

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Page 5, line 5, remove "For the first calendar year after the allocation under subdivision a is completed."

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Page 13, replace lines 6 through 11 with:

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Page 13, line 17, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 13, line 17, replace "after June 30, 2011" with "from July 1, 2011, through June 30, 2017, and is thereafter ineffective"

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

CONFERENCE COMMITTEE

HB 1046

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1046
April 13, 2011
#16570

☒ Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A BILL relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes; to provide a continuing appropriation; to provide a penalty; and to provide an effective date.

Minutes:

No attachments.

Chairman Froseth: Reviewed the version of the bill .03012. I'm not satisfied with the amendments from the Senate or the Senate Appropriations Committee. I'm going to start with going through the bill. Does anyone have any comments before we start?

Senator Dotzenrod: When we had the bill in committee it was passed 5-1 or 6-1 in the Senate vote and Senator Triplett had voted no on it and she visited with me prior to the first meeting on this. She really wants to convey to the committee that she has some strong feelings on this. I think she grew up in the area near the Canadian border and she is familiar with the history of the area. She was very outspoken in our hearing about this and she wanted to know if I would convey to the conference committee that she was very much against the fact that we have these minerals in the ground one time and once they're taken they are gone forever. She felt we were not reflecting that very well in the way we amended that. I voted for the bill but I am also not very happy with the rate that we have in here. When we had the bill on the floor of the Senate there was some comments made by other Senate members that they were also concerned about the rate.

Chairman Froseth: On page three on line six is the rate of taxation. It left the House at 4% tax on the product and it describes how it is to be taxed later. The Senate amended that to 1 ½% which I don't agree with. Also on page three lines 9-11 it talks about the arm's length agreement and I know what this is but I'd like to have an explanation on what you feel is the arm's length agreement so we're clear on our understanding of that.

Senator Miller: An arm's length agreement will be the best possible way to determine a price but if that is not something that would easily be determined we would revert to this average annual price component. The pricing structure for potash is much different than oil.

Senator Cook: I don't recall this language here being created by the members of the committee I think it was brought to us under advice of counsel from either the tax department or legislative council. We can find out how that came in there about the arm's length agreement.

Chairman Froseth: On page three lines 28-30 the over struck language talks about the imposition of the tax. I take that as there not being any tax on the cost of moving the material from one point to another. Is that your understanding of that?

Senator Cook: I think the key points we are going to have contentions on are the tax rates and the degree that is in lieu of taxes on local property and distribution. The rest of these items we could work through very quickly.

Chairman Froseth: I just think we need some clarification on the meaning of this.

Senator Miller: This language of an arm's length agreement was part of the bill that came out of the interim.

Chairman Froseth: This is new language that wasn't included in the bill draft forwarded over by the interim. Moving on to page four on line nine it's definitely felt by the people in the area that the processing plant should be subject to property tax just like any other processing facility in North Dakota.

Senator Cook: Do you have testimony in here from people in the area that testified to that point?

Chairman Froseth: We have testimony that was taken in the House hearing from the people of Burke County who objected to the tax exemption of the processing facilities.

Senator Cook: Any County Commissioners or any elected people from Burke County or any of the counties out there?

Chairman Froseth: Yes, it's in our packet.

Senator Cook: When we had the hearing in the Senate we didn't have any testimony whatsoever or any communication from any elected people from any of the potential counties that would have potash mined in their counties. The only testimony I recall was from a couple of surface owners from Burke County.

Chairman Froseth: I think when this was first heard in the Senate there was a Burke County Commissioner there but he didn't testify. At that point as the bill left the House the provision was still in the bill that it was subject to property tax and that's probably why he didn't testify. When we heard this bill in the House there wasn't anyone from the industry that testified so we had very little information about the industry. I was very surprised of that at that time. On page 4 line 29 it changes the spacing unit to a mining permit area. I haven't heard of any definition of what a mining permit area would be. Was there a definition given in the Senate testimony?

Senator Cook: There was and I think the best person who could answer that would be Lynn Helms.

Chairman Froseth: Could you come forward and define a mining permit area. We have no idea if that's like a one lease site or a one lease mine or if it's a whole county.

Lynn Helms, Department of Mineral Resources: That's something that's defined in our subsurface mining rules. It involves a group of wells or recovery wells that are mining from the same ore body. I will give you an example; a potash company would come in and apply for an area they wished to mine and would lay out the well pattern in that area. We provide set backs from the outside boundary of that area so they wouldn't be mining salt or whatever mineral from the neighbor's acreage. That area then would be defined as the mining permit area. They would be permitted to drill subsurface mineral producing wells anywhere within that area up to a distance away from the outside boundary of that mining permit area. It is something that is defined in our rules. The reason we had heartburn in with a spacing unit is because it's generally defined as that area that an individual well can produce from. In our mind that was going to create some huge potential problems because you'd be dealing with trying to tax individual wells rather than a mine and there is no value at the well head, there is only value at the tailgate of the processing plant which is the plant that processes all of the minerals coming from that permitted area. That's why we suggested that the Senate make that change.

Chairman Froseth: My concern is that part of the tax appropriation goes back to the county. It is based on the first million dollars of the mining permit area. If the mining permit is half the county it could make quite a difference in how much money the county will receive from a mining potash area.

Lynn Helms: I would agree. I think the good thing about mine permit area is that it is set through a public hearing process. They have to make an application to the Department of Mineral Resources for their mine permit area. They have to hold a public hearing that affords an opportunity for not just the company who is doing the mining but also for the mineral owners and the county commissioners and everybody involved to come and have their say at that hearing in terms of what is the right area to define this mine permit. They can be expanded as well. They might cross a county line. The definition of a spacing unit, is if it deals with an individual well with the traditional definition of a spacing unit it would never generate enough potash to generate a million dollars tax revenue. An individual well is not going to produce more than a million dollars in tax revenue. The way it was defined as it left the House it would basically mean that you would be setting up the tax for each individual well and the tax sharing would be applied to an individual well as opposed to a mine. We are trying to keep it as consistent as we can with the way strip mines are operated and recovery units are operated.

Chairman Froseth: Could you give us an approximate area of how large a mining area might be?

Lynn Helms: I am going to have to get back to you on that. It would something like the Belle Plain mine.

Representative Shirley Meyer: You don't know the number of the rules you're quoting on the subsurface mining rules?

Lynn Helms: It's 43.02.05 but I'll confirm that.

Chairman Froseth: Moving on to page 5 lines 4-7, 5% allocation each month to counties must be retained by the State Treasurer and deposited into the state general fund for a total of \$2 million which then has to be deposited... This goes on with the intent to begin a granting program or granting fund, isn't that correct?

Senator Miller: The point of this is for the state to get whatever money it allocates out to the county through the impact fund and get that money back. There probably needs to be some tweaking if it stays in the bill.

Chairman Froseth: We have one county involved and it will probably be one county at a time. We're going to take 5% of the county's 10% and put it in a grant fund and only one county could apply for so it doesn't really seem to have much purpose.

Senator Miller: The intention was that the state would front the \$2 million before the plant was even operational and let the counties prepare for the development and then that money would be reclaimed after.

Senator Cook: One of the things that we believe in the Senate is the vast majority of impact that was going to be realized is going to be up front, before any tax dollars are generated. The tax dollars would not be generated until potash is actually mined, run through a plant, and sold. That means that if there's a plant that's going to get built there is going to be considerable drilling and considerable pipes underground to get that potash to the plant. We're looking at the earliest of five years before any potash is able to be sold. The bill was brought out of the committee with a \$2 million appropriation to impact and address the upfront impact to this county. That \$2 million appropriation was contingent on the county issuing a building permit for the processing plant. Appropriations didn't like the idea of appropriating \$2 million out because it would have been spent in the following biennium and there's no way that could get done in the next two years so they put intent language in the bill if the processing plant received a permit. They wouldn't receive a permit unless the county that was going to be host to this plant was willing to give them one.

Chairman Froseth: The next item is on page five and it's a percentage back to the counties and state. Distribution of the tax revenue that was in the House bill has been completely changed to a straight 10% to the county and 90% to the state. I think we have to have some discussion on that. The rest of the language that's been struck on line 25 is taking out the county impact grant fund program and that's fine with me. The counties weren't too excited about that to start with. The last question would be the duties of the industrial commission on lines 16-21. The reason we put that in was because the counties were really concerned about the control of the industry. The people of Burke County are really worried about what damage it might cause to their land and their infrastructure. The only thing that they've seen with the potash mining in Canada near Regina is they wanted to make certain this wasn't going to happen to their area so for the powers of the industrial

commission to regulate this at a high degree of protection for surface owners seemed like a good safeguard for them to refer back to if there was any damage or destruction. On page 14 it talks about the expiration date. Does that pertain only to the effective date of the grant?

Senator Cook: I think the appropriation's intent was at the end of the bill.

Chairman Froseth: On page 14 it talks about the expiration date. Does that pertain only to the effective date of the grant?

Senator Miller: The reason I put that in there was because I wanted us to come back and revisit our taxation policy or allocation policy once the plants are operational. Likely, by 2017 there will be something operating and I thought that might be prudent. Then again you could come and do that again regardless, if you wanted you don't have to have an expiration date.

Chairman Froseth: That was the intent of the interim study.

Senator Cook: I certainly would not expect the House to pass out a bill that did not reflect its intentions and I wouldn't expect the Senate too either. It is obvious that the intentions of the two chambers here are a ways apart. There are three issues we're going to have to negotiate here and find some middle ground and that's the purpose of this conference committee.

Chairman Froseth: We will meet again and try to work out our differences.

Representative Shirley Meyer: Before we meet again could we have someone at that meeting to address the arm's length contract?

Chairman Froseth: Yes, we will. We will adjourn for now.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1046
April 14, 2011
#16621

☒ Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A BILL relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes; to provide a continuing appropriation; to provide a penalty; and to provide an effective date.

Minutes:

No attachments.

Chairman Froseth: Do any of the committee members have any comments before we get started? Lynn Helms sent us an email to each of us that clarifies a few questions I had yesterday. One was what defines a mine permit area. I would like to read the definition into the record; a mine permit area is the maximum size we would anticipate in North Dakota at 64,781 acres which is 10 miles by 10 miles or approximately one half the area of the Cedar Hills Oil Field Unit. The Hershey Michigan mine permit area is more typical of what we would anticipate in North Dakota at 2,388 which is two miles by two miles. I'm satisfied with that definition and explanation of a mine permit area. Another concern I had was about the regulations and he stated that they were an administrative code for subservice mineral regulation of 43-02.02 and I'm okay with that as it would be regulated properly through the rules set by Administrative Code by the Industrial Commission.

Senator Miller: If it would be of benefit to the folks back home for you I think it would be worth putting some kind of legislative intent language in there that it is our intent of the Industrial Commission to re-examine their rules. I think that would help put some minds at ease at least since that was the reason it was put in the bill in the first place.

Chairman Froseth: That would be fine. Did you have that ready?

Senator Miller: I don't have it ready but I can look at that.

Chairman Froseth: We could have it drafted then take a look at it. Also, another concern was about the spacing of a mine permit area. Well spacing area is established by the Industrial Commission order after public hearing through the code listed in the bill. They hold public hearings before the mine permit area is established. That satisfies my concerns. I think we also needed clarification on this arm's length agreement. I'm working off the first engrossed 3012 version. Tax and potash is assessed against the sales price of

the potash in an arm's length contract between the taxpayer and the purchaser. I didn't do any research or find any information on this. Is there anybody in the audience who would know what an arm's length agreement is? Ben, could you come to the podium and explain this?

Ben Gerber, Lobbyist for Dakota Salts: This is what I worked on with the tax committee. Oil and gas is done by an arm's length contract and I'm pretty sure it's defined in code. For example, I spoke with Representative Meyer today and sold her 2,000 or a ton of potash then that would be an arm's length transaction. If I sold it to a subsidiary that I owned that wouldn't be an arm's length transaction. If there was not an arm's length transaction there needed to be a default because otherwise there would be litigation or there would be uncertainty. The default would go back to what is 57-65.02 subsection 1 where it says the annual average price of potash and there's a commodity code that the tax department put in there. That came out of there because there were some troubles in the oil and gas industry where you would have a producer that would sell it to a different entity that they own and then they sell it to another entity that they owned so none of those would be an arm's length transactions. There were some issues on how to tax that and this would take care of that if the tax department says it's not an arm's length transaction then it defaults to this commodity code.

Representative Hatlestad: Does that mean that to tax potash we need a price upon which to place the tax?

Ben Gerber: Yes. There needs to be a price. There is a commodity code that is published by the United States Department of Labor but it's an average price of the year prior. Since it is a commodity prices can change so that's why it makes sense to base it off of a contract price rather than an average from the previous year.

Representative Hatlestad: So that would be similar to what property taxes are assessments are set up based upon recent sales. If you had 10 sales to 10 different customers we get an idea of what the price would be and then base our tax on that?

Ben Gerber: I couldn't explain how the United States Department of Labor calculates that. I think what's important to address is that there are different grades of potash so if we don't base it off the contract price it becomes a very complicated system on how to figure what exact grade was sold under this contract and that was another issue we worked on.

Chairman Froseth: On page 3 lines 28-30 that language was taken out. Can you explain what that means to the end price of the product?

Ben Gerber: Dakota Salts said that was a concession they were willing to make. What really ended up happening was the tax department had some issues with that because what is a transportation cost and I think that was another issue that was brought up with oil and gas taxes. What is an allowable transportation cost is it trucking to the rail station or is a FOB contract so you get to deduct the price of shipping to China or the UK or wherever you're selling it? It's too complicated so we decided just to take it out of the bill. It actually increases the tax burden because you're not allowed to deduct that.

Chairman Froseth: That's the way I read it. On page 5 starting on line 4 where it talks about 5% of each of the monthly allocation to the counties the intent of that is to go towards paying back the grants of that \$2 million.

Senator Cook: That was written and put in the bill at such a time we had a \$2 million appropriation. You could see where it references the \$2 million. I would suppose we could take that out until such time a grant was given and then make sure we have a pay back or a claw back or whatever put in that would match the grant or we could make it more generic so it wouldn't reference the \$2 million figure. It would probably be better if we put it in the language now because it adds some credibility to our intent that we offer a grant. It would probably make it easier to justify getting a grant in the next biennium if things progress to where a plant is going to get built. We should certainly do some word-smithing on that I would think.

Representative Hatlestad: If you used the word "grant" doesn't that indicate that you don't pay it back?

Senator Cook: You don't want to use the word "grant."

Representative Hatlestad: So it would have to be a loan.

Chairman Froseth: The only other concern I had with this was the expiration date. I don't think we need to put an expiration date on it because we're going to study it the next interim and we'll have the next legislative session to review it again. We would leave the effective date in but we'd take out the language regarding an expiration date.

Senator Cook: I would be comfortable with that too. Whether it's on or off I think is irrelevant.

Chairman Froseth: Now I will explain what I don't like. On page 3 line 6 the rate of tax is totally unacceptable at 1 ½%. The original bill draft that came to our interim committee had a 5% rate and in our interim it was lowered to 4%. In my amendment to the House I tried to raise it back to 5% but they didn't accept it and put it back at 4%. I would like to have it put back to 4%. Next one is on page 4 lines 9-18 where it talks about the tax exemption on the processing facilities and this is also unacceptable because all other gas refineries in the state, the wind towers, and all the processing plants pay property taxes. I don't see where this would be a fair way of handling our property taxes across the state if we exempt the processing plant for potash and two miles down the road we tax a gas refining facility. On page 5 with the distribution to counties this is totally unacceptable also. If we're going to tax this at 1 ½% at \$320 a ton or whatever it was then it would be about \$3.30 tax a ton and the county would end up with 10% of that or \$.33 a ton.

Senator Cook: After the first million. They get 100% of the first million.

Chairman Froseth: A million dollars doesn't go very far to repair roads or infrastructure. I think we have to do some adjusting on that. I think those are probably the big three items that we need to resolve. Does anyone else have any other issues? If not, let's start discussing.

Senator Cook: Maybe we have a different perception of what the impact would be. Are we all comfortable that when we look at the processing plant that we won't have piles of salts or are we concerned of some environmental issues here? I looked back and I read some testimony that you received from individuals who had fears of salt. Have those fears been put away? When I look at the plant in Michigan which I understand this plant is going to be modeled after, I would think that before a building permit would be issued locals would be assured that's the way this plant would be modeled. I'm comfortable that the salt will be contained and it won't be blowing all over. Are the rest of you at that level of comfort?

Chairman Froseth: In my mind I'm a lot more comfortable that's the way it's going to be developed but we still have a lot of leery people in Burke County, especially the land owners who depend on their crops for their livelihood and are still concerned. I don't know what will finally calm their concerns until they see the plant built and functioning like it's supposed to.

Senator Cook: I'm comfortable that it's not going to happen and I'm also comfortable that the way this permit will be issued that the actual local government is in control of that permit and would certainly assure their own locals that they are not going to issue a permit that doesn't have some sort of means to make sure the salt isn't sitting in piles out in the open.

Representative Shirley Meyer: Has Belle Plain changed what they were doing? That's where the environmental concerns came from because of the salt piles. Has that process been changed?

Chairman Froseth: I don't think so. In response to Senator Cook I am comfortable that our Industrial Commission will regulate this and take care of that problem but there is still concern. There's been a lot of oil field damage that sometimes you can't control no matter how much you regulate it and accidents happen. It doesn't take a lot of accidents of this type to do a lot of destruction.

Senator Cook: I think it's an important topic to discuss in order for us to move forward. It's unfortunate that the plant sits just north of these folks and salt is blowing all over. I look at the pictures of the plant in Michigan which I know Dakota Salts is modeling after and I feel comfortable that the Industrial Commission and the local county commission makes sure that happens but you still have some people who will see it and get others excited. The reason I bring that up is to what degree that generates talk amongst certain people that encourages policy makers to move towards a policy that would prohibit something from being built. I think that is the core of the issue here with tax policy as we are going to determine whether the pack up and go home or whether they continue to invest money in North Dakota. Maybe we would listen more and look more at the competitive nature that we have in this industry with the tax of New Mexico as we try to put together a tax policy that we felt was in a position to make sure that there was some degree of success available for the industry. If you have a whole lot of people that because of environmental fears say they don't even want it then that would drive us to put a tax policy in place that would say they are never coming.

Representative Shirley Meyer: You've forgotten more about tax policy than I'll ever learn but is it ever done that you put intent language for the Industrial Commission that this unit is going to be a closed unit and not like it is at Belle Plain? Is that ever done that it is the intent that a permit will be issued so that it's a closed unit?

Senator Cook: That has nothing to do with tax policy. Somehow along the line you have to look at the way such a plant would be permitted. Maybe we have regulations out here that would assure that's not being built.

Senator Miller: I think that would be a power of the local county commission.

Lyn Helms: Our rules already prohibit the salt ponds and salt piles with regards to the well fields. There will be a Public Service Commission hearing for the siting of the plant itself just like there are for gas plants. They don't allow ponds or piles anymore either. It's hard for me to imagine a scenario which someone like Dakota Salts or an operator could convince us that they ought to be exempt from those rules since everyone else is following them. The problem as I understand it at Belle Plain is that the exemption was made in the 1960s to encourage them to experiment with solution mining. They have managed to convince the ministry up there to continue that exemption. The problem is if you once let it start getting it stopped as opposed to if you've already got rules and policies in place that prohibit it then they have a huge hurdle to get over to convince us that they could ever have an outside salt pile or pond.

Chairman Froseth: I think education is a big process of this and I don't think there's been much education attempted in Burke County. I attended one meeting in Lignite to talk to the mineral owners about leasing their property and they didn't have much information on how the process was going to be handled. As soon as that meeting was over the talk afterwards wasn't very pretty. I think you have to conduct a good education in that area to convince those people that it's going to be a proper thing.

Lyn Helms: You are absolutely correct. We are taking two of the Industrial Commission members with us on the Belle Plain tour. The Ag Commissioner asked if on the way back we could schedule a meeting with Burke County to address what we've seen. I told them that I didn't think we could fit that into our schedule but I made a commitment with him that we would be going back up there within a month or so of having made that tour and collecting our thoughts and conducting a public meeting about what we learned at Belle Plain and what an operation in Burke County would look like.

Representative Shirley Meyer: The rules you have in place for oil and gas I would assume would follow here.

Lyn Helms: No, that is not the case. The existing subsurface mineral production rules also prohibit waste storage on the surface either liquid or solid. We are going to update those as Senator Miller indicated. I think the legislative intent language that you planned to put in this legislation also covers that. It would be very difficult for us with that language in this bill when we do our rule update to suddenly relax that and allow solid or liquid waste to be stored on the surface. The subsurface mineral rules already prohibit it. If you have this

intent language in here there is no way we could do that rule revision in the wrong direction, if anything it would become more stringent.

Senator Cook: I know we had a brief conversation on legislative intent language on two different things. I think you need to be specific as far as what legislative intent language we are talking about putting in here.

Lyn Helms: It was my understanding that what is currently listed as section 57-65.19 which is the powers of Industrial Commission that you removed would come back in as legislative intent language. That is the language I am speaking of.

Senator Cook: You will help with what the legislative intent language would say?

Lyn Helms: Absolutely.

Senator Cook: Is it safe to assume that the plant in Canada doesn't have to contain that salt; they can store it underground? They have somewhat of a less expensive way of mining potash and getting it there and if so, do you have any idea what it costs to contain it as we require them to do?

Lyn Helms: I don't know the cost but directionally yes it would give them a competitive advantage to the extent that our salt plant in Williston had to close in 1989 because of that competitive advantage. Their salt pile became a surplus of useless byproduct that they were able to dump on the market for a few pennies and that put the Hardy Salt Plant in Williston out of business. After they went bankrupt the Department of Mineral Resources which was the Industrial Commission ended up closing the facility and dealing with it. Certainly, that gives them a competitive advantage over the way we want this plant to operate which is no solid piles or no liquid waste ponds.

Chairman Froseth: Another concern is that it is at the heart of an old oil field that's been there for 50-60 years. A lot of small and fairly shallow oil wells with gas lines and gathering lines all over and I don't know if some of those earlier ones are charted. When they start talking about digging in pipeline and moving this product by underground pipelines back and forth that scares a lot of them into thinking there's a gas line there and some of those early lines weren't charted. Do you have any records of them?

Lyn Helms: There are no records of them and that is a gap in regulation in this state that I thought for 12 years needs to be addressed and looked at. The gathering lines for oil, gas, water, or whatever do not have to be put on a map or located or identified regulation-wise. We really need to take a look at how we'd like to have that done.

Senator Cook: We put gathering lines in.

Lyn Helms: There you go. Maybe my 20 year old problem is solved. I worked for an oil company for 18 years and we installed all those lines and every time we'd dig near a facility we'd get a surprise.

Chairman Froseth: We have to do the language on page 5 line 8 on the 5% monthly allocation to counties deposited into the general fund until the total reaches \$2 million. If we're going to change that \$2 million appropriation we have to change the language in there so it is something like a repayment, maybe to repay any loans. Then we have the issue of the distribution to the county and tax on the product and tax exemption.

Representative Hatlestad: If we can address the tax exemption. County Commission now has the authority to grant tax exemptions, do they not? Are they a limited number of years length of time, is it five years maximum?

Senator Cook: It's limited to five but in lieu of taxes they can do for up to 20 years. There's a lot of flexibility run at the local level.

Representative Hatlestad: But that's run by the county commissioners so they can control that issue.

Senator Miller: The production facility is going to cost around \$400 million and generate \$500,000 annually in tax. If we put an extraction tax on the potash I don't see why there isn't a method to put all those together and save them some burden of another tax.

Chairman Froseth: There isn't an extraction tax; it's a tax on the finished product. The 10% going back to the county wouldn't even begin to cover any of the services the county is going to have to provide such as fire protection, ambulance, and upkeep of the infrastructure.

Senator Cook: You keep saying the 10% and I keep saying the first million dollars goes back to them. Once a plant is up and running I think the major impact that is going to be realized is going to be over with. Maybe my belief there is wrong but I'm looking at pictures of the plant in Michigan where the mines are out there and running and you have the well head on top and pipes delivering the products to the processing plant. I had a farmer tell me he wished we could build our crushing plants this way so that we could deliver all our soybeans in some sort of a slurry rather than have the trucks beating up on the roads. To me that million dollars that we get up front is there and is more than enough to offset the loss in property tax and cover impact.

Chairman Froseth: But the million dollars now is in the mining permit area that might be an area of 10 miles by 10 miles or the minimum of two miles by two miles and how many years would it take to mine out an area as that? It might be a million dollars once every five years and it isn't really a whole lot of income to the county.

Representative Hatlestad: My concern is how they are going to get their finished product to market, is it truck or rail? Do they have a railroad up there now? My guess is that some will go by truck as well. I think we need to take a look at the oil country and all the traffic as I'm sure there are concerns and whether the million dollars would be enough to build up the infrastructure. We would have to make some educated guesses.

Chairman Froseth: There are two mainline railroads, Canadian Pacific and Burlington Northern. Still the county has to realize some income from this other than their 10% as that

probably won't amount to much. The counties have the right to grant a tax exemption or a partial tax exemption or a five year exemption on the facility or whatever they feel is reasonable. I'm sure they'll be reasonable. There's a small gas plant a few miles from the test well that's paying property taxes and I think every gas plant in the state is paying property taxes. All the wind towers are taxed too.

Senator Cook: I would argue we wouldn't have a wind tower in the state if it wasn't for subsidies.

Representative Hatlestad: You talked about tax rates and I think you mentioned you had tax rates for New Mexico; do you have a figure of what they charge?

Senator Cook: Yes we do. I don't know if I have it in my packet here but we do have tax rates.

Representative Hatlestad: Are they considered standard or middle of the road?

Senator Cook: There are three tax rates out there in Michigan, Utah, and New Mexico. We looked at all of them and I think that New Mexico is the state that produces the most amount of potash in the United States.

Senator Dotzenrod: 75% of US production comes from New Mexico. Their rate is 2 ½% but they deduct from that their lifting, hauling, and crushing as they are allowable reductions so they end up between 2% and 1 ½%. We really wouldn't have that kind of deductions they have because this is going to be a slurry type operation.

Chairman Froseth: Any other questions or comments. We will meet again then.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1046
April 15, 2011
#16655

☒ Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A BILL relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes; to provide a continuing appropriation; to provide a penalty; and to provide an effective date.

Minutes:

No attachments.

Chairman Froseth: We have three issues yet to resolve and that is the total tax, the distribution of county and state shares, and property tax exemptions. I think everything else is pretty well covered and agreed upon.

Senator Cook: What if we just take the distribution out of the bill and not worry about it?

Chairman Froseth: How about the property tax exemption?

Senator Cook: I'll speak for myself. If you take the distribution off and leave the tax where it's at and give them tax on the processing plant.

Representative Hatlestad: Did you say tax the property or leave that issue up to the county commissioners?

Senator Cook: Leave the issue of property tax on the processing plant to the county commissioners. We would allow that to be taxable yet if they wanted to either put a tax on it or give it a five year tax exemption or whatever they wanted to do at the local level. Take the distribution out of the bill and leave the tax at 1 ½%.

Chairman Froseth: Take all the distribution out of there?

Senator Cook: Take all the distribution out of there.

Representative Hatlestad: Can we include a provision in there then that the distribution formula will be negotiated in the next session so it's not just left there.

Senator Cook: I think that would be fair and along with the intent language of what degree we have an impact grant up front.

Chairman Froseth: I don't know how that would work as a grant repayable. If it's a loan they'll have to go through the Bank of North Dakota. It could be a repayable grant I suppose. I'll have to check with legislative council on that. Repayable by 5% of the counties proceeds.

Senator Cook: I think it's possible if we went down that road. Right now you have an industry out there leasing up land in a certain area. Maybe there's a county not so willing to embrace this. They have their concerns for whatever reason. Maybe there's another county that would love to welcome them with open arms. I don't think we should try to restrict any of that activity from happening. It would make our efforts here a lot easier I think.

Chairman Froseth: I think I would go with that and take Representative Hatlestad's recommendation that we put some intent that the proceeds will be shared or negotiated between county and state. I don't know about the 1 ½% rate though. I still think we need to go higher than that. I would suggest 2 ½%.

Senator Cook: I just spoke for myself but if we look at having a policy in place for people who want to sell their mineral rights that want to sell them and realize some of the benefit of it we're putting a tax on it that will go somewhere. If we allow them at the local level to put a tax on the processing plant that is going to be a sizeable amount of tax revenue that anybody who's going to pursue this industry is going to be paying. We don't want to get it so high that they will turn around and walk away and put all their efforts in New Mexico.

Chairman Froseth: I pointed out in a discussion earlier today that North Dakota has built a pretty good business climate; we've got low corporate tax rates, low income tax rates, low worker's compensation tax rates, low unemployment tax rates, etc. We've made this state a pretty good place to do business and I think comparing to other states you need to take those aspects into consideration. I think we rate way better than any of the other states that are producing potash. I think we have a favorable business climate even if our rate is set a little higher than those states. I think we are well enough in position to be inviting to those companies. Let's take a vote of Senator Cook's recommendation to remove the distribution formula and tax exemption.

Senator Cook: At a rate of 1 ½%.

Chairman Froseth: No, I'm not including that in this motion.

Senator Cook: Aren't they all kind of related?

Chairman Froseth: I think they are separate.

Senator Miller: I think if you look at the revenue that we will be generating if we get to the ideal production numbers of 1 ½ million tons per year which is what the Michigan plant produces roughly and you look at the current market value of potash and that is a

considerable amount of revenue even at 1 ½%. Now you put the property tax on and it's a half million dollars a year. I don't know how much it's going to take to keep the county from any impacts they are going to need or whatever but I can't imagine they are going to need more than \$3 million annually. That's going to be quite a bit of revenue for them. I think it's important to be cognizant that those minerals underneath the ground are owned by somebody, that is somebody's property and any policy that we pursue needs to recognize that they have a right to sell those minerals and that we should not put any kind of tax on it that could infringe on their ability to be able to sell them. If we put on too high of a tax it could make it uneconomical to do business and we're essentially infringing on somebody's property rights. I would suggest a 2 ¼% tax.

Senator Dotzenrod: The bill that the Senate worked on I thought was a little heavy on state decision making and a little light on what the locals could do. We took away their ability to tax the property and we imposed our rate and our distribution. I was hoping that in the course of the conference committee we would move toward more local decision making and more local questions about how they viewed this and if they wanted it and how bad they wanted it. I am in favor of the idea that there will be local decisions about the plant's exemption and property tax. I think as far as the tax goes on the potash I would prefer to see it leave here with a tax that's probably a little bit higher than what we might think is perfect rather than lower than what we think is perfect because I think it is going to be difficult to come back and entice someone to come in and entice them to pursue development and then raise the rate on them after they have committed some of their resources. If we are going to error here I would rather error on the side that is a little higher because there won't be anything taken out of the ground in the next two years. I'm in favor of 2 ½% at your proposal and have the locals make the decision on the taxing property and then we take the distribution out.

Senator Miller: I think if we do 2 ½% then the property tax exemption still needs to be on the table.

Senator Cook: The higher the tax the more pressure the industry is going to put on the locals for a property tax exemption the more argument they are going to have to make for a property tax exemption in order to make some of this a reality. If you want to look at the whole package and you want to end this now **I would agree to a 2% production tax and the locals have authority to levy property tax on the processing plant and we take the distribution out of it. We settle on that and go home then come back in two years and revisit the issue. I would make that a motion.**

Senator Miller: Seconded.

A roll call vote was taken: YES 6 NO 0 ABSENT 0
MOTION CARRIED.

Chairman Froseth: We are going to have to meet again to review the amendments. I will work with John Walstad in getting the amendments and we'll meet next week. Meeting adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1046
April 18, 2011
#16700

☒ Conference Committee

Committee Clerk Signature

Mary Brunker

Explanation or reason for introduction of bill/resolution:

A Bill relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; relating to exemption of minerals subject to in lieu of taxes; to provide a continuing appropriation; to provide a penalty; and to provide an effective date.

Minutes:

See attached amendments .03013.

Chairman Froseth: Distributed marked up bill and amendments. Reviewed the amendments of .03013. Please refer to the attached amendments.

Senator Cook: Are we okay with the transportation language at the bottom?

Chairman Froseth: Maybe we could have Mr. Gerber come up and explain that to us.

Ben Gerber, Dakota Salts: That is what we took out originally in the Senate. That was at the suggestion of the tax department. They had a problem with oil and gas and what constitutes transportation costs, are they transportation costs if the potash is going to China or if it's going to Michigan or anywhere where do we draw the line at transportation costs. It creates a lot of issues with the tax department and litigation so it was a concession by the industry to just take it out and make it easier for everyone.

Chairman Froseth: It already has been taken out on the potash tax itself.

Senator Cook: I'd move then that the Senate recede from their amendments and further amend it as presented to us in .03013.

Senator Miller: Seconded.

Chairman Froseth: We have a motion and a second. Any other discussion?

Senator Dotzenrod: One of the things we did with these amendments is we took the distribution out and there is an appropriation of \$2 million still on the bill. Is there a section in here for the \$2 million and how it is to be distributed or allocated?

Chairman Froseth: No. That is the only reference to it in Section 4. It's an impact loan rather than a grant. The intent of it is if the 63rd legislature will appropriate \$2 million then counties can apply for loans from that fund for upfront money to help with the infrastructure repair while the plant is being built. There will be no tax on it until it's in the process and being sold and it would probably take two years to build that plant and get the product being mined and getting tax revenue off it. I think the intent was to provide the counties with a source of upfront money if they needed it. They could loan against that fund and it has to be repaid.

Senator Dotzenrod: I think at one time we had some language in there about the repayment taking 5% out and that is out of there too now. The only reference is in section four and I guess we can just assume that there will be some negotiation between anyone who wants to get that money. They will have rules in place and they will all know the terms and understand any caps or limits that apply to them and their interest rates. There's no point to putting that in the bill as that will be between the borrower and the lender.

Chairman Froseth: That's the way I understand it at this point. There's a continuing study for the next two years and all those details will have to be worked on and come forward in the 63rd assembly with a proposal to do those things and the distribution of the tax revenue.

Senator Cook: It's the study along with the intent and that's the key. The study references potash mining and taxation issues.

Chairman Froseth: We really don't have a good handle on what kind of revenue to expect or what kind of income the tax will bring. Hopefully, we will have some information in the next biennium in the study that will give us an idea of what kind of revenue can be expected from the mining area and then we'd have a better handle on how the distribution would work.

Senator Miller: I think because there is no allocation in this the intent to appropriate will be taken very seriously too.

A roll call vote was taken: YES 6

NO 0

ABSENT 0

MOTION CARRIED.

Meeting adjourned.

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1046 as (re) engrossed

Date: 4-13-11, 4-14-11, 4-15-11

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 2% production tax + locals have authority + take out distribution

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Cook Seconded by: Senator Miller

Representatives	4-13	4-14	4-15	Yes	No		Senators	4-13	4-14	4-15	Yes	No
Chairman Froseth	✓	✓	✓	✓			Senator Cook	✓	✓	✓	✓	
Rep Hatlestad	✓	✓	✓	✓			Senator Miller	✓	✓	✓	✓	
Rep S. Meyer	✓	✓	✓	✓			Senator Dotzenrod	✓	✓	✓		✓

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

VK
4/18/11
1082

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1046

That the Senate recede from its amendments as printed on pages 1422 and 1423 of the House Journal and pages 1189-1191 of the Senate Journal and that Engrossed House Bill No. 1046 be amended as follows:

Page 1, line 5, remove "continuing"

Page 1, line 6, replace "appropriation" with "statement of legislative intent"

Page 2, line 11, after "the" insert "mining"

Page 2, line 17, after "5." insert "\"Mining permit area\" means the area covered by a permit issued by the industrial commission to mine potash and potash byproducts."

6. "

Page 2, line 20, replace "6." with "7."

Page 2, line 25, replace "7." with "8."

Page 2, line 28, replace "8." with "9."

Page 3, line 1, replace "9." with "10."

Page 3, line 1, replace "a subsurface mineral" with "potash"

Page 3, line 2, replace "byproduct" with "potash byproducts"

Page 3, line 4, replace "four" with "two"

Page 3, line 7, after "potash" insert "is assessed against the sales price of the potash in an arm's-length contract between the taxpayer and the purchaser. If a potash sale or transfer is not the result of an arm's-length contract, the tax"

Page 3, line 10, after "index" insert "(commodity code PCU212391212391)"

Page 3, line 23, remove ", less, when applicable, transportation"

Page 3, remove line 24

Page 3, line 25, remove "point of sale under the contract"

Page 3, line 28, remove ", less, when applicable, transportation costs associated with moving the"

Page 3, line 29, remove "byproducts to the point of sale"

Page 4, line 19, remove "and city auditor"

Page 4, line 21, remove "- Continuing appropriation"

Page 4, replace line 23 with "determined by the sixty-third legislative assembly."

Page 4, remove lines 24 through 30

Page 5, remove lines 1 through 23

2082

Page 13, line 6, replace "Powers of industrial commission" with "Rules - Legislative intent"

Page 13, remove line 7

Page 13, line 8, replace "protection, and reclamation. Environmental" with "It is the intention of the legislative assembly that potash mining, environmental"

Page 13, line 8, after "protection" insert an underscored comma

Page 13, line 10, after the first underscored comma insert "and"

Page 13, line 10, remove the second underscored comma

Page 13, line 10, after the second "and" insert "that the adopting agency will promote"

Page 13, after line 11, insert:

"SECTION 4. LEGISLATIVE INTENT - IMPACT LOANS 2013-15 BIENNIUM. It is the intent of the sixty-second legislative assembly that the sixty-third legislative assembly will provide a source for up to \$2,000,000, or so much of the sum as may be necessary, for loans to potash development-impacted political subdivisions, for the biennium beginning July 1, 2013, and ending June 30, 2015, to be repaid from the future proceeds of tax allocations under chapter 57-65."

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1046 as (re) engrossed

Date: 4-18-11

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows
amendment . 3013

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) HB 1046 was placed on the Seventh order of business on the calendar

Motion Made by: Senator Cook Seconded by: Senator Miller

Representatives	4-18	Yes	No		Senators	4-18	Yes	No
Chairman Froese	✓	✓			Senator Cook	✓	✓	
Rep. Hattestad	✓	✓			Senator Miller	✓	✓	
Rep. S. Meyer	✓	✓			Senator Dotson	✓	✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier Senator Miller

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION CARRIED.

REPORT OF CONFERENCE COMMITTEE

HB 1046, as engrossed: Your conference committee (Sens. Cook, Miller, Dotzenrod and Reps. Froseth, Hatlestad, S. Meyer) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1422-1423, adopt amendments as follows, and place HB 1046 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1422 and 1423 of the House Journal and pages 1189-1191 of the Senate Journal and that Engrossed House Bill No. 1046 be amended as follows:

Page 1, line 5, remove "continuing"

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"SECTION 4. LEGISLATIVE INTENT - IMPACT LOANS 2013-15 BIENNIUM.

It is the intent of the sixty-second legislative assembly that the sixty-third legislative assembly will provide a source for up to \$2,000,000, or so much of the sum as may be necessary, for loans to potash development-impacted political subdivisions, for the biennium beginning July 1, 2013, and ending June 30, 2015, to be repaid from the future proceeds of tax allocations under chapter 57-65."

Renumber accordingly

Engrossed HB 1046 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1046

|

Testimony on HB 1046
House Finance and Taxation
01-10-2011

Chairman Belter, Vice-Chair Headland, Members of the House Finance and Taxation Committee.

I am Representative David Rust of District 2.

I AM in support of a bill to ^{tax}~~regulate~~ the mining of potash and its byproducts.

I do have concerns about the impact on those counties where this activity takes place. I'm concerned that the proposed tax percentage is too low and that the 20% allocated to the counties will be too little.

We need to make sure that we provide enough revenue to the counties from taxes placed on potash to get ahead of negative impact to infrastructure, etc. from the onset.

No one really knows what direction this industry will take or what impacts it will have on roads, communities, the environment, etc.

Let's make sure that counties don't come out on the short end of the stick.

Thank you.

#2

House Finance and Taxation Committee

My name is Vicky Steiner, I represent District 37.

I oppose HB 1046 as passed during the interim. The taxation rate set in the original bill was arbitrary in my opinion and it doesn't tie to potash operations and what the costs to local governments might be.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1046

Page 3, line 4, replace "four" with "five"

Page 3, line 19, replace "four" with "five"

Page 4, replace lines 22 through 26 with:

"1. The first one million dollars of the taxes collected under this chapter from production within each spacing unit must be allocated to the county in which the spacing unit is located. If a spacing unit is located in more than one county, the first one million dollars of the taxes collected under this chapter from production within that unit must be allocated among the counties on the basis of the acreage of the spacing unit within each county. Amounts allocated to the county under this subsection must be deposited by the county treasurer in the county road and bridge fund.

2. After the allocation under subsection 1 has been made, revenue from taxes collected from production within each spacing unit must be allocated as follows:

a. For the first three calendar years, seventy percent to the producing county and thirty percent to the state general fund.

b. For the first three calendar years after the allocation under subdivision a is completed, sixty percent to the producing county and forty percent to the state general fund.

c. For the first two calendar years after the allocation under subdivision b is completed, fifty percent to the producing county and fifty percent to the state general fund.

d. For the first two calendar years after the allocation under subdivision c is completed, forty percent to the producing county and sixty percent to the state general fund.

e. After the allocation under subdivision d is completed, thirty percent to the producing county and seventy percent to the state general fund.

3. The county treasurer shall deposit ten percent of the revenue received by the county under subsection 2 in a special potash impact grant fund for the county.

57-65-07.1. County potash impact grant fund - Grants - Reports.

Amounts deposited in the county potash impact grant fund under section 57-65-07 must be allocated through grants by the board of county commissioners to or for the benefit of the county or townships or cities within the county. Grants may also be awarded to the county on behalf of unorganized townships in the county. Grants may be awarded on the basis of applications for funding to offset potash development impact. Grants under this section may be awarded to grantees only to meet initial impacts affecting basic governmental services and directly necessitated by potash development impact."

Page 12, after line 7, insert:

"57-65-19. Powers of industrial commission.

The industrial commission shall adopt and maintain rules for potash mining, environmental protection, and reclamation. Environmental protection and reclamation rules, at a minimum, must establish a high degree of protection for surface owners, surface and underground water, productive capacity of soils, public health and safety, and public participation of public officials and members of the public in counties in which potash mining will be conducted."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1046

Page 4, remove line 7

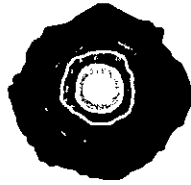
Page 4, line 8, replace "any processing plant, mining facility, or satellite facility producing potash or byproducts." with "The payment of the taxes under this chapter must be in full, and in lieu of all ad valorem taxes by the state, counties, cities, towns, townships, school districts, and other municipalities, upon any property rights attached to or inherent in the right to producing potash and potash byproducts, upon producing potash and potash byproducts leases, upon machinery, appliances, and equipment used in and around any well producing potash and potash byproducts and actually used in the operation of such well, and upon any investment in any property."

Page 4, line 9, replace "on which" with "and" and remove "is located"

Page 4, line 11, remove "nor excise taxes upon the sale of"

Page 4, line 12, remove "minerals or byproducts at retail"

Renumber accordingly



24 JANUARY 2011

Sirius Minerals Plc

("Sirius" or the "Company")

North Dakota Assay Results

The Directors of Sirius Minerals Plc (AIM: SXX, OTCQX: SRUXY), the globally diversified potash development group, are pleased to announce the company has received the assay results for its initial drill hole conducted on its 100% owned Dakota Salts Project in North Dakota.

While Sirius is still awaiting the finalisation of the technical report and recommendations from North Rim Exploration Limited ("North Rim"), the following observations can be made:

- The total intersection is interpreted to include the White Bear marker bed (1.57m) followed by 15.05m of interbed halite with 8.69m of Esterhazy Member mineralisation at the base;
- The total Esterhazy Member intersection was 27.9 ft (8.5 metres) with an average grade of 11.8% K₂O;
- Peak value of K₂O within the Esterhazy intersection of 41.0% K₂O and 10.3% Carnallite over 1.1 feet (0.34 meters); and
- The potash mineralisation is in the form of both sylvite and carnallite which is similar to Esterhazy Member type mineralisation seen in the Saskatchewan Prairie Evaporite Formation.

Sirius and its consultants are continuing to review these results and are planning the next stages of its exploration programme which may include additional seismic lines, geochemical and regional studies prior to initiating further drilling.

Chris Fraser, Managing Director of Sirius, commented:

"We are very pleased that our first hole has confirmed the continuity of the Saskatchewan potash beds into North Dakota and more importantly in our Dakota Salts Project. Sirius is now working with its technical team to properly analyse and interpret these results to plan the next phase of our ongoing exploration activities in North Dakota."

Drill Hole Technical Summary

Drilling of the Dakota Salts EBY-1 wellbore in Burke County, North Dakota, USA, began 14 November 2010. The well was drilled to a final depth of 9167 ftKB (KB=Kelly Bushing) or 2794 mKB on 15 December 2010.

Schlumberger Limited was the drilling and safety manager for the project and Saxon Energy Services was the drilling contractor. SAXON 147 was the rig used to drill the well. North Rim was responsible for the Geological Technical Coordination of the project including core retrieval supervision, detailed

geological logging and assay sample selection. Boyd PetroSearch, of Calgary Alberta, Canada provided 2D seismic interpretation.

Three inch core was cut from the lower Dawson Bay Formation 8652 ftKB (2637.1 mKB) to part way through the Prairie Evaporite Formation 8978ftKB (2736.5 mKB). Samples were taken in both the Esterhazy Member and the Whitebear potash marker bed. The cores were first cut in half, and one half of the core was sent for geochemical assaying. A total of 54 assays with an average length of 0.8 feet (0.24 metres) were taken over 43.1 feet (13.1 metres) of core for EBY-1. Within the Esterhazy Member a total of 37 samples over 27.9 feet (8.1 metres) were taken with a maximum length of 1.3 feet or 0.38 metres and an average length of 0.75 feet (0.23 metres). These assay samples were collected by North Rim using industry recognized standards.

The samples were forwarded to the Geoanalytical Laboratories at the Saskatchewan Research Council (SRC) in Saskatoon, Saskatchewan on the 21st of December, 2010. The samples were crushed, split, and analysed using SRC's basic potash package (soluble digestion ICP-OES, % weight insolubles and % weight moisture). Quality assurance and quality control measures were strictly adhered to, including the use of standards, blanks and repeats throughout the analyses. SRC is ISO accredited to 17025.

The assay results and technical content of this release have been reviewed by Tabettha Stirrett, P. Geo. of North Rim. Mrs. Stirrett is a Professional Geologist registered in the province Saskatchewan and is a Qualified Person as defined by NI 43-101 and AIM.

A summary of the results is set out in the Annexure.

For further information, please visit the **Company's website www.siriusminerals.com**. Alternatively please contact:

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About Sirius Minerals Plc

Sirius Minerals is a globally diversified potash development company. Its primary focus is to bring on stream major potash mining facilities through the acquisition and development of projects overlying recognised potash deposits. Today it holds properties in the United Kingdom (Yorkshire), North America (North Dakota), and Australia (Queensland and Western Australia).

The Company is additionally progressing ongoing Research and Development initiatives into the secondary uses of salt and potash beds for energy storage and carbon dioxide sequestration.

Incorporated in 2003, Sirius Minerals' shares are traded on the London Stock Exchange's AIM market. Its shares are also traded in North America on the OTCQX through the use of a sponsored ADR facility. Further information on the Company can be found at www.siriusminerals.com.

Glossary of Certain Technical Terms

Bed	In geology a bed is the smallest division of a geologic formation or stratigraphic rock series marked by well-defined divisional planes (bedding planes) separating it from layers above and below.
Carnallite	Carnallite is an evaporite mineral, a hydrated potassium magnesium chloride with formula: $\text{KMgCl}_3 \cdot 6(\text{H}_2\text{O})$. It is variably coloured yellow to white, reddish, and sometimes colorless or blue.
Evaporite	Evaporite is a name for a water-soluble mineral sediment that results from the evaporation from an aqueous solution and has been concentrated by evaporation. There are two types of evaporate deposits, marine which can also be described as ocean deposits, and non-marine which are found in standing bodies of water such as lakes. Evaporites are considered sedimentary rocks.
Halite	Commonly known as rock salt, is the mineral form of sodium chloride (NaCl). Halite forms isometric crystals. The mineral is typically colourless or white, but may also be light blue, dark blue, purple, pink, red, orange, yellow or gray depending on the amount and type of impurities.
Interbed	To interleave between other beds or strata having different characteristics. Interbedding occurs when beds (layers or rock) of a particular lithology lie between or alternate with beds of a different lithology.
K_2O	Potassium Oxide
Member	The formal lithostratigraphic unit next in rank below a formation. A member possesses lithologic properties distinguishing it from adjacent parts of the formation.
Potash	Any of several compounds containing potassium, especially soluble compounds such as potassium oxide, potassium chloride, and various potassium sulphates. Used chiefly in fertilizers.
Saskatchewan Prairie Evaporite Formation	The Saskatchewan Prairie Evaporite Formation is a geological formation consisting mainly of Halite, Sylvite, and Carnallite observed and mined in the Williston Basin in Saskatchewan, Canada.
Sylvite	Sylvite is potassium chloride (KCl) in natural mineral form. It forms crystals in the isometric system very similar to normal rock salt, halite (NaCl). Sylvite is colourless to white with shades of yellow and red due to inclusions. Its principal use is as a potassium fertilizer.

ANNEXURE

From (m)	To (m)	Thickness (m)	Member	%K2O	%MgO	%Carn	%Insols
2685.43	2685.67	0.24		16.70	0.06	0.41	1.90
2685.67	2686.02	0.35	Whitebear	2.60	0.10	0.69	8.10
2686.02	2686.22	0.2	Whitebear	17.40	0.04	0.28	0.60
2686.22	2686.45	0.23	Whitebear	0.22	0.02	0.14	0.40
2686.45	2686.51	0.06	Whitebear	1.04	0.31	2.14	37.00
2686.51	2686.83	0.32	Whitebear	0.45	0.07	0.48	1.30
2686.83	2687.24	0.41	Whitebear	1.34	0.10	0.69	6.20
2687.24	2687.5	0.26		0.56	0.10	0.69	5.80
2687.5	2687.84	0.34		0.34	0.06	0.41	1.80
2701.35	2701.73	0.38		0.73	0.12	0.83	6.00
2701.73	2701.97	0.24		1.02	0.14	0.96	10.10
2701.97	2702.27	0.3		0.72	0.16	1.10	12.80
2702.27	2702.45	0.18		1.44	0.14	0.96	9.90
2702.45	2702.81	0.36	Esterhazy	22.60	0.14	0.96	6.40
2702.81	2702.9	0.09	Esterhazy	33.30	5.56	38.31	0.60
2702.9	2702.97	0.07	Esterhazy	23.50	0.67	4.62	2.70
2702.97	2703.17	0.2	Esterhazy	12.10	6.45	44.45	1.80
2703.17	2703.38	0.21	Esterhazy	8.14	6.56	45.21	0.10
2703.38	2703.65	0.27	Esterhazy	22.60	4.09	28.18	<0.1
2703.65	2703.93	0.28	Esterhazy	16.10	8.81	60.71	<0.1
2703.93	2704.1	0.17	Esterhazy	25.10	4.35	29.98	<0.1
2704.1	2704.35	0.25	Esterhazy	9.89	2.60	17.92	0.10
2704.35	2704.56	0.21	Esterhazy	2.84	0.53	3.65	47.00
2704.56	2704.86	0.3	Esterhazy	0.34	0.21	1.45	7.20
2704.86	2704.95	0.09	Esterhazy	1.92	0.41	2.83	16.60
2704.95	2705.07	0.12	Esterhazy	3.29	0.36	2.48	6.10
2705.07	2705.15	0.08	Esterhazy	9.58	0.43	2.96	24.20
2705.15	2705.42	0.27	Esterhazy	18.40	0.40	2.76	15.00
2705.42	2705.76	0.34	Esterhazy	41.00	1.49	10.27	2.90
2705.76	2706.09	0.33	Esterhazy	37.70	1.40	9.65	3.80
2706.09	2706.34	0.25	Esterhazy	17.60	2.94	20.26	1.40
2706.34	2706.69	0.35	Esterhazy	8.61	0.12	0.83	1.00
2706.69	2706.99	0.3	Esterhazy	3.32	0.08	0.55	1.20
2706.99	2707.33	0.34	Esterhazy	3.85	0.08	0.55	1.00
2707.33	2707.65	0.32	Esterhazy	3.00	0.10	0.69	1.50
2707.65	2707.94	0.29	Esterhazy	4.17	0.08	0.55	0.60
2707.94	2708.26	0.32	Esterhazy	2.07	0.05	0.34	0.50
2708.26	2708.4	0.14	Esterhazy	1.37	0.02	0.14	<0.1
2708.4	2708.57	0.17	Esterhazy	1.63	0.07	0.48	2.20
2708.57	2708.62	0.05	Esterhazy	3.44	0.26	1.79	22.10
2708.62	2708.86	0.24	Esterhazy	2.01	0.06	0.41	1.80
2708.86	2708.89	0.03	Esterhazy	1.78	0.11	0.76	5.70
2708.89	2709.16	0.27	Esterhazy	5.29	0.03	0.21	0.20
2709.16	2709.31	0.15	Esterhazy	7.72	0.04	0.28	<0.1
2709.31	2709.46	0.15	Esterhazy	37.40	0.04	0.28	1.00
2709.46	2709.69	0.23	Esterhazy	20.50	0.03	0.21	0.40
2709.69	2709.97	0.28	Esterhazy	3.21	0.02	0.14	0.20
2709.97	2710.25	0.28	Esterhazy	8.74	0.09	0.62	6.90
2710.25	2710.63	0.38	Esterhazy	5.83	0.08	0.55	6.20
2710.63	2710.96	0.33	Esterhazy	2.78	0.07	0.48	3.80

POTASH

(Data in thousand metric tons of K₂O equivalent unless otherwise noted)

Domestic Production and Use: In 2010, the production value of marketable potash, f.o.b. mine, was about \$540 million. Potash was produced in Michigan, New Mexico, and Utah. Most of the production was from southeastern New Mexico, where two companies operated three mines. New Mexico sylvinitic and langbeinite ores were beneficiated by flotation, dissolution-recrystallization, heavy-media separations, or combinations of these processes, and provided more than 75% of total U.S. producer sales. In Utah, which has three operations, one company extracted underground sylvinitic ore by deep-well solution mining. Solar evaporation crystallized the sylvinitic ore from the brine solution, and a flotation process separated the potassium chloride (muriate of potash or MOP) from byproduct sodium chloride. Two companies processed surface and subsurface brines by solar evaporation and flotation to produce MOP, potassium sulfate (sulfate of potash or SOP), and byproducts. In Michigan, one company used deep-well solution mining and mechanical evaporation for crystallization of MOP and byproduct sodium chloride.

The fertilizer industry used about 85% of U.S. potash sales, and the chemical industry used the remainder. More than 60% of the produced potash was MOP. Potassium magnesium sulfate (sulfate of potash-magnesia or SOPM) and SOP, which are required by certain crops and soils, also were produced.

Sallent Statistics—United States:	2006	2007	2008	2009	2010^a
Production, marketable ¹	1,100	1,100	1,100	700	900
Imports for consumption	4,470	4,970	5,800	2,220	4,700
Exports	332	199	222	303	380
Consumption, apparent ¹	5,200	5,900	6,700	2,600	5,200
Price, dollars per metric ton of K ₂ O, average, muriate, f.o.b. mine ²	375	400	675	835	600
Employment, number:					
Mine	480	480	525	510	540
Mill	620	580	615	640	650
Net import reliance ³ as a percentage of apparent consumption	79	81	84	73	83

Recycling: None.

Import Sources (2006–09): Canada, 87%; Belarus, 5%; Russia, 5%; and other, 3%.

Tariff:	Item	Number	Normal Trade Relations 12-31-10
	Potassium nitrate	2834.21.0000	Free.
	Potassium chloride	3104.20.0000	Free.
	Potassium sulfate	3104.30.0000	Free.
	Potassic fertilizers, other	3104.90.0100	Free.
	Potassium-sodium nitrate mixtures	3105.90.0010	Free.

Depletion Allowance: 14% (Domestic and foreign).

Government Stockpile: None.

POTASH

Events, Trends, and Issues: In 2009, U.S. production was at its lowest point since 1943, and consumption was at the lowest point since 1962. World production was at its lowest level since 1993. In 2010, world potash markets began to recover after potash sales had collapsed from the combined effects of the world economic downturn, high prices, and weak demand.

The leading U.S. potash producer continued work on converting a closed underground mine into a solution mine. The company anticipated starting operations in late 2012, pending regulatory approvals. Another company planned to complete expansion of its solar evaporation ponds along the Great Salt Lake, Utah, in 2011 to increase production capacity of SOP. North Dakota issued its first potash exploration permit since 1976. The U.S. mining company would use solution mining methods to recover the potash because the deposits in North Dakota are too deep to use conventional underground mining techniques economically.

Plans were in place to increase world production capacity by 28%, from 42.9 million tons in 2010 to 54.7 million tons in 2014, with expansions of existing operations in Canada and Russia and new projects in Argentina, Belarus, Canada, Chile, China, Congo (Brazzaville), and Laos. In 2010, a major international mining company unsuccessfully bid to acquire the leading potash producer in Canada and the world. In November, the international company abandoned its attempt 10 days after the Canadian Government ruled that the sale of the potash company would not be in the best interest of Canada.

World Mine Production and Reserves: Reserves data for the United States, Chile, and Germany were updated using information published by the producers in the respective countries. For Germany, reserves are listed as exploitable reserves by the producing company. Reserves for China and Russia were updated from official Government sources from those countries and may not be exactly comparable to the reserve definition in Appendix C.

	Mine production		Reserves ⁴
	2009	2010 ^a	
United States	1,700	1,900	130,000
Belarus	2,490	5,000	750,000
Brazil	385	400	300,000
Canada	4,320	9,500	4,400,000
Chile	692	700	70,000
China	3,000	3,000	210,000
Germany	1,800	3,000	150,000
Israel	2,100	2,100	⁵ 40,000
Jordan	683	1,200	⁵ 40,000
Russia	3,730	6,800	3,300,000
Spain	435	400	20,000
Ukraine	12	12	25,000
United Kingdom	427	400	22,000
Other countries	—	—	50,000
World total (rounded)	20,800	33,000	9,500,000

World Resources: Estimated domestic potash resources total about 7 billion tons. Most of these lie at depths between 1,800 and 3,100 meters in a 3,110-square-kilometer area of Montana and North Dakota as an extension of the Williston Basin deposits in Saskatchewan, Canada. The Paradox Basin in Utah contains resources of about 2 billion tons, mostly at depths of more than 1,200 meters. The Holbrook Basin of Arizona contains resources of about 1 billion tons. A large potash resource lies about 2,100 meters under central Michigan. The U.S. reserves figure above includes approximately 40 million tons in central Michigan. Estimated world resources total about 250 billion tons.

Substitutes: There are no substitutes for potassium as an essential plant nutrient and an essential nutritional requirement for animals and humans. Manure and glauconite (greensand) are low-potassium-content sources that can be profitably transported only short distances to the crop fields.

^aEstimated. — Zero.

¹Data are rounded to no more than two significant digits to avoid disclosing company proprietary data.

²Average prices based on actual sales; excludes soluble and chemical muriates.

³Defined as imports – exports + adjustments for Government and industry stock changes.

⁴See Appendix C for resource/reserve definitions and information concerning data sources.

⁵Total reserves in the Dead Sea are arbitrarily divided equally between Israel and Jordan for inclusion in this tabulation.

POTASH IN NORTH DAKOTA

ED MURPHY

Introduction

For the first time in 34 years, the North Dakota Geological Survey has issued a subsurface mineral permit for potash exploration. The permit was issued to Dakota Salts, LLC—a wholly owned subsidiary of Sirius Exploration PLC. At least four earlier potash exploration wells have been drilled in northwestern North Dakota. In 1962, Texaco, Inc. drilled the TXL Storage no. 1 near the town of Lignite in Burke County. A cavern was created in the salt section of this well for propane storage. Three additional potash wells were drilled in 1976; two were drilled in Burke County and one in Bottineau County. Burlington Northern, Inc. drilled the Helming no. 4-11 in Bottineau County. Chandler & Associates, Inc. drilled the Ewing no. 3-3 and the Wilson no. 2-33 in Burke County, and farmed-out the potash section of these wells to Kalium Canada, Ltd.

Potash

The term potash originated in the early 16th century, referring to

the salt that remained when a mixture of water and wood ashes were evaporated in an iron pot to form potassium carbonate (Wilton, 2009). Today, potash is the common name typically applied to a variety of potassium salts (fig. 1). In the Williston Basin, potash primarily consists of potassium chloride (mineral name sylvite) and hydrated potassium magnesium chloride (mineral name carnallite). Potash spot market prices or mining statistics are typically reported as either KCl (potassium chloride) or K₂O (potassium oxide) equivalent.

The Prairie Formation

North Dakota was covered, or partially covered, by seas throughout most of Paleozoic, Mesozoic, and early Cenozoic time (60 to 500 million years ago). The Williston Basin originated about 500 million years ago (Late Cambrian to Early Ordovician) becoming the primary receptacle for sediment deposition in an area that includes western North Dakota, northwestern South Dakota, eastern

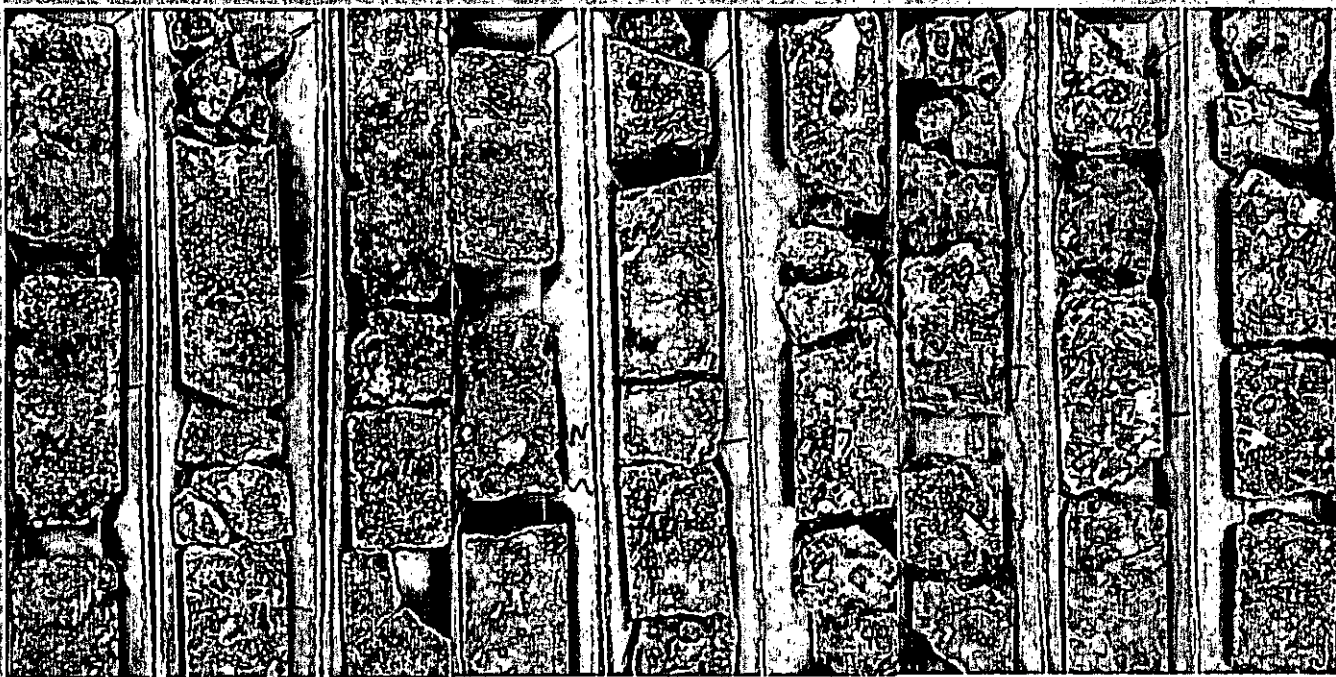


Figure 1. Twenty-one feet of salt core from a depth of 8,983 to 9,004 feet (going from 8,983 feet in the upper left to 9,004 feet in the lower right hand portion of the photograph) in the Texaco TXL storage well in central Burke County. Note the variable grain size, color, and clay content across this interval of the Esterhazy Member of the Prairie Formation.

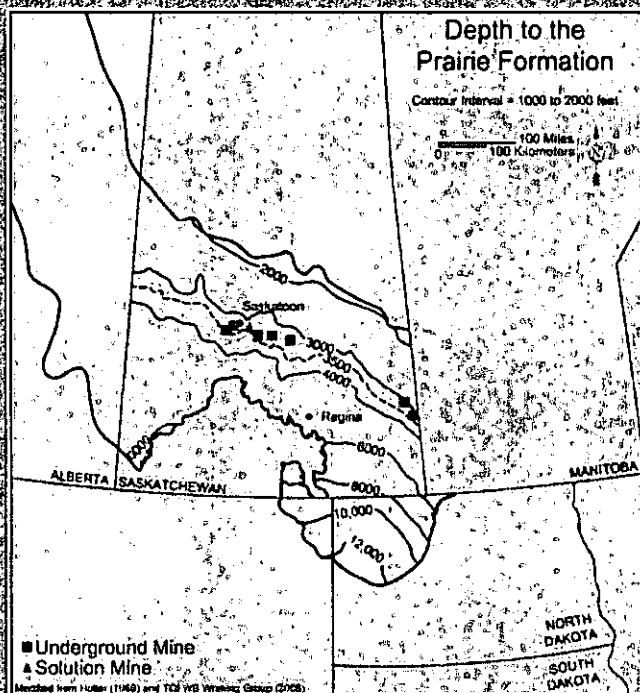
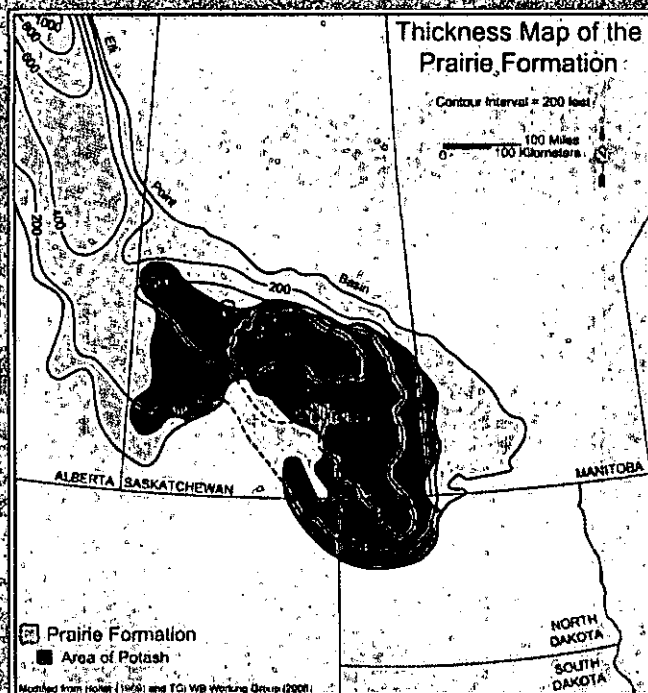


Figure 2a: An isopach map (thickness) of the Prairie Formation and the extent of potash zones within that formation. **2b:** Depth to the Prairie Formation and locations of operating potash mines. Mine locations taken from the Saskatchewan Ministry of Energy and Resources Operating Mines List published in March 2010.

Montana, southern Saskatchewan, and southwestern Manitoba. Periodically, these seas deposited evaporite minerals when they became isolated from the open oceans. Evaporites are deposited in waters confined within closed basins where circulation is impeded and the rate of evaporation exceeds the rate of recharge. As the volume of water is reduced, the concentration of dissolved salts increases until eventually they begin to precipitate out of solution and are deposited on the basin floor. This scenario of evaporite deposition repeated itself at least two dozen times within the North Dakota portion of the Williston Basin. As a result, there are about 24 salt layers in the basin ranging in thickness from a few feet up to hundreds of feet (LeFever and LeFever, 2005). The thickest accumulation of salt in the basin occurs within the Prairie Formation (Devonian).

During the Middle Devonian, roughly 400 million years ago, the Williston Basin was some distance from the open ocean, but connected to it through an elongated northwest-southeast trending trough called the Elk Point Basin. The Elk Point Basin extended from northwestern North Dakota to northern Alberta (fig. 2a). Early in the Middle Devonian, two structural divides created three sub-basins within the Elk Point Basin; the southernmost sub-basin covered Saskatchewan, Manitoba, North Dakota, and Montana. The poorly circulating water within these sub-basins began to precipitate salt, creating the Prairie Formation, or the Prairie Evaporite as it is known in Canada. The Prairie Formation extends from northwestern North Dakota into northern Alberta. Throughout much of Saskatchewan and northwestern North Dakota the Prairie Formation is 300 to 500 feet thick (fig. 2a). While halite (sodium chloride, NaCl , typically known as table salt) and anhydrite (calcium sulfate, CaSO_4) are the dominant evaporites within the Elk Point Basin, potash was also deposited in the sub-basin that covered parts of Saskatchewan, Manitoba,

North Dakota, and Montana creating the largest potash deposit in the world. This deposit extends over an area of 76,000 square miles, more than the total land area of North Dakota (71,000 square miles). Roughly 12,000 square miles of this potash deposit is situated in northwestern North Dakota.

Potash is concentrated into three zones within the Prairie Formation because minerals have different solubilities. Minerals typically precipitate from seawater in the following order: calcite and dolomite, gypsum and anhydrite, halite, sylvite and carnallite, etc. By the time the potassium salts began to precipitate in the Elk Point Basin, much of the seawater had evaporated. The presence of halite both above and between the potash zones indicates that water levels periodically rose in the basins and the evaporative cycle began all over again.

Complicating the stratigraphy of the Prairie Formation is the dissolution of some of the salt over time. This dissolution is especially evident along the edges of the deposit. Salt collapse within the Prairie Formation has affected overlying rocks and in some cases has been credited with creating traps or inducing faults and fractures into the overlying formations that are associated with oil production (LeFever and LeFever, 2005).

Most of the salt within the Prairie Formation, whether in Canada or in the United States, is halite. Potash makes up only about 10% of the formation by volume and is concentrated in three zones. The uppermost potash zone is discontinuous across the international border and is called the Mountrail Member in North Dakota and the Patience Lake Member in Saskatchewan. The other two members, the Belle Plaine and Esterhazy, are remarkably continuous and can be correlated from Saskatchewan into Manitoba, Montana, and North Dakota (Anderson and Swinehart, 1979) (fig. 3).

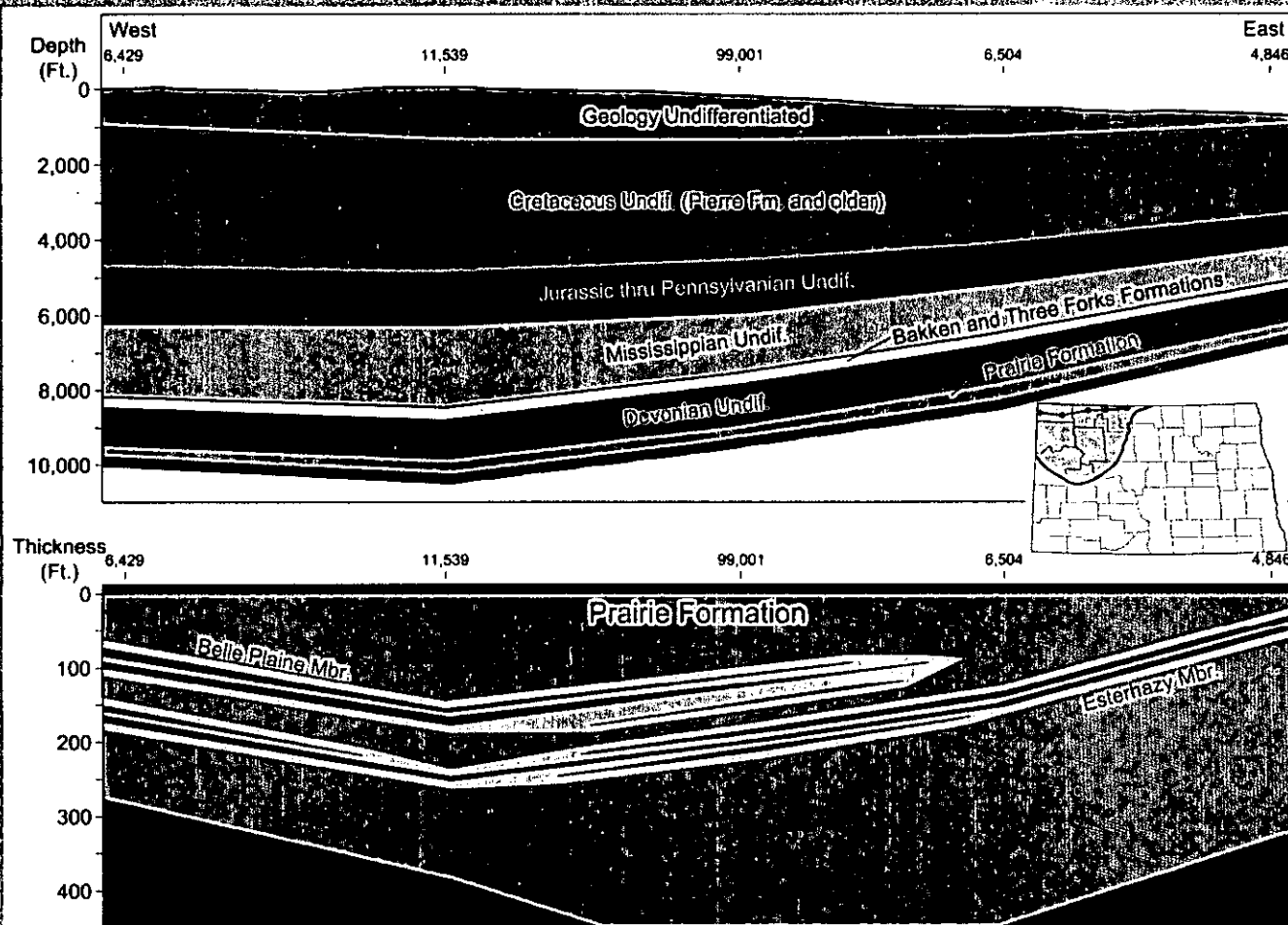


Figure 3: An east-west cross section (correlating to red line on inset map) to the base of Devonian rocks in northwestern North Dakota. The lower expanded cross section of the Prairie Formation demonstrates its variable thickness as well as the lenticular nature of the potash beds (dark green) within the Belle Plaine and Esterhazy Members. Most of the salt in the lime green and light green portion of the lower diagram is halite.

History of Potash Mining in the Prairie Formation

Potash mining began in Saskatchewan in 1959 and by 1971 the nine potash mines currently operating were all in production. Of these mines, seven are underground workings, one is a flooded underground mine now operated as a solution mine (Patience Lake), and another is a solution mine (Belle Plaine). It has been estimated that Saskatchewan contains 63.5 billion metric tons of recoverable potash reserves (reported as K_2O). This amount includes 4.5 billion metric tons of potash that could be mined by conventional underground methods, and 59 billion metric tons by solution mining techniques (modified from Holter, 1969). The cut-off between conventional underground mining and solution mining has been placed at about 3,600 feet, beyond which conventional underground salt mining is not considered safe (Halabura and Hardy, 2007) (fig. 2b).

Production and Uses of Potash

Canada is the leading producer of potash in the world. In 2008, Canada produced 10.5 million metric tons of potash (K_2O equivalent), accounting for approximately one third of the world's production of 35 million metric tons (fig. 4). Russia, Belarus, Germany, China, Israel, Jordan, and the United States are, in that order, the other leading potash producers (Jasinski, 2010a). Almost

half (45%) of the potash mined in the province of Saskatchewan is consumed in the U.S. In contrast, only about five percent of Saskatchewan's potash is consumed within Canada. The remaining 50% or so of Saskatchewan's potash production goes to the Pacific Rim (China, Japan, Malaysia, Korea, and Indonesia) and Latin American countries (Fink and Berenyi, 2010).

In 2008, the United States mined about 1.1 million metric tons of potash (K_2O equivalent). In the meantime, the United States imported 5.7 million metric tons, 87% of these imports coming from Canada. Most of the potash produced within the U.S. in recent years has come from southeastern New Mexico, but there has also been domestic potash production in Michigan and Utah (Jasinski, 2010a). The potash deposits in northwestern North Dakota and northeastern Montana are recognized as the largest deposits in the United States. While Anderson and Swinehart (1979) placed the resource at 60 billion tons (50 billion in North Dakota and 10 billion tons in Montana) the U.S. Geological Survey estimates the total U.S. potash resource at roughly 7 billion metric tons, with the majority of that occurring in northwestern North Dakota and northeastern Montana (Jasinski, 2010a).

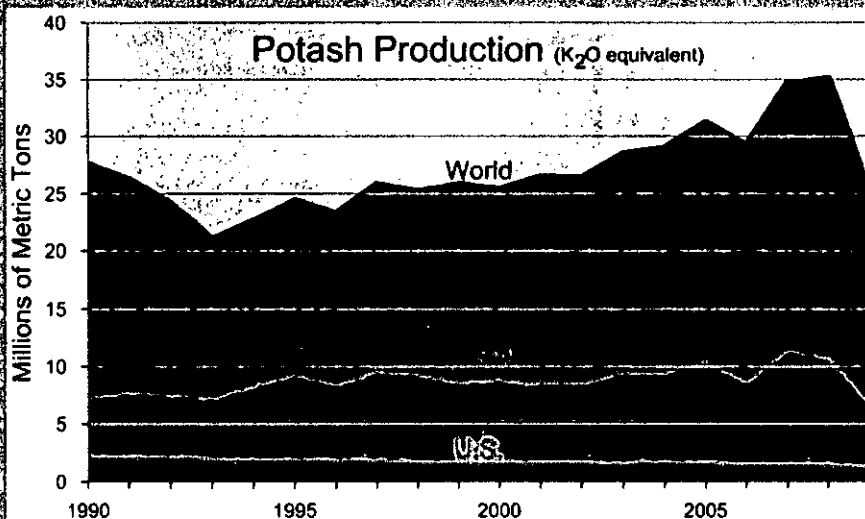


Figure 4. World, Canadian, and U.S. production of potash from 1990 through 2009. Source: U.S. Bureau of Mines and U.S. Geological Survey Mineral Commodity Surveys.

Worldwide, 93% of the potash mined is used as agricultural fertilizer (Jasinski, 2010b). Typically, the nitrogen, phosphorus, and potassium contents of fertilizer are labeled, in that order, on the fertilizer bag. In other words, a fertilizer bag labeled 22-2-14 contains 14% potassium by weight. Potash is used in a variety of other applications including aluminum recycling, metal electroplating, oil and gas drilling, mud, snow and ice melting, steel heat treating, and water softening (Jasinski, 2010b).

Price and Outlook of Potash

Throughout the 1980s and 1990s the spot price for potash was less than \$200 per metric ton of KCl. As was the case with many mineral commodities, potash prices began increasing in the mid-2000s, setting a record price in 2008 (fig. 5). A potash price projection in the mid-2000s predicted that the KCl spot price would begin dramatically increasing in 2007, peak at \$1,375 in 2011, and would stay above \$1,000 per metric ton through the year 2020. Much of this speculation was driven by projected increases in potash consumption within China and India.

The worldwide economic downturn has driven prices far below the record high, but they are still more than twice the average price of ten years ago (fig. 5).

In 2009, worldwide production of potash dropped 29%

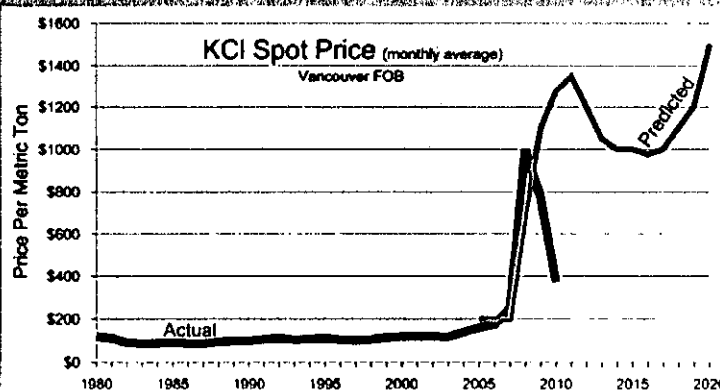


Figure 5. Potash spot market prices from 1980 thru 2010 and projected prices from 2005-2020. The projected prices were estimated in the mid 2000s and did not foresee the worldwide economic downturn that began in 2008. Source: Fertecon.

(down from 35 to 25 million metric tons of K_2O) as a result of the decrease in potash demand stemming from the economic downturn. Canadian potash production dropped 38%, going from 10.5 million metric tons in 2008 to 6.5 million in 2009. U.S. production decreased 24% to 840,000 metric tons in 2009 (fig. 4). Potash production has been recovering in 2010 to near pre-2009 levels. Going forward, as the world economy recovers, some in the industry are predicting potash will continue to increase at the past decade's rate of about 2.5% per year (Stone, 2009).

References

- Anderson, S.B., and Swinehart, R.P., 1979, Potash salts in the Williston Basin, U.S.A., *Economic Geology*, v. 74, no. 2, p. 358-376.
- Fink, R., and Berenyi, J., 2010, Potash fact sheet: Saskatchewan Energy and Resources, Saskatchewan Minerals, 2 p.
- Halabura, S.P., and Hardy, M.P., 2007, An overview of the geology of solution mining of potash in Saskatchewan: Solution Mining Research Institute Technical Meeting, Halifax, Nova Scotia, Canada, Oct. 27, 18 p.
- Holter, M.E., 1969, The Middle Devonian Prairie Evaporite of Saskatchewan: Saskatchewan Dept. of Mineral Resources, Industrial Minerals Division Rept. no. 123, 101 p.
- Jasinski, S.M., 2010a, Potash mineral commodity surveys 2010: United States Geological Survey, p. 122-123.
- Jasinski, S.M., 2010b, Potash (advanced release) in 2008 Minerals yearbook: United States Geological Survey, p. 58.1-58.9.
- LeFever, J.A., and LeFever, R.D., 2005, Salts in the Williston Basin, North Dakota: North Dakota Geological Survey Report of Investigation no. 103, 41 p.
- Stone, K., 2009, Potash outlook: Natural Resources Canada, TFI fertilizer outlook and technology conference, Tampa, Florida, October 29.
- TGI Williston Basin Working Group, 2008, Devonian Prairie Evaporite: isopach, Manitoba: Science, Technology, Energy, and Mines, Manitoba Geological Survey, Stratigraphic Map SM2008-DPE-1, scale 1:1,000,000, www.WillistonTGI.com.
- Wilton, D., 2009, Potassium/potash, Wordorigins.org, Sept. 3, www.wordorigins.org/index.php/site/comments/potassium_potash/.

POTASH STATISTICS¹
U.S. GEOLOGICAL SURVEY
[All values are in metric tons (t) K₂O unless otherwise noted]

Last modification: November 9, 2010

Year	Production	Imports	Exports	Stocks	Apparent consumption	Unit value (\$/t)	Unit value (98\$/t)	World production
1900	877	77,000	NA	NA	77,900	65.70	1,290	NA
1901	NA	54,400	NA	NA	54,400	72.20	1,420	NA
1902	NA	18,300	NA	NA	18,300	55.50	1,050	NA
1903	NA	12,900	NA	NA	12,900	60.10	1,090	NA
1904	NA	73,500	NA	NA	73,500	72.40	1,320	NA
1905	411	125,000	NA	NA	125,000	76.20	1,380	NA
1906	NA	27,200	NA	NA	27,200	65.80	1,200	NA
1907	NA	28,100	NA	NA	28,100	89.80	1,580	NA
1908	NA	26,800	NA	NA	26,800	54.60	993	NA
1909	NA	152,000	NA	NA	152,000	72.30	1,310	NA
1910	NA	318,000	NA	NA	318,000	58.20	1,020	NA
1911	NA	321,000	NA	NA	321,000	64.10	1,120	NA
1912	NA	301,000	NA	NA	301,000	63.70	1,080	NA
1913	NA	241,000	NA	NA	241,000	61.10	1,010	NA
1914	NA	179,000	NA	NA	179,000	63.30	1,030	NA
1915	989	40,900	NA	NA	41,800	91.40	1,470	NA
1916	8,820	3,850	NA	NA	12,700	501	7,490	NA
1917	29,600	2,300	NA	NA	31,900	468	5,970	NA
1918	35,000	1,930	NA	14,700	36,900	458	4,950	NA
1919	41,500	32,900	NA	11,430	74,300	227	2,140	122,000
1920	37,600	192,000	NA	8,160	229,000	192	1,560	224,000
1921	4,000	66,400	NA	11,500	70,400	131	1,190	994,000
1922	10,300	179,000	NA	10,600	189,000	63.40	615	1,400,000
1923	17,500	185,000	1,410	11,200	201,000	64.00	610	1,250,000
1924	19,800	178,000	690	9,770	202,000	60.30	575	1,100,000
1925	23,400	227,000	840	9,320	258,000	61.00	568	1,590,000
1926	22,700	242,000	NA	8,170	264,000	73.80	680	1,710,000
1927	44,900	221,000	NA	2,270	249,000	78.20	732	2,000,000
1928	54,800	300,000	NA	1,910	355,000	72.10	687	2,030,000
1929	52,200	295,000	NA	5,630	347,000	76.90	733	2,200,000
1930	51,400	311,000	NA	9,980	354,000	75.90	741	2,050,000
1931	57,900	195,000	NA	9,530	238,000	77.50	831	1,400,000
1932	50,500	103,000	NA	25,400	152,000	71.30	849	1,250,000
1933	126,000	156,000	NA	19,000	266,000	60.70	760	1,670,000
1934	104,000	156,000	NA	45,400	249,000	55.60	676	1,980,000
1935	204,000	219,000	NA	16,300	423,000	41.40	493	2,270,000
1936	202,000	192,000	NA	30,800	394,000	48.90	573	2,310,000
1937	242,000	319,000	56,200	50,500	504,000	49.50	560	2,820,000
1938	260,000	176,000	47,000	79,300	388,000	51.90	600	3,010,000
1939	332,000	90,800	76,000	26,700	347,000	43.00	504	2,730,000
1940	357,000	108,000	57,000	14,900	407,000	34.10	397	2,810,000
1941	482,000	14,400	51,600	8,810	445,000	39.40	437	3,210,000
1942	618,000	3,950	44,600	5,480	577,000	33.60	336	3,170,000
1943	664,000	15,500	63,500	12,700	616,000	33.30	314	3,270,000
1944	742,000	4,360	62,500	27,000	684,000	36.90	342	3,040,000
1945	790,000	5,460	61,300	31,100	734,000	36.80	333	1,910,000
1946	842,000	3,960	59,600	34,500	787,000	33.70	282	2,310,000
1947	956,000	23,600	61,800	13,300	917,000	31.10	227	2,620,000
1948	1,040,000	24,700	63,300	10,200	999,000	30.80	208	2,940,000
1949	1,020,000	17,400	63,100	8,230	971,000	31.30	214	2,540,000
1950	1,160,000	182,000	59,000	18,700	1,280,000	41.70	282	3,130,000

POTASH STATISTICS¹
U.S. GEOLOGICAL SURVEY
[All values are in metric tons (t) K₂O unless otherwise noted]

Last modification: November 9, 2010

Year	Production	Imports	Exports	Stocks	Apparent consumption	Unit value (\$/t)	Unit value (98\$/t)	World production
1951	1,280,000	285,000	62,300	29,300	1,500,000	41.30	259	5,080,000
1952	1,450,000	171,000	51,100	89,100	1,570,000	43.10	265	5,620,000
1953	1,570,000	121,000	44,500	253,000	1,650,000	43.40	265	5,900,000
1954	1,740,000	108,000	59,900	283,000	1,790,000	41.80	253	6,620,000
1955	1,820,000	161,000	118,000	337,000	1,860,000	42.30	257	7,260,000
1956	1,910,000	164,000	205,000	399,000	1,870,000	41.20	247	7,530,000
1957	1,940,000	165,000	212,000	508,000	1,890,000	39.20	227	7,890,000
1958	2,120,000	181,000	230,000	337,000	2,070,000	36.80	208	7,980,000
1959	2,250,000	212,000	306,000	251,000	2,150,000	37.70	211	8,530,000
1960	2,360,000	205,000	445,000	282,000	2,120,000	36.70	202	9,070,000
1961	2,260,000	238,000	429,000	506,000	2,060,000	38.90	212	9,710,000
1962	2,470,000	309,000	459,000	259,000	2,320,000	41.70	225	9,800,000
1963	2,460,000	539,000	386,000	434,000	2,610,000	41.90	223	11,300,000
1964	2,760,000	669,000	561,000	268,000	2,870,000	41.30	217	12,300,000
1965	2,660,000	1,010,000	588,000	457,000	3,080,000	42.70	221	13,700,000
1966	2,840,000	1,350,000	564,000	626,000	3,630,000	41.30	208	14,600,000
1967	2,840,000	1,540,000	629,000	783,000	3,790,000	34.10	166	15,700,000
1968	2,640,000	1,960,000	679,000	613,000	3,940,000	28.00	131	16,200,000
1969	2,780,000	2,120,000	643,000	356,000	4,260,000	23.70	105	17,400,000
1970	2,420,000	2,360,000	519,000	412,000	4,290,000	35.20	148	18,200,000
1971	2,350,000	2,510,000	523,000	388,000	4,350,000	39.60	159	19,900,000
1972	2,380,000	2,690,000	705,000	425,000	4,370,000	39.40	154	20,000,000
1973	2,600,000	3,250,000	821,000	187,000	5,050,000	39.90	146	18,900,000
1974	2,310,000	3,920,000	728,000	191,000	5,520,000	57.10	189	21,100,000
1975	1,900,000	3,440,000	740,000	562,000	4,640,000	74.60	226	24,700,000
1976	2,270,000	4,170,000	879,000	471,000	5,580,000	79.80	229	24,300,000
1977	2,230,000	4,610,000	865,000	467,000	5,990,000	79.00	213	25,200,000
1978	2,310,000	4,710,000	809,000	414,000	6,210,000	86.50	216	26,100,000
1979	2,390,000	5,170,000	635,000	251,000	6,920,000	104	234	25,700,000
1980	2,220,000	4,970,000	840,000	273,000	6,350,000	129	256	27,900,000
1981	1,910,000	4,800,000	491,000	520,000	6,210,000	156	280	27,100,000
1982	1,780,000	3,860,000	519,000	520,000	5,120,000	146	247	24,500,000
1983	1,510,000	4,440,000	300,000	391,000	5,650,000	135	222	27,400,000
1984	1,640,000	4,830,000	446,000	312,000	6,020,000	135	212	29,300,000
1985	1,270,000	4,590,000	513,000	336,000	5,350,000	127	192	29,200,000
1986	1,150,000	4,210,000	547,000	378,000	4,840,000	110	164	28,800,000
1987	1,490,000	4,070,000	470,000	155,000	5,090,000	124	178	30,500,000
1988	1,430,000	4,220,000	380,000	248,000	5,260,000	164	226	31,800,000
1989	1,540,000	3,410,000	446,000	307,000	4,500,000	172	226	29,300,000
1990	1,720,000	4,160,000	470,000	303,000	5,410,000	132	164	27,500,000
1991	1,710,000	4,160,000	624,000	343,000	5,240,000	163	195	26,100,000
1992	1,770,000	4,250,000	663,000	283,000	5,350,000	171	198	23,900,000
1993	1,480,000	4,360,000	415,000	305,000	5,430,000	159	180	20,400,000
1994	1,470,000	4,800,000	464,000	234,000	5,810,000	159	175	23,100,000
1995	1,400,000	4,830,000	409,000	312,000	5,820,000	152	163	24,700,000
1996	1,430,000	4,950,000	481,000	265,000	5,900,000	146	152	23,900,000
1997	1,400,000	5,490,000	466,000	200,000	6,430,000	145	147	25,500,000
1998	1,300,000	4,780,000	477,000	300,000	5,600,000	174	174	26,000,000
1999	1,200,000	4,470,000	459,000	300,000	5,210,000	162	158	27,200,000
2000	1,200,000	4,610,000	367,000	301,000	5,600,000	155	147	27,000,000
2001	1,100,000	4,540,000	366,000	NA	5,300,000	151	139	26,400,000

POTASH STATISTICS¹
U.S. GEOLOGICAL SURVEY
 [All values are in metric tons (t) K₂O unless otherwise noted]

Last modification: November 9, 2010

Year	Production	Imports	Exports	Stocks	Apparent consumption	Unit value (\$/t)	Unit value (98\$/t)	World production
2002	1,200,000	4,620,000	371,000	NA	5,400,000	110	100	27,100,000
2003	1,100,000	4,720,000	329,000	NA	5,600,000	110	97	28,600,000
2004	1,200,000	4,920,000	233,000	NA	6,000,000	125	108	32,100,000
2005	1,200,000	4,920,000	200,000	NA	5,900,000	165	138	33,800,000
2006	1,100,000	4,470,000	332,000	NA	5,200,000	170	137	30,400,000
2007	1,100,000	4,970,000	199,000	NA	5,900,000	185	145	35,700,000
2008	1,100,000	5,800,000	222,000	NA	6,700,000	300	485	34,500,000
2009	700,000	2,220,000	303,000	NA	2,600,000	335	255	20,800,000

NA Not available.

¹Compiled by D.A. Buckingham (retired), J.P. Searls (retired), J.A. Ober, and S.M. Jasinski.
 Data are calculated, estimated, or reported. See notes for more information.

Potash Worksheet Notes

Data Sources

Sources for the potash worksheet are the mineral statistics publications of the U.S. Bureau of Mines and the U.S. Geological Survey—Minerals Yearbook (MYB) and its predecessor, Mineral Resources of the United States (MR), and Mineral Commodity Summaries (MCS). The years of publication and corresponding years of data coverage are listed in the References section below. Blank field values indicate that data are not available.

Production

Potash production data are reported domestic sales data. All data are reported in terms of their K₂O equivalents. Except for 1900 and 1905, no sales data are available prior to 1915. Data are reported in the MR and the MYB.

Imports

Potash imports, in terms of their K₂O equivalents, are reported for 1900 to the most recent year. Data are reported in the MR and the MYB.

Exports

Potash export data are not available for 1900–22 and 1926–36. Potash exports for 1923–25 are reported as the K₂O equivalents of potassium salts and potash fertilizers. For 1937–77, potash exports are reported as the K₂O equivalents of potash chemicals and fertilizers. Potash export data for 1978 to the most recent year are reported in terms of K₂O equivalents, but do not include potassium salts and mixed fertilizers export data. Data are reported in the MR and the MYB.

Stocks

Data are yearend producer stocks. Stocks data are not used in the apparent consumption equation. Potash stock data are not available for prior to 1918 and for 1919. Data for 1918 and 1920–77 are reported in the MR and MYB. Data for 1978–99 are reported in the MCS. Data for 2001 to the most recent year are not available.

Apparent Consumption

The significant drop in apparent consumption from 1915–21 was a result of an embargo against imports from Germany. Domestic apparent consumption data for 1900–23 are calculated using the following equation:

$$\text{APPARENT CONSUMPTION} = \text{DOMESTIC SALES} + \text{IMPORTS} - \text{EXPORTS}.$$

For 1924 to the most recent year, published apparent consumption data are used. Data are reported in the MR and the MYB.

Unit Value (\$/t)

Unit value is defined as the value of 1 metric ton (t) of potash (K₂O equivalents) apparent consumption. For 1900–23, 1928–30, and 1937 to the most recent year, the unit value data are calculated using the following equation:

$$\text{UNIT VALUE} = (\text{DOMESTIC SALES VALUE} + \text{IMPORT VALUE} - \text{EXPORT VALUE}) / (\text{DOMESTIC SALES TONS} + \text{IMPORT TONS} - \text{EXPORT TONS}).$$

Unit value data for 1924–27 and 1931–36 are calculated using the following equation:

$$\text{UNIT VALUE} = \text{APPARENT CONSUMPTION VALUE} / \text{APPARENT CONSUMPTION TONS}.$$

The significant rise in unit value from 1915–21 was a result of an embargo against imports from Germany, coupled with high demand. Data are reported in the MR and the MYB.

Unit Value (98\$/t)

The Consumer Price Index conversion factor, with 1998 as the base year, is used to adjust unit value in current U.S. dollars to the unit value in constant 1998 U.S. dollars.

World Production

Potash world mine production data are reported in terms of K₂O equivalents. Potash world production data are not available prior to 1919. Data are reported in the MR and the MYB.

References

- U.S. Bureau of Mines, 1927–34, Mineral Resources of the United States, 1924–31.
- U.S. Bureau of Mines, 1933–96, Minerals Yearbook, 1932–94.
- U.S. Bureau of Mines, 1978–95, Mineral Commodity Summaries, 1978–95.

U.S. Geological Survey, 1901–27, Mineral Resources of the United States, 1900–23.
U.S. Geological Survey, 1997–2000, Mineral Commodity Summaries, 1997–2000.
U.S. Geological Survey, 1997–present, Minerals Yearbook, v. 1. (Available via <http://minerals.usgs.gov/minerals>.)
U.S. Geological Survey and U.S. Bureau of Mines, 1996, Mineral Commodity Summaries, 1996.

Recommended Citation Format:

U.S. Geological Survey, [year of last update, e.g., 2005], [Mineral commodity, e.g., Gold] statistics, *in* Kelly, T.D., and Matos, G.R., comps., Historical statistics for mineral and material commodities in the United States: U.S. Geological Survey Data Series 140, accessed [date], at <http://pubs.usgs.gov/ds/2005/140/>.

For more information, please contact:

USGS Potash Commodity Specialist

Testimony HB 1046

Chairman Cook and members of the Senate Finance and Tax Committee, for the record I am Glen Froseth, Representing District 6, which is all of Bottineau and Renville counties and the north half of Ward County. I am also a close neighbor to Burke County, where the initial development and potash production is being contemplated.

As amended, HB 1046 sets policy to regulate and tax the production of Potash in North Dakota, and is quite similar to the bill that was advanced from the Interim Finance and Tax Committee.

First first change is on page 4, beginning with line 6, where it will assure that local taxing entities will be able to collect property tax on potash processing facilities and equipment. If a property tax exemption is to be made, it can be done by the county in which the processing is located. This will keep potash processing facilities on the same level such as gas processing facilities across the state.

The most substantive change is in Section 3, starting on page 4, beginning with line 21, 57-65-07, Allocation of Revenue. As HB1046 came from the Interim committee, it would have allocated the revenue with 20 percent going to the county in which it is produced, and 80 percent going into the state's general fund.

Mr. Chairman and Committee, the House Finance and Tax amended the bill to change this distribution to more adequately assure that the county where potash is produce, will be kept whole from infrastructure damage, similar to what is now occurring in oil producing counties, and will favor the county with more revenue in the first five years of production from a mining site.

The new allocation formula will return the first one million dollars to the county road and bridge fund. Continuing on page 5, after the first Million dollars has been reached, the county will recieve 40% and the state 60% for the next one year period; then the county/state share will be split 50%/50% for the next year, then county/state split of 40%/60% for the following year, and finally, the county/state split of 30%/70% from then on.

Also note, on page 5, lines 11 through 13, that 30% of the state allocation will go to the new state Legacy Fund.

To insure the county will have funds available for other impacts other than roads and bridges, 10% of the ocunty's share must be deposited into a County potash Impact Grant Fund (lines 14-15), which may be awarded to the county, townships, or cities within the county to meet initial impacts affectng basic governmental services directly affected by potash development.

(Mr. Chairman and committee, if it would please the committee, I would also suggest that school districts could be included as a recipient of the County Impact Grant Fund.)

Other House amendments to HB1046 are on page 13, starting on line 6, where 57-65-19 is added to place emphasis on the powers of the Industrial Commission to adopt and maintain rules for potash mining, environmental protection, and reclamation at a degree of **high protection** for surface owners, water supplies, productivity of soils, public health and safety in counties where potash is produced.

Section 4 has also been added to continue a interim study regarding potash mining and taxation issues.

The purpose of this is that potash production is new to our state and as the industry progresses and grows, there will be many issues yet to be discovered, much similar as to issues relating to the development of our oil and gas industry, which still continue after more than 50 years of development.

Mr. Chairman and Committee, I urge you to support HB1046 as it was amended in the House and give it a Do Pass recommendation. Thank you.

Burke County
Director of Tax Equalization
PO Box 174
Bowbells ND 58721
Janet Cron

March 7, 2011

North Dakota Finance and Taxation Committee
2011 Legislative Session

Re: HB 1046

I testified on the original HB 1046 in January. I would like you to know my concerns:

1. We have a gas plant a mile from the original test well. It has been taxed since it was built. The potash plant should be taxed to support the local needs. The county commissioners could grant a new business exemption if the potash company applied for tax relief to get the plant built.
2. I am concerned about the air quality after having first hand information about the Belle Plaine solution mine in Canada.
3. The water table in Flaxton City has dropped 30 feet and the main water well had to be re-set. A huge expense for a town of 65 folks. Can we afford to sell the water needed to make this plant go?
4. **A local contractor has not received payment for any of the work he did for the first potash test well. Where and when will money be received for the start up well.**

This new venture leaves a lot of unanswered questions. I request that you slow this down and take the time to answer the questions we bring before you.

I appreciate the engrossment of HB1046. This method of getting tax dollars back to the entities affected by Potash should make the transition palatable.

Janet Cron
Burke County Zoning Board Member
Burke County Director of Tax Equalization

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Chairman Cook and Members of the Senate Finance and Taxation Committee:

For the record, I'm Representative David Rust of District 2 which consists of all of Williams County except for most of Williston, part of Mountrail County, all of Divide County, and all of Burke County.

The mining of potash has huge implications for Burke County. HB 1046, if passed, would provide funds for the county to deal with the impact associated with that industry. It also will provide dollars to the state of ND and to the Legacy Fund. In many respects HB 1046 is similar to the 5% gross oil and gas production tax.

The mining of potash is really uncharted territory for ND. There are a number of unknowns in that process. It is crucial that Burke County's impact is a high priority and that the county is provided the funds to deal with damage to infrastructure such as roads and whatever other issues that may need to be addressed.

I commend those who have had the foresight to formulate this legislation and thereby escape some of the pitfalls that occurred in the early 1950s with oil and gas exploration and development.

I'm basically here in support of HB 1046 and to ask that you give it a "Do Pass" recommendation.

If you have any questions, I'll try to answer them; following that, with your acquiescence I'll return to the House Education Committee for hearings there.

Thank you.



HOUSE BILL NO. 1046

Senate Finance and Taxation Committee
March 8, 2011

Testimony of Lynn D. Helms, Director

The Industrial Commission, Department of Mineral Resources, Geological Survey Division has jurisdiction over subsurface mineral extraction under North Dakota Century Code 38-12 and North Dakota Administrative Code 43-02-02.

38-12-02. Jurisdiction of commission. The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. Subject to the provisions of section 38-08-21, the director of mineral resources shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the subsurface mineral resources of this state and the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the director of mineral resources has the authority:

1. To require:

- a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration, development, and production of subsurface minerals on state and private lands within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
- b. The delivery, free of charge, to the state geologist of the basic exploration data collected by the operator, within thirty days of field collection of such data. This data must include:
 - (1) Sample cuts, core chips, or whole cores.
 - (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.

(4) Other pertinent information as may be requested by the state geologist. The data so submitted is confidential for a period of one year when so requested by the operator and such period may be further extended upon approval by the commission.

- c. The filing of monthly production reports in the manner prescribed by the commission and any other reports deemed necessary by the commission.
 - d. The conducting of all exploration, development, and production operations in such a manner as to prevent pollution of freshwater supplies, to provide for the protection of the environment and public safety, and to ensure the optimum recovery of the mineral resource.
 - e. The reclamation of all land disturbed by operations regulated by this chapter to a condition consistent with prior land use and productive capacity.
- 2. To regulate the drilling and abandonment of exploration test holes and producing wells and all other exploration, development, production, and reclamation operations.
 - 3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of this chapter.
 - 4. To inspect all exploration, development, and production sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all exploration, development, or production installations for purposes of inspection and shall have the authority to require the operator's aid if it is necessary and is requested.

43-02-02-29. Mining plan. Before conducting any mining or production operations, the operator shall submit to the state geologist for approval a mining plan which shall show in detail the proposed development or mining operations to be conducted. Mining plans shall be consistent with and responsive to the requirements of not only this chapter but also statutes and rules for the protection of nonmineral resources, and for the reclamation of the surface of the lands affected by the operations. No operations shall be conducted except under an approved plan. Those portions of a mining plan which contain information which is proprietary to a specific company's mining methods shall be retained at that company's office located nearest the mining site, and shall be approved by the state geologist and open to inspection by the state geologist and the industrial commission at all times. In the event of disagreement as to what constitutes proprietary information, it shall be resolved by the company, the state geologist, and the industrial commission. All portions of the mining plan which provide for the protection of natural resources, other than the mineral being mined, and for the reclamation of the surface shall be filed in the office of the state geologist.

43-02-02-32. Pollution by saltwater. All saltwater liquids or brines produced shall be disposed of without pollution of freshwater supplies. Disposal shall be in accordance with an order of the commission, after hearing. At no time shall saltwater liquids or brines be allowed to flow over the surface of the land or into streams. Pits shall not be constructed within natural surface drainage channels and, before any saltwater liquid or brine is placed in the pit, any pit which is bottomed in permeable materials, such as sand or gravel, shall be lined with an impermeable material. The commission shall have the authority to condemn any pit which does not properly impound such water.

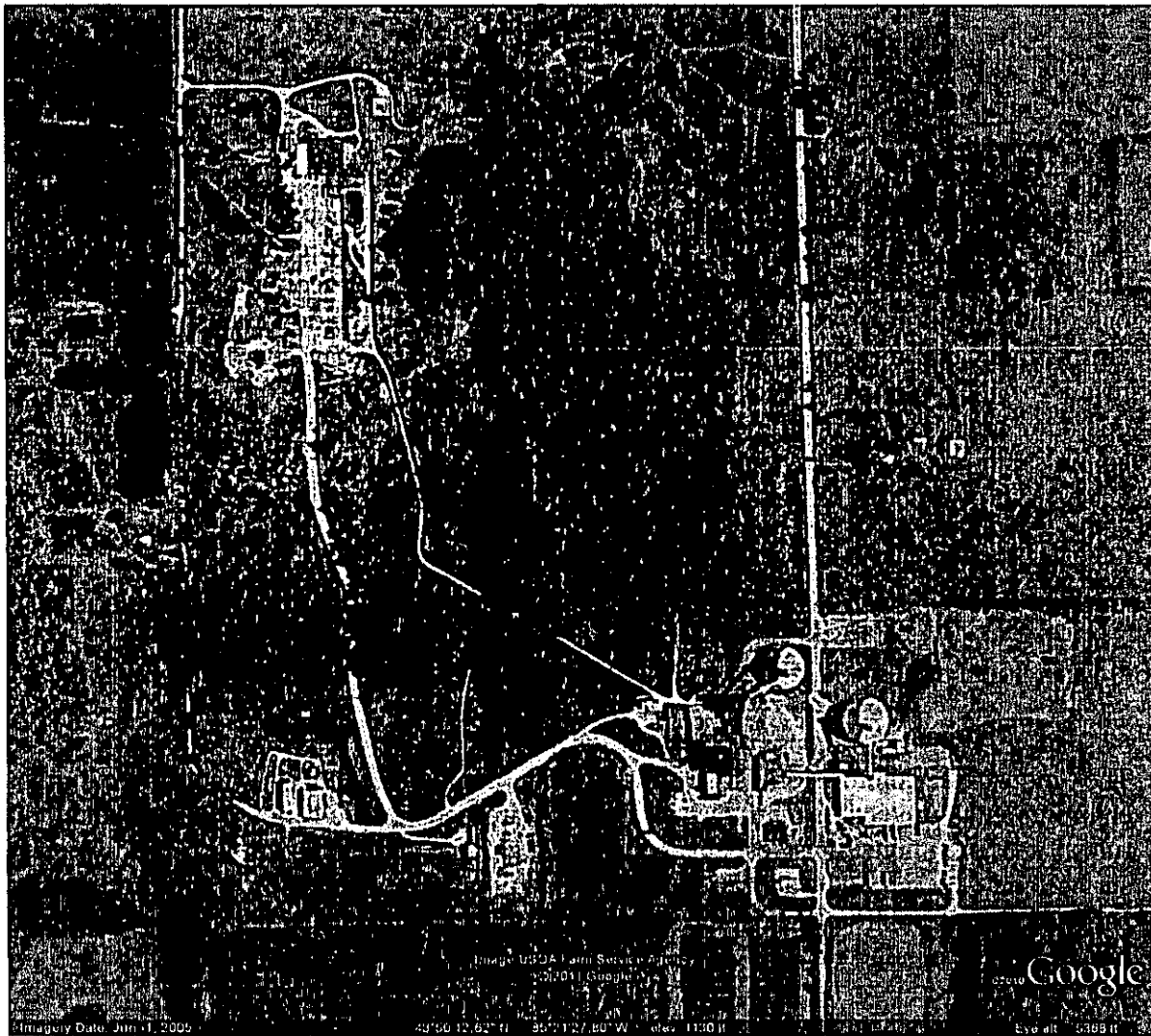
43-02-02-33. Investigative powers. Upon receipt of a complaint from any landowner, royalty owner, mineral owner, local or federal official, in the official's official capacity, or any member of the state legislative assembly, in the legislator's official representative capacity, or any other interested party, alleging drilling or production operations which are in violation of the statutes or any rule, regulation, or order of the commission, the state geologist shall immediately cause an investigation of such complaint to be made. The state geologist may also conduct such investigations on the geologist's own initiative or at the direction of the commission. If after such investigation the state geologist affirms that cause for complaint exists, the state geologist shall cause written notice of the results of the investigation to be mailed to the operator of the drilling or production operation and shall forthwith notify the commission, in writing, of the investigation. The commission shall institute such legal proceedings as, in its discretion, it believes necessary to enjoin further activities resulting in the violation complained of.

Engrossed House Bill 1046 was amended to insert the following language on page 13 lines 6-11 into the Taxation Title that mostly duplicates current solution mining law.

57 - 65 - 19. Powers of industrial commission .

The industrial commission shall adopt and maintain rules for potash mining, environmental protection, and reclamation. Environmental protection and reclamation rules, at a minimum, must establish a high degree of protection for surface owners, surface and underground water, productive capacity of soils, public health and safety, and participation of public officials and members of the public in counties in which potash mining will be conducted.

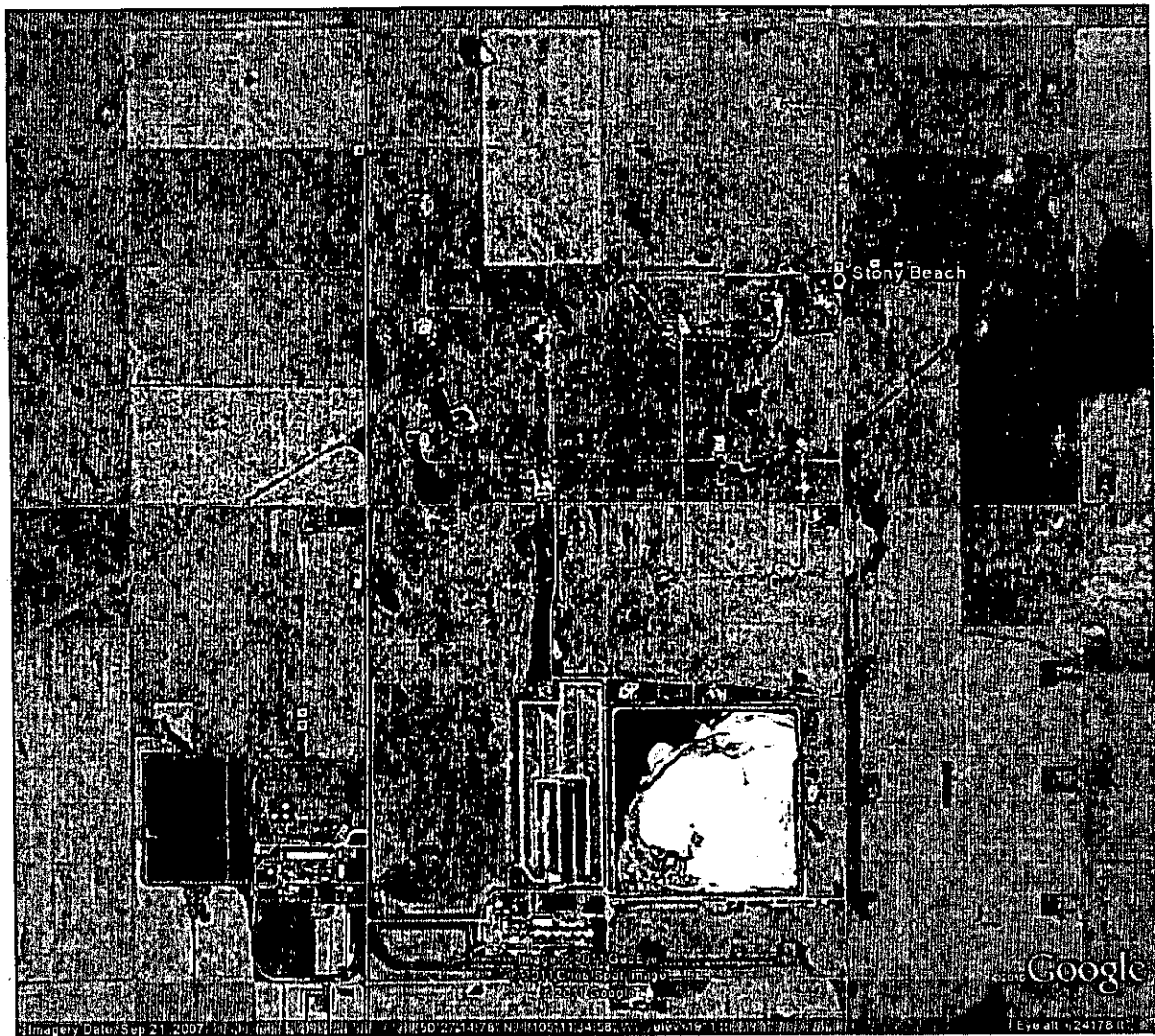
In addition to being duplicative and located in the taxation title, this section unintentionally discriminates with regard to participation of officials and citizens. The NDIC requests that this section be removed from the bill.



Hershey Michigan Mine

Since 1995

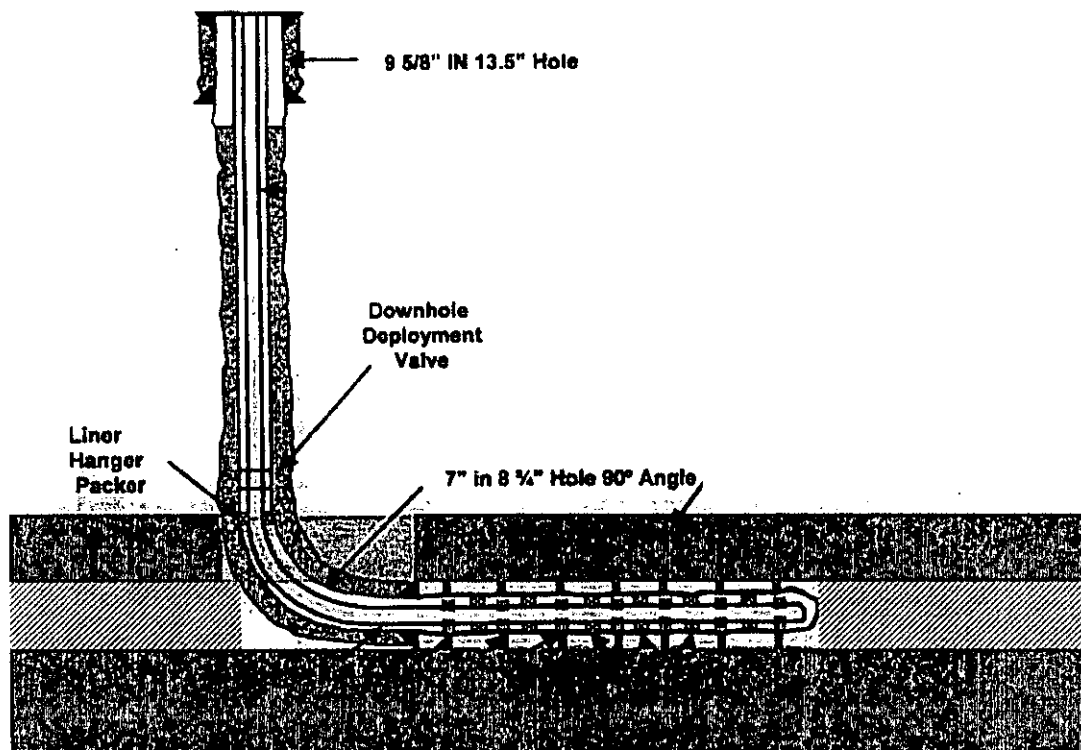
1.6 million tons per year



Belle Plain Saskatchewan Mine

Since 1964

2.8 million tons per year



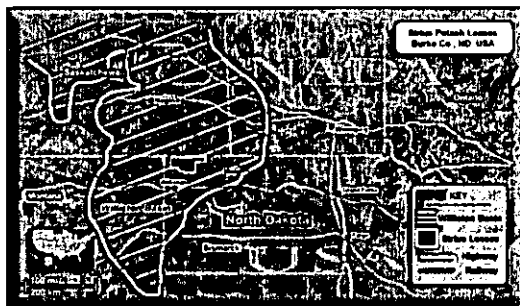
Typical horizontal solution mining well construction



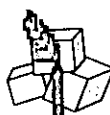
Dakota Salts LLC is a wholly owned subsidiary of Sirius Minerals Plc. Dakota Salts holds mineral leases in excess of 10,090 acres in North Dakota, allowing for the exploration and extraction of salt and potash and the creation of caverns for the storage of natural gas and other hydrocarbons or the storage of compressed air for electricity generation. Included within these acres is 394 acres of State of North Dakota land.

The modern potash industry is unique; the top eight potash producers control 82% of world potash production. The United States imports 90% of the potash it uses to produce fertilizer. Currently China is the largest producer/distributor of fertilizer, while the United States is the second largest. The International Fertilizer Association (IFA) estimates that demand for potash will continue to grow at 3.7% per annum. Thus, this presents a unique opportunity for North Dakota.

Dakota Salts is committed to identifying innovative new ways to commercialize its properties concurrently or after the mining activity has been concluded that help reduce carbon emissions. One of these ideas is storing compressed air in underground storage caverns and then releasing it when required to power turbines to generate electricity when it is needed.



Dakota Salts' properties overlie the Williston Basin which today yields over 33% of the world's potash supply. The North Dakota State Government Geological survey estimates there are some 50 billion tonnes of potash in North Dakota. Dakota Salts' claims cover some 19 square miles of land 155 miles north-west of Bismarck. Based on a wealth of historic data, Dakota Salts' claim area overlies known exploration targets where typically the potash seam is 20ft-35ft thick at 8000-9000ft beneath the surface. The K_2O (potash) grade ranges between 18-25% and dependant on grade, the land has been estimated to contain 2.1 to 5.2 million





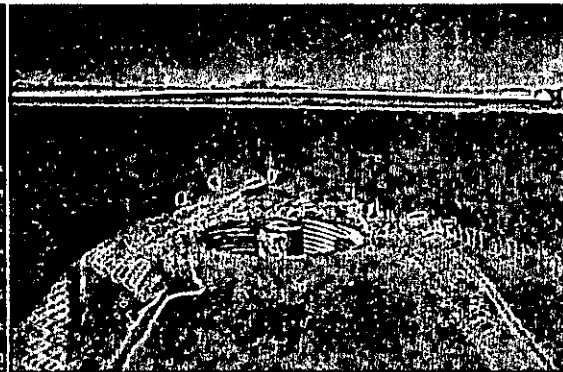
metric tonnes per square kilometer. Dakota Salts properties are close to rail, gas and water infrastructure.

Current Status

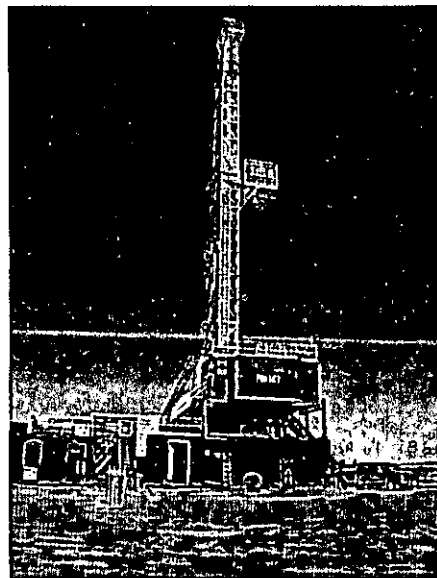
Dakota Salts has been and continues to work closely with the North Dakota authorities to progress the potash mining project. In August 2010, the company was awarded the first potash exploration permit issued in North Dakota for thirty years. In conjunction with its drilling partners - Boyd Exploration Consultants Ltd. ("Boyd PetroSearch") and North Rim Exploration Ltd. ("North Rim") – Dakota Salts commenced its initial drilling program in November 2010.



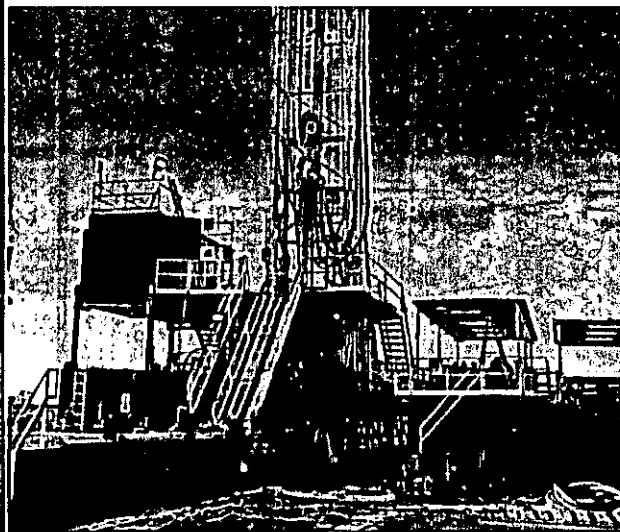
Conductor Casing Pre-set



North Dakota Drill Pad



Saxon Rig 147 and Drilling Platform on site in N.D.



Close up of North Dakota Potash Exploration Rig



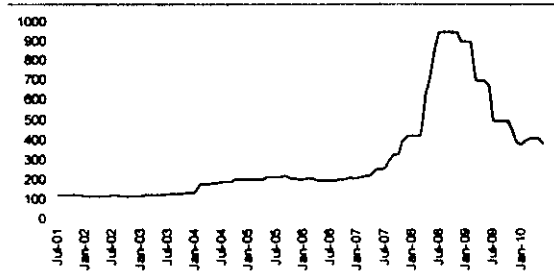


Why is Potash Important?

Ninety-five percent of the world's potash is used in fertilizers, and is a key ingredient in enhancing plants' ability to retain water. Potash increases crop yields and resistance to disease, and when used as a feed supplement it contributes to animal growth and milk production.

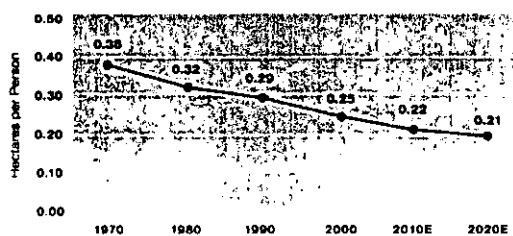
The world's farmers are under increasing pressure to produce more from diminishing reserves of arable land. As the world's population grows the amount of land available for food production decreases. Therefore fertilizer is a vital tool to maximize farm outputs to produce more, with less. As a result there has been an increasing demand for potash, leading to an underlying upward trend in prices.

Potash Price (US\$/T) - CIF Asia/Oceania



Source: Bloomberg

Hectares of Arable Land per Person



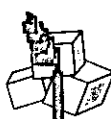
Source: United Nations Food and Agriculture Organization (FAO); U.S. Department of Agriculture (USDA)

Supply and Demand:

Just 12 countries are the source of the world's potash production, meeting the needs of more than 150 countries. More than 65% of the world's potash supply is located in two regions: Saskatchewan in Canada, and among the states of the former Soviet Union.

About 93% of world potash production is consumed by the fertilizer industry, and the United States is the world's seventh largest producer. Potassium chloride is the main fertilizer product, containing an average 61% of K_2O equivalent. Other potassium fertilizers include potassium nitrate, potassium magnesium sulfate, and potassium sulfate.

U.S. production has been relatively stable for several years, but the increased demand from emerging nations has prompted producers to begin expanding their production capacity. One new potash mine needs to open every year in order to keep up with growing global demand, otherwise demand will outstrip supply.



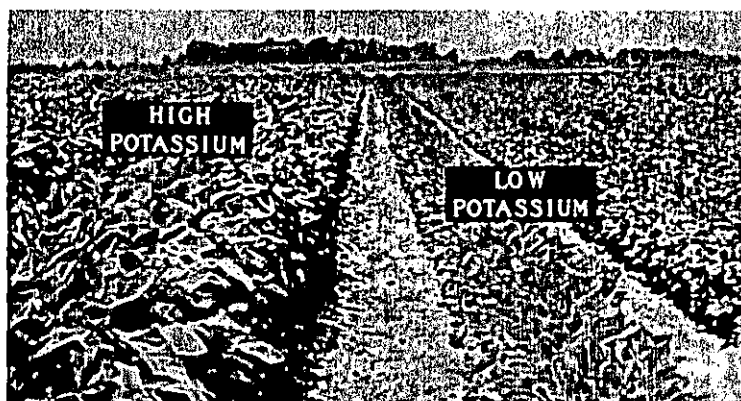
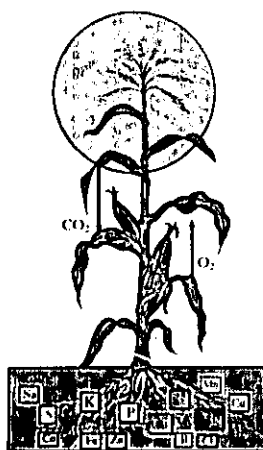


Figure 5. Photograph showing a soybean test plot demonstrating the improved growth obtained with the addition of potash. Photograph courtesy of the Potash and Phosphate Institute.

Potash

Potassium is essential for plant growth; little potassium, however, ends up in the edible portion of the plant (fig. 5). Potassium helps facilitate sugar movement through plants, and boosts resistance to stresses such as drought and disease. Potassium is found in potash, a term that includes various mined and manufactured salts; all contain potassium in a water-soluble form. Potash is produced at underground mines, from solution-mining operations, and through the evaporation of lake and subsurface brines. Minerals mined for potash include potassium chloride [KCl or muriate of potash (MOP)], potassium-magnesium sulfate [$\text{K}_2\text{SO}_4 \cdot \text{MgSO}_4$ or sulfate of potash magnesia (SOPM)], or mixed sodium-potassium nitrate ($\text{NaNO}_3 + \text{KNO}_3$ or Chilean saltpeter). Manufactured compounds are potassium sulfate [K_2SO_4 or sulfate of potash (SOP)] and potassium nitrate (KNO_3 or saltpeter). The United States produces about 3 Mt/yr of potash, mostly in New Mexico. About 1 Mt of that production is exported. About 8 Mt is imported by the United States every year, primarily from Canada, the largest potash producer in the world. The United States consumes about 11 Mt/yr tons of potash of all types and grades. About 95 percent of this is used for agricultural purposes.



Major Nutrient (K,P,N), Minor Nutrient (S, Mg), Rest are Micronutrients.

Fertilizer

A fertilizer is a substance applied to soil to enhance its ability to produce plentiful, healthy plants. Fertilizers are natural and manufactured chemicals containing nutrients known to improve the fertility of soils. Nitrogen, phosphorus, and potassium are the three most important nutrients for crop growth; some plant scientists think sulfur is also a major nutrient because of its benefit to plant health and growth. These and other nutrients are found naturally in soils. Soils used for agriculture, however, become depleted in these nutrients and frequently

require fertilizing before the soils can be used successfully again. The most efficient way to produce fertilizer is through mining or industrial processes. Fertilizers are increasingly important to improve crop yields needed to feed a growing world population. The United Nations estimates that the world population will reach 7.7 billion by 2020, an increase of 35 percent from 5.7 billion in 1995. Much of the population increase will be in developing countries, where food supply and malnutrition are already serious problems (Pinstrup-Andersen and Cohen, 1998).

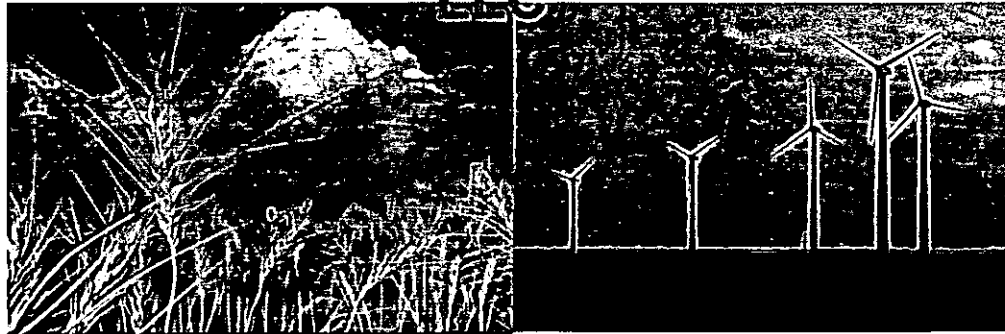
Although demand for food will increase as population increases, the area of cultivated land will not increase significantly. For this reason, methods for improving crop production must be found to satisfy the nutritional requirements of the expanding population. The use of fertilizers is one way to increase food supplies.

U.S. Agriculture

The United States is a large producer of fertilizers for domestic use and export. U.S. farmers are the most productive in the world, providing the foodstuffs to meet domestic demand, as well as a tremendous quantity of exported goods for the rest of the world. Planted acreage varies little from year to year in the United States. Agricultural production is found in every State but is concentrated in the Midwest. Many different crops are grown in the United States, but more than 80 percent of crop land is planted in corn, soybeans, and wheat. Because efforts to improve crop yields have intensified, increased quantities of mineral fertilizers are applied to replace nutrients depleted from the soil. This is one of the easiest and quickest ways to improve soil fertility. Research has helped determine nutrient requirements for specific crops



Dakota Salts, LLC



- ◇ Subsidiary of Sirius Minerals Plc - Publicly Traded on the London AIM Exchange (SXX) and via American Depositary Receipts (SRUXY).
- ◇ Company Highlights:
 - Portfolio includes 2 Potash exploration projects in Australia and 1 in the U.K.
 - Current Investment in North Dakota Projects, \$5,000,000 to date.
 - Engaged with the Renewable Energy Council in North Dakota to study the economics of CAES within salt caverns.





Global Industry Outlook

What is Potash

Potash is the term used to describe Potassium (K) bearing minerals and chemicals – it's mainly used in fertilizer production.

Potash Landscape

50% of the world's known potash reserves are in Canada (75B Tons). Other countries with significant reserves include:

- Russia
- Belarus
- Germany

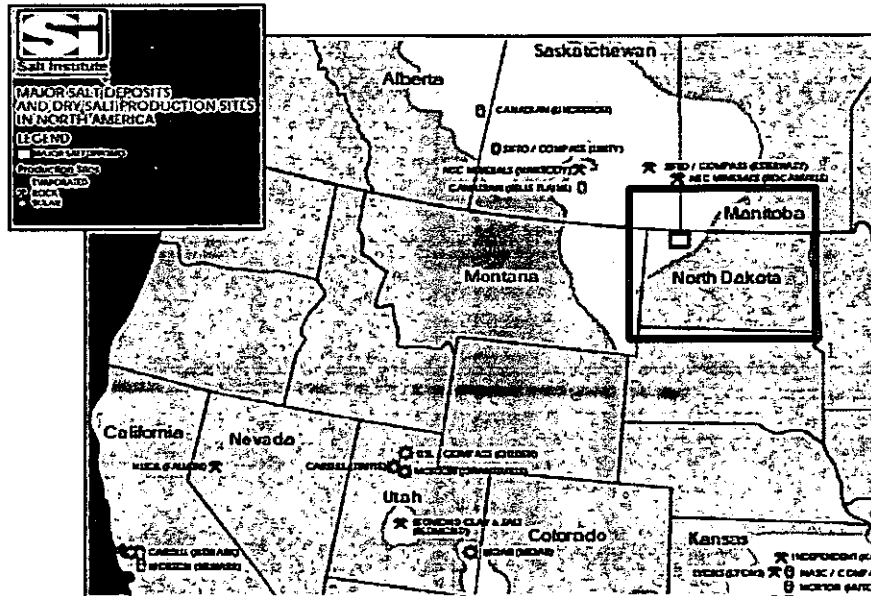
A Global Market

- The top 8 Potash producers control 82% of the world production
- U.S. imports 90% of potash to produce fertilizer
- China is the largest producer/distributor of fertilizer – U.S. is the second largest.

A Growing Need

The International Fertilizer Association (IFA) estimates that demand for potash will continue to grow at 3.7% per annum.

North Dakota Assets



- State of North Dakota estimates 50 billion tons of Potash
- 33% of world's Potash comes from Williston Basin (Saskatchewan)
- Solution Mining techniques to be deployed

► Dakota Salts in the Williston Basin

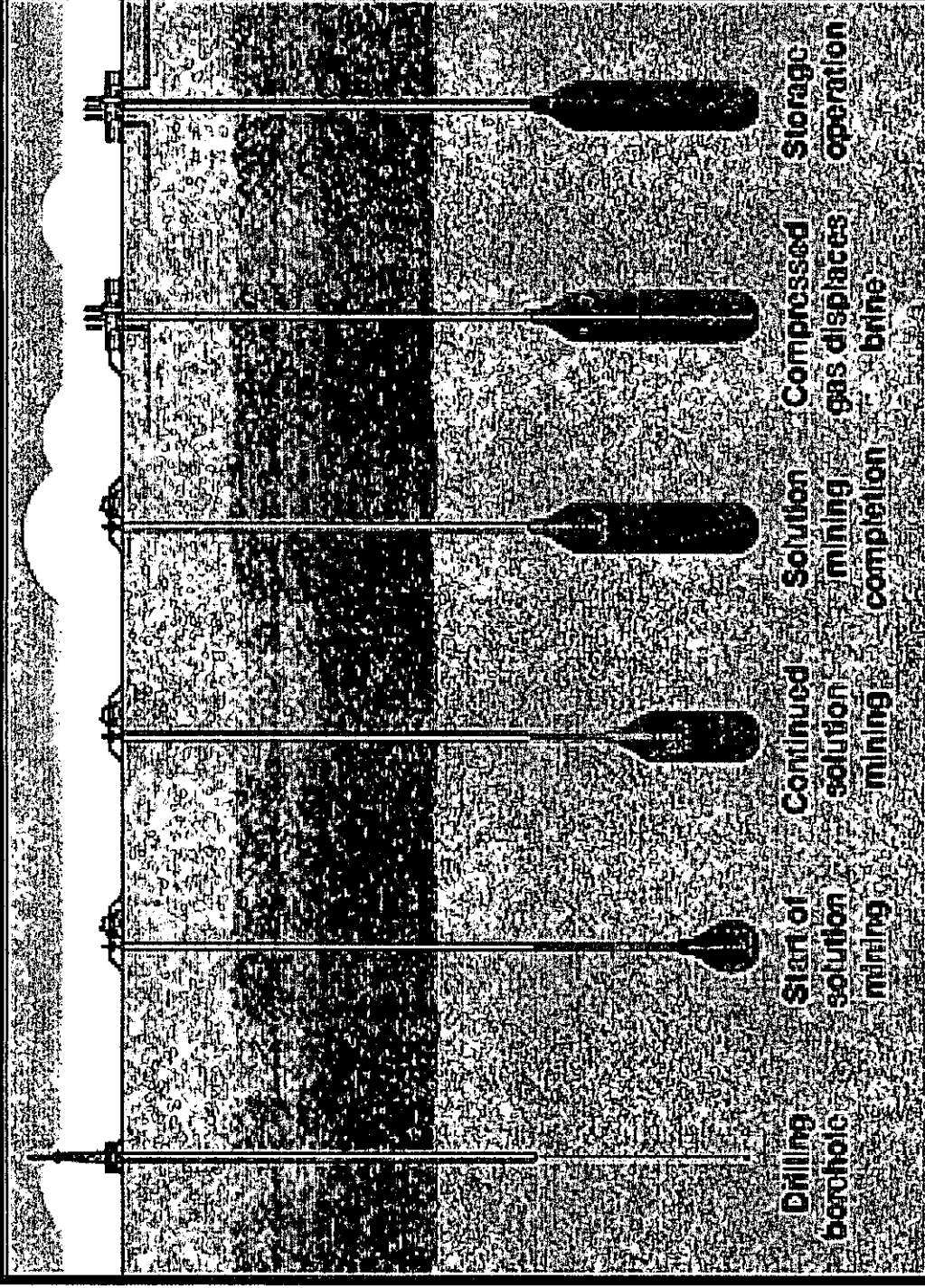
- 14,000 acres of private & state mineral interests
- Rail, gas and water close proximity

► Known exploration targets

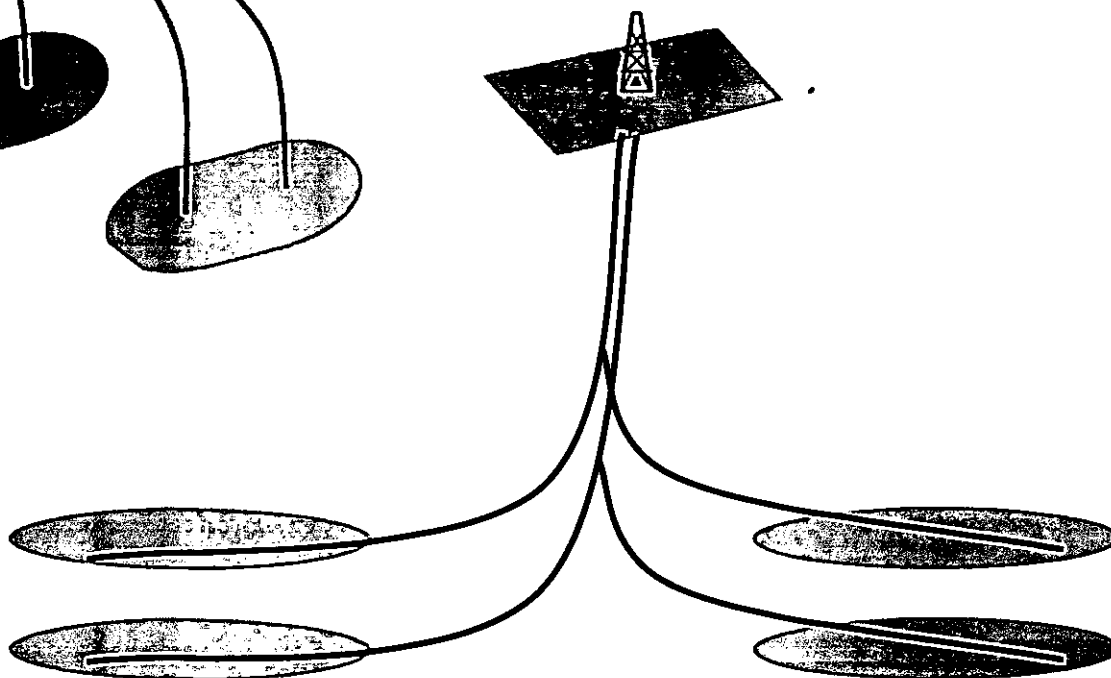
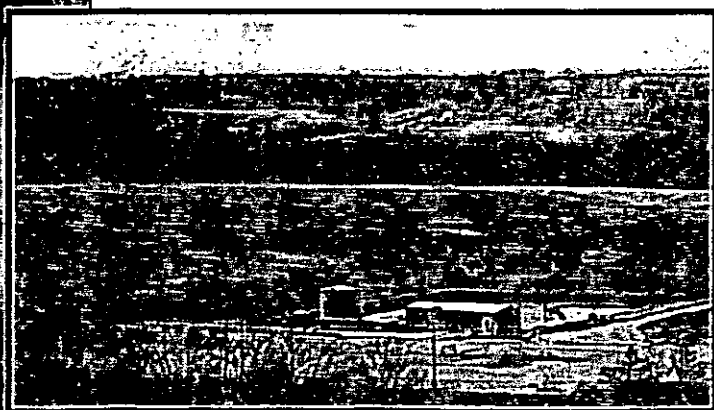
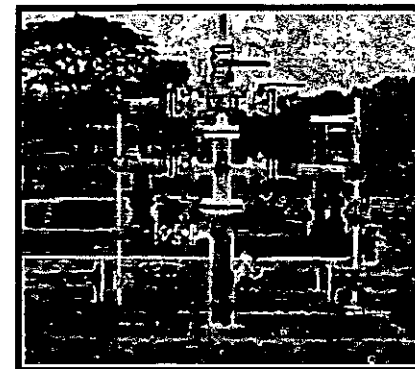
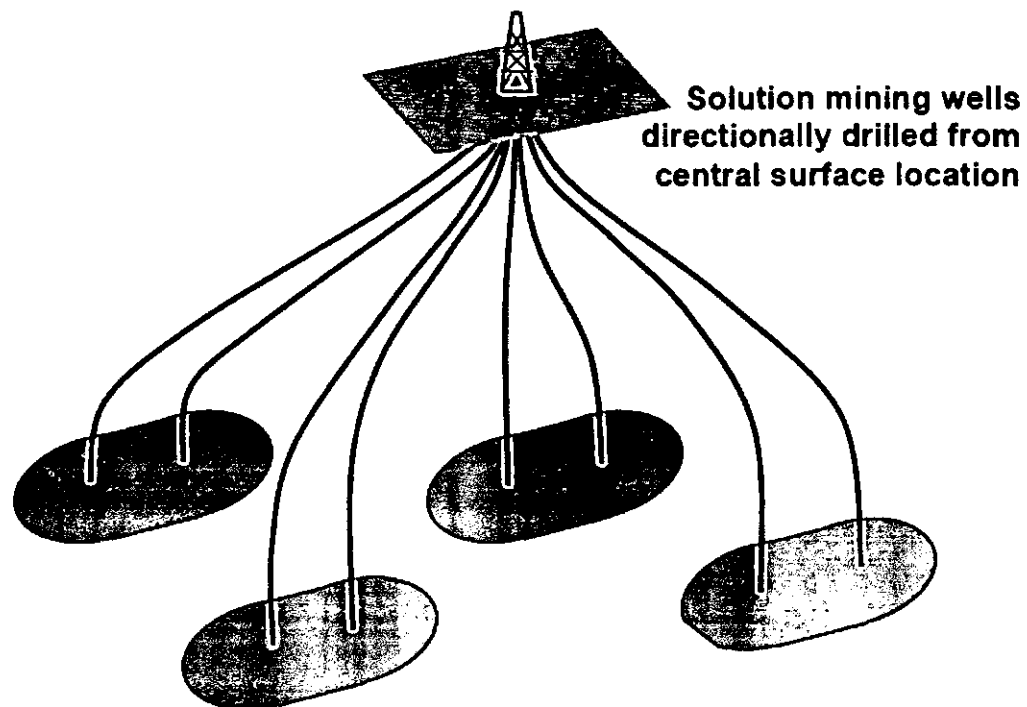
- Historic data on all properties from previous exploration
- Drilling locations selected based on 2D seismic data analysis
- 1st exploratory hole⁴

A Well is Drilled and Water Is Circulated

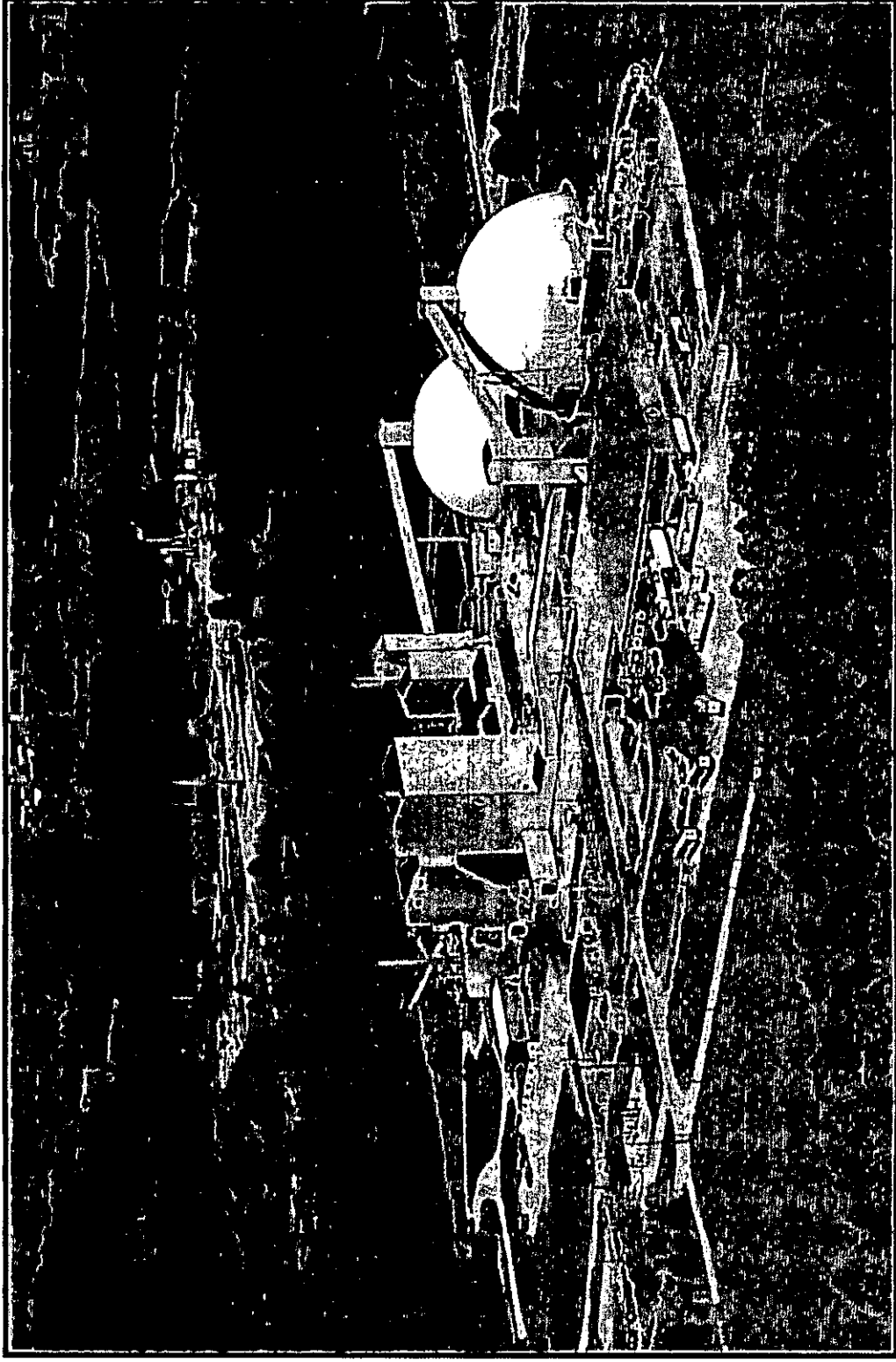
The Solution Mining Process



Utilizing Advanced Technologies in Well Drilling and Cavern Generation Enables Proper Exploitation and Utilization of North Dakota's Salt Resource



Hersey Solution Mine, Michigan

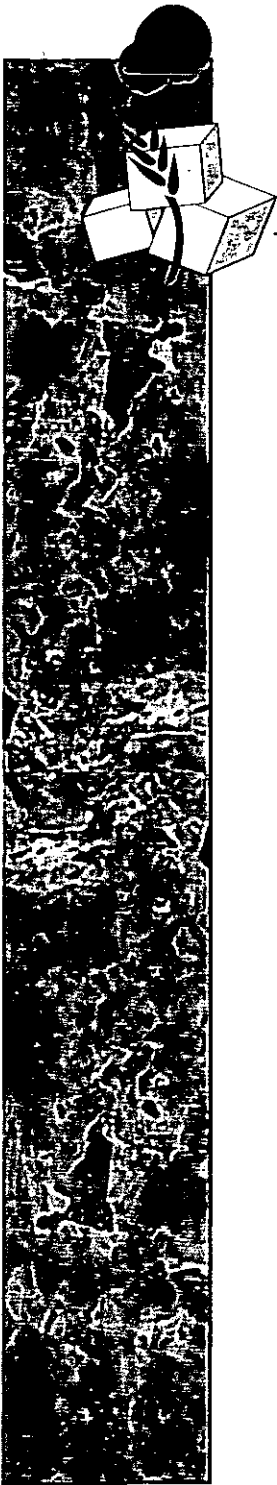




Domestic Potash Production

Key Data Points

- The United States accounts for 2.5% of the Global Potash Production – while it accounts for 19% of it's consumption...
- Potash producing states in the U.S. include:
 - New Mexico (75% of the U.S. Production)
 - Utah
 - Michigan



Potash Taxation by State

Michigan: excludes Potash from the State's severance tax, and does not impose a Property Tax.

Utah: The State of Utah excludes Potash from the State's Severance Tax, and does not impose a Property Tax.

New Mexico: Severance tax: 2.5%, net proceed and severance tax deductions include the actual cost of hoisting, crushing, and loading. New Mexico also has a 0.5% Severer Tax or a 0.125% Processors Tax.



Kelly L. Schmidt
State Treasurer

STATE OF NORTH DAKOTA

OFFICE OF STATE TREASURER

STATE CAPITOL, 600 E. BOULEVARD AVE., DEPT 120, BISMARCK, NORTH DAKOTA 58505-0600

701-328-2643 FAX 701-328-3002

<http://www.treasurer.nd.gov>

House Bill 1046
Neutral Testimony
Committee: Senate Finance and Tax
Date: March 15, 2011
Carlee McLeod
Deputy Treasurer

Chairman Cook, members of the committee, for the record I am Carlee McLeod, Deputy State Treasurer.

As was relayed to you last week, a definition of the term "spacing unit" as used on page 4, line 25, will be needed to ensure that the tax is distributed accordingly.

This bill currently has language providing for a transfer of revenues to the Legacy Fund. As written, 30% of the revenue remaining with the state after the distributions would be placed in the Legacy Fund. This is different than the 30% of total oil and gas revenues. There is no constitutional mandate to place any of these funds in the Legacy Fund, so anything the legislature decides to do will be acceptable. However, since our office will be responsible for the placement of these funds into the Legacy Fund, we want to be absolutely clear that, as written in the current form of HB 1046, the 30% relates to the amounts remaining with the state after the allocation to counties in 57-65-07(1) and (2). So, if \$1,100,000 is taxed on a particular spacing unit, the first \$1,000,000 stays with the county. Of the remaining \$100,000, 60% also goes to the county (\$60,000) and 40% (\$40,000) goes to the general fund. Of that \$40,000, 30% (\$12,000) will be placed in the Legacy Fund. We want to be clear that this is the intent of the legislature to avoid any confusion.

Additionally, we have some concerns about the mechanics of this bill, and we are offering the attached amendment to that regard.

First, reference is made to payments to city auditors, but the distribution does not provide a city distribution.

Second, the calendar year referenced on page 5 needs to be clarified to run from the time the million dollar 100% allocation to the county is met. In speaking with the legislator responsible for this distribution scheme, it was made clear that the time period desired was a consecutive twelve month period.

The amendment should be adopted as follows:

Page 4, line 19, remove "and city auditor"

Page 5, line 3, replace "calendar year" with "consecutive twelve month period"

Page 5, line 5, replace "calendar year" with "consecutive twelve month period"

Page 5, line 7, replace "calendar year" with "consecutive twelve month period"

Lastly, this distribution will be included in our TDOC (Tax Distribution Outstanding Check) computer system. Since production under this bill is not expected to occur for at least a few years, we will not reprogram the system with these changes immediately. However, as the likelihood of production nears, we will need to request an appropriation for the programming at that time.