2011 HOUSE FINANCE AND TAXATION

HB 1268

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
January 19, 2011
#13072

☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Forth Berthold Reservation; and to provide an effective date.

Minutes: *Please refer to testimony #1*

Aaron Birst, ND Association of Counties: Support. There is a technical correction. It's believed to be an oversight of what was drafted last time around. We believe county government is a direct beneficiary of this legislation. We support this. We actually supported the bill that we had yesterday. We like that bill better for obvious reasons because there's the retroactive application which is around another $2 million that would flow through that formula if that was enacted. But we certainly support this bill also as an attempt to change the oversight when this was originally passed.

Representative Shirley Meyer: Explain on Fort Berthold, do the counties share the roads or is it just by default?

Aaron Birst: I will certainly take a look at that and get back to the committee. I suppose there are some legal obligations the county would have if the tribe would no longer maintain that but I'm not certain on that.

Representative Shirley Meyer: Also if you wouldn't mind checking on the abandoned BIA roads. And to see if there is a procedure in place then that the county has to take up or if they are just abandoned forever.

Aaron Birst: I will do that.

Mark Fox, Fort Berthold Tax Department Director: Opposition. Please refer to attached testimony from Tex G. Hall #1.

Chairman Wesley R. Belter: I don't believe, we as a legislative branch, has the authority to make these changes. Secondly, are you sure you want us to have that authority?

Mark Fox: The state's percentage of the tax is derived from production extractions, your ability to set up certain percentages for the benefit of tribal roads and tribal property so I don't understand why you wouldn't have that authority.

Chairman Wesley R. Belter: The question I have if we would have authority to do that here then we would have authority over a lot of issues between the state of North Dakota and the tribes. It's my understanding that we as a legislature really don't have that authority.

Mark Fox: I guess I'll do my best to answer but the authority as government to government between to sovereign nations to reach agreements on how monies are expended. For example, I have no doubt in my mind that if the Three Affiliated Tribes and its own percentage as a sovereign nation said as a legislature we are going to approve expenditures to help the county to prepare roads and to assist in other ways they could do that as well as the sovereign government.

Representative Shirley Meyer: Maybe as a point of clarification both HB1268 and HB1198, neither one of them affect the terms of the compact in any way, shape, or form. The only thing these two bills attempt to do is to address the correction that should have been made when we passed the legislation a long time ago. The counties get their portion first and it no way affects the compact because that will be coming out of the state's portion of the revenue. It doesn't affect the tribe's revenue and it doesn't change anything. That is my understanding.

Mark Fox: I agree with that 100%. I'm not here to say that you're affecting our percentage in what we get in tax revenue as part of the agreement. I understand that fully. But on behalf of our Chairman what we are saying whether it's in opposition or support for the bill, that if you're going to set up, which you already have but you're making a correction to it, of how you formulate assistance in our area for the tax that you derive that you consider using that to help us offset what's going on there with the damage and things of that nature.

Chairman Wesley R. Belter: Going back to my original comment though, in the letter from your Chairman, would we not be changing the compact?

Mark Fox: I don't believe so. It's still your percentage. All we're asking as being in the area and going through what we are and being part of North Dakota that consideration is made one way or another. I don't know if it should be through the Governor's office in how they provide assistance or if it's through legislation things could be provided so that when you reformulate that a certain percentage is said to help assist Three Affiliated Tribes with certain things that happened there because of the construction provided by the oil boom.

Representative Glen Froseth: I can see your concern of repairing the damage on the reservation but also the oil that's produced on the reservation has to be transported off your lands and across the other county properties to get to its destination to be transported to refineries and out of state. In that aspect of it, the county that you live in also needs those funds to maintain their infrastructure. So if we take money away from Mountrail County and give it to your lands I don't know if that's an even trade off. I think Mountrail County also

needs those funds to maintain the system that transports the product that's produced on your property. I think the county might be the big loser.

Mark Fox: I appreciate your comment. In the situation that we have now that together, both county and ourselves are undergoing a lot of destruction and there's a lot of need there with the industry and what it's done. I understand what you're saying if you take from the county. We have a lot of questions over the agreement now. We have a current agreement which the state receives 50% of ours and we receive 20% of yours when it comes to extraction and production. We allude to that in the bill that it doesn't seem fair. In other words, we are only getting 20% to help us deal with problems and yet we're giving up 50% to help Mountrail County deal with its problems. I think that is something that relates to this. As an alternative it's mentioned in here that we could probably take a look at hopefully address.

Representative Dave Weiler: Getting back to the original bill that we are discussing yesterday there were some comments and Representative Meyer had eluded to the time toward last session when the amendments were drawn up for this particular piece of legislation and you wanted the amendments drafted by people that represented you and not by legislative council. It sounded like you were very adamant that you write up the amendment and not legislative council. What was the reason for that?

Mark Fox: I can't stand up here and tell you what the logic was at that point in time. All I can tell you is that some person or member of our government question why we had a deal of that nature. If we could flip it to the other side, if you passed it where we took 80-20 of yours and 50-50, I think all your constituents in the state would have deep concerns of what you have done here. What I'm getting at is that there is logic and a basis I can only guess at with the spurring of economic activity I'm not sure. All I know is that there seems to be inequity there and we very much want to deal with it.

Representative Dave Weiler: If there was an understanding or intent that it was supposed to be done one way and it was incorrectly done that way I certainly understand and agree with the fact that we need to rectify the situation. I'm not questioning that but I was just wondering why you were so adamant that you write up the amendment and you answered that so thank you.

Representative Patrick Hatlestad: If there were a change and you got the additional 30% of revenue would that be totally devoted to road infrastructure?

Mark Fox: I can't answer that on behalf of my government. I would imagine because it's one of our more serious problems that a large portion of it would be but we also have to understand that there are other problems such as law enforcement, illegal drug activity, outsiders that come in, and it becomes a market place for everything that is not always good. We have death on our roads. We've had several deaths with our enrolled members and non-enrolled members, citizens of North Dakota that have perished and died because of difficulties of that road. We have a housing shortage that continues on. Now with all the non-tribal members in the area they have taken up what available housing that may have been there and we have even a great shortage tenfold. Market price is up and what it costs to live a lot of our members are living below the poverty rate. For me to say yes that

if we got the extra 30% and it would go to only roads would be difficult to say as there are so many things we have to deal with.

Representative Patrick Hatlestad: From current oil revenues, can you give me an estimate of the percentage that you devote then to infrastructure of roads?

Mark Fox: It would definitely be a guess. Knowing our budget I'm going to say we're probably spending 30-40% of it.

Vice Chairman Craig Headland: You keep referring to the compact and your belief that it is unfair to the tribes. Do you think you would even have oil development with that compact?

Mark Fox: Yes. I believe you'd have oil development. We could argue about has fast that would have occurred but I think development would have occurred to some degree. Maybe it did accelerate the movement of it. I know the agreement itself helps move it forward because we have one set tax and how we break it up is that between two sovereigns. The tax for the oil industry to understand that there is only one set tax and not duel taxation has no doubt helped the situation.

Representative Shirley Meyer: Currently on oil development there is a citing fee and a taro tax. None of that is shared between the nation and the county. Your nation keeps 100% of those fees, correct.

Mark Fox: That is correct.

Representative Shirley Meyer: And just as a point of clarification with 2419, when we worked on that for a month, everyone had to give up something. Everyone was unhappy so we thought we did a good job basically. The oil companies had to give up things. The counties were the only entity deemed to be held harmless. We didn't want the counties to do it. The state had to put in the regulatory for free. The tribes had to give up that percentage on the 80-20 on the non-trust lands. It was a compromise. These are basically just technical corrections and wouldn't affect the compact.

Chairman Wesley R. Belter: No further testimony. Closed hearing on HB 1268.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
February 1, 2011
#13818

☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Forth Berthold Reservation; and to provide an effective date.

Minutes:

Representative Patrick Hatlestad: Made a motion for DO PASS.

Representative Roscoe Streyle: Seconded.

A roll call vote was taken: YES 13 NO 0 ABSENT 1
MOTION CARRIED—DO PASS.
Vice Chairman Craig Headland will carry HB 1268.

FISCAL NOTE

Requested by Legislative Council
03/30/2011

Amendment to: HB 1268

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				($2,880,000)		
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
			$2,880,000					

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).*

The provisions of HB 1268 with Senate Amendments allow oil-producing counties within the Fort Berthold Reservation to receive the full amount of oil and gas gross production tax they would receive without the oil and gas tax revenue sharing agreement between the Tribal government and the State.

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.*

If enacted, Section 2 of HB 1268 with Senate Amendments is expected to reduce permanent oil tax trust fund revenues and increase county revenues by an estimated $2.88 million during the 2011-13 biennium. A portion of the additional county revenue shown above may be shared with cities, schools, and county infrastructure funds.

Section 1 of the bill changes the distribution of revenue received through the leasing of lands acquired by the United States for flood control. The fiscal impact of these changes cannot be determined as the amount of revenue likely to be received is 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.*

HB 1268 will require substantial modifications to computer systems within the Office of State Treasurer. The estimated cost of system changes is currently not known.

   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:**	03/30/2011

FISCAL NOTE

Requested by Legislative Council
01/12/2011

Bill/Resolution No.: HB 1268

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				($2,880,000)		
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
			$2,880,000					

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).*

The provisions of HB 1268 allow oil-producing counties within the Fort Berthold Reservation to receive the full amount of oil and gas gross production tax they would receive without the oil and gas tax revenue sharing agreement between the Tribal government and the State.

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.*

If enacted, HB 1268 is expected to reduce permanent oil tax trust fund revenues and increase county revenues by an estimated $2.88 million during the 2011-13 biennium. A portion of the additional county revenue shown above may be shared with cities, schools, and county infrastructure funds.

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.*

HB 1268 will require substantial modifications to computer systems within the Office of State Treasurer. The estimated cost of system changes is currently not known.

   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:**	01/17/2011

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

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1268

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. Hatlestad Seconded By Rep. Streyle

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	AB	
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) 13 No 0

Absent 1

Floor Assignment Rep. Headland

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

REPORT OF STANDING COMMITTEE

HB 1268: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1268 was placed on the Eleventh order on the calendar.

2011 SENATE FINANCE AND TAXATION

HB 1268

2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1268
3/16/2011
Job Number 15532

☐ Conference Committee

A Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Fort Berthold Reservation

Minutes: Written Testimony Attached

Chairman Cook opened the hearing on HB 1268.

Representative Skarphol – HB 1268 is a result of conversation I had with some County Commissioners at a North Dakota Oil and Gas Association meeting in which they expressed concern about the fact that when the negotiations were done with the Native Americans on Fort Berthold with regard to distribution of the monies, there was an oversight, and I did discuss this with the conferees, Senator Lyson and Representative Keiser and they fully intended for this to be incorporated into the bill last time. They discussed it and then in the preparation of the amendments it didn't get included. They were not aware of it until I called them about it. What it does is distribute a portion of the tax revenue that in a normal distribution formula would go to the counties, inadvertently because of the amendments in the bill last session ended up going to the state. This bill would return in the future the money that should have gone to the counties to the counties because it was their responsibility with regard to the roads on the reservations and that is what the money will get used for by the county. I was told at the time it was a $400,000 loss to the county, I suspect it's more substantial in today's environment.

Chairman Cook – This is an amendment that was neglected in a bill that dealt with the tribal tax policy?

Representative Skarphol – Same issue, it was negotiated last session in Conference Committee.

Chairman Cook – This is the second bill I've seen or that we have here right now dealing with the distribution to counties. What do we have in HB 1304 last session that is in the transportation bill? The distribution to continue that.

Representative Skarphol – What's in the transportation bill to the best of my recollection in the current session is the $142 million that was direct appropriation for county roads. There is not a change in the formula that I'm aware of.

Chairman Cook asked for further testimony in favor of HB 1268. No one came forward.

Chairman Cook asked for testimony opposed to HB 1268. No one came forward.

Chairman Cook asked for neutral testimony for HB 1268.

Carlee McLeod, Deputy Treasurer – (See attached testimony A, proposed amendment)

Chairman Cook – It's not retroactive.

Carlee McLeod, Deputy Treasurer – It is not retroactive.

Chairman Cook – It's just for the production tax.

Carlee McLeod, Deputy Treasurer – That's correct.

Senator Triplett – If I'm remembering correctly the state took a reduction in the amount of its taxes in order to come to the agreement with the Three Affiliated Tribes sort of for holding the Three Affiliated tribes harmless and yet we are giving the counties an allocation based on the entire amount of state and tribal taxes and we are actually, like, paying the counties for taxes that we as a state are not taking in, in other words we are subsidizing these counties with funds that would otherwise go back to the general fund and be spread among everyone in the state, is that right?

Carlee McLeod, Deputy Treasurer – The simple answer would be yes but I think it's a bit more nuanced than that. I think the idea is that with the tribal agreement they encouraged more developments and that money, the tribe gets to keep more money and yes then the state kind of eats that portion that the tribe is entitled to but that the county in which that production occurs is still having all the same sort of oil development issues and that from what I understand, the agreement when they put that together was that the counties would not be harmed by the reduction on the state side that goes to the tribe and right now they are. So the mechanics of it is yes it would come out of the portion that the state would keep but it is part of the overall production and what normally would go to the county if the state hadn't agreed to a lesser share.

Chairman Cook – The agreement we have with Tribal Government, it's just the production tax number one, that's the only tax that is imposed?

Carlee McLeod, Deputy Treasurer – No, there is an agreement for both extraction and production however production is the only tax that we then further distribute to counties. The extraction stays with a variety of state funds.

Chairman Cook – Extraction taxes are imposed on all wells on tribal land?

Carlee McLeod, Deputy Treasurer – I believe so.

Kevin Schatz, Tax Department – Actually wells drilled on fee land in a spacing unit on the reservation are subject to an oil extraction tax exemption for 60 months but after that oil extraction tax is assessed on those wells and on fee land the split between the tribe and the state according to the agreement is the tribe gets 20% of the gross production tax on fee land and the 11.5% that's assessed on trust lands is split 50/50 between the state and the tribe.

Chairman Cook – On the trust lands there is a full 11.5% on the fee lands there is a 60 month exemption for the extraction tax.

Kevin Schatz, Tax Department – That is correct.

Chairman Cook – The production tax is split 20% to the tribe, 80% to the state.

Chairman Cook – Once the 60 month exemption for the extraction tax is over…

Kevin Schatz, Tax Department – That extraction tax all goes to the state on fee land.

Senator Dotzenrod – Fee lands, that's deeded, tribal land that belongs to the tribe?

Kevin Schatz, Tax Department – Trust land is either held by the tribe or by an individual Native American in trust by the United States Government. Fee land is privately held land that's not held in trusts. It can be a non Native American or a Native American member but it's not held in trusts so it's considered fee.

Greg Boschee, Mountrail County Commissioner – I like the amendment. This was promised to us 2 years ago and we've waited 2 years to get it. There is no retroactive, but I do stand in favor of us getting it from this day forward.

Senator Triplett – We heard Ms. McLeod say that her understanding is that the county intends to use this money primarily for roads on the reservation, is that your intention.

Greg Boschee, Mountrail County Commissioner – Yes

Chairman Cook closed the hearing on HB 1268.

2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1268
3/28/2011
Job Number 16040

☐ Conference Committee

A. Bthmiller

Explanation or reason for introduction of bill/resolution:

Relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Fort Berthold Reservation

Minutes: Committee Work

Chairman Cook opened discussion on HB 1268.

Senator Dotzenrod – Did the House pass SB 2047?

Chairman Cook – Yes they did.

Vice Chairman Miller – I'll move adoption of the proposed amendments.

Seconded by **Senator Dotzenrod**.

Chairman Cook – All in favor say yea. Opposed? (6-0-1)

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

Seconded by **Senator Dotzenrod**.

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

Carried by **Senator Dotzenrod**.

11.0098.01001
Title.02000

Prepared by the Legislative Council staff for
Senator Cook
March 28, 2011

3-28-11
1 of 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1268

Page 1, line 1, after "reenact" insert "section 21-06-10 and"

Page 1, line 1, remove the second "of the"

Page 1, line 2, after "to" insert "allocation of revenues from the leasing of federal flood control lands and"

Page 1, line 4, remove "and"

Page 1, line 4, after "date" insert "; and to declare an emergency"

Page 1, after line 5, insert:

"**SECTION 1. AMENDMENT.** Section 21-06-10 of the North Dakota Century Code is amended and reenacted as follows:

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

The state treasurer shall ~~pay~~transfer the moneys allocated to the state under 33 U.S.C. ~~701(c)(3)~~701c-3 to the oil and gas impact grant fund, to be held in a special account within that fund and made available through grants by the energy development impact office only for the benefit of oil and gas development-impacted townships, school districts, or county governments in the counties ~~entitled to receive them in proportion to the area of the land in the county~~in which land has been acquired by the United States for which compensation is being provided under 33 U.S.C. ~~701(c)(3) as that area bears to the total of these federal lands in the state. A county receiving an allocation under this section shall disburse the moneys received as follows:~~

~~1. One-half must be paid to the school districts in the county which have lost land subject to taxation because of the acquisition of lands by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) in proportion to the area of these federal lands in each district as that area bears to the total of such lands in all of the school districts in the county. If, however, all of the land in a district has been acquired by the United States, that district's proportionate share of the funds allocated under this subsection must be paid into the county tuition fund and expended according to the law governing that fund.~~

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

~~3. The final quarter must be allocated among the organized townships, if any, which have lost land subject to taxation because of land acquisitions by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) and the county for road purposes in proportion to the area of these lands in each township as that area bears to the total area of these federal lands in the county. The county must be allocated a similar~~

2 of 2

~~proportionate share based on the area of these lands in the county not within an organized township.~~

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto~~701c-3. A school district receiving grant funds under this section must deposit the amount received in its general fund and may not transfer the funds received, or other amounts made available by reason of the receipt of grant funds under this section, into its building fund."

Page 2, line 6, replace "This" with "Section 1 of this Act is effective for revenue received by the state under 33 U.S.C. 701c-3 after the date of the filing of this Act with the secretary of state. Section 2 of this"

Page 2, after line 7, insert:

"**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3-28-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1268

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 0

Absent 1

Floor Assignment _____

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

Verbal vote

Date: 3-28-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1268

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	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue					
Dave Oehlke	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Dotzenrod

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

REPORT OF STANDING COMMITTEE

HB 1268: 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, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1268 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "section 21-06-10 and"

Page 1, line 1, remove the second "of the"

Page 1, line 2, after "to" insert "allocation of revenues from the leasing of federal flood control lands and"

Page 1, line 4, remove "and"

Page 1, line 4, after "date" insert "; and to declare an emergency"

Page 1, after line 5, insert:

"**SECTION 1. AMENDMENT.** Section 21-06-10 of the North Dakota Century Code is amended and reenacted as follows:

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

The state treasurer shall ~~pay~~transfer the moneys allocated to the state under 33 U.S.C. ~~701(c)(3)~~701c-3 to the oil and gas impact grant fund, to be held in a special account within that fund and made available through grants by the energy development impact office only for the benefit of oil and gas development-impacted townships, school districts, or county governments in the counties ~~entitled to receive them in proportion to the area of the land in the county~~in which land has been acquired by the United States for which compensation is being provided under 33 U.S.C. ~~701(c)(3) as that area bears to the total of these federal lands in the state. A county receiving an allocation under this section shall disburse the moneys received as follows:~~

~~1. One-half must be paid to the school districts in the county which have lost land subject to taxation because of the acquisition of lands by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) in proportion to the area of these federal lands in each district as that area bears to the total of such lands in all of the school districts in the county. If, however, all of the land in a district has been acquired by the United States, that district's proportionate share of the funds allocated under this subsection must be paid into the county tuition fund and expended according to the law governing that fund.~~

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

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

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto~~701c-3. A school district receiving grant funds under this section must deposit the amount received in its general fund and may not transfer the funds received, or other amounts made available by reason of the receipt of grant funds under this section, into its building fund."

Page 2, line 6, replace "This" with "Section 1 of this Act is effective for revenue received by the state under 33 U.S.C. 701c-3 after the date of the filing of this Act with the secretary of state. Section 2 of this"

Page 2, after line 7, insert:

"**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2011 SENATE APPROPRIATIONS

HB 1268

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

HB 1268
03-31-11
Job # 16212

☐ Conference Committee

Committee Clerk Signature Alice Delzer

Explanation or reason for introduction of bill/resolution:

A ROLL CALL VOTE ON THE OIL & GAS PRODUCTION TAX REVENUES ON THE FORT BERTHOLD RESERVATION

Minutes: You may make reference to "attached testimony."

Chairman Holmberg opened the hearing on HB 1268. Tad H. Torgerson, OMB and Becky J. Keller, Legislative Council were also present.

Rep Skarphol, District 2, Tioga, As this bill was introduced in the House was only section 2 of the bill as it exists now. Section 1 was added in the Senate. That particular aspect of that Section of law was also addressed in 2047, Senate bill regarding that particular topic. The tax committees need to work out their differences with regard to that. Obviously, Section 1, the counties have a great deal of difficulty with because of the fact that it does change the flow of the money from their perspective to where they receive it quarterly as opposed to monthly as it currently happens so I would assume the counties will have some input on that. My interest in this bill is primarily Section 2 and my reason or being here is to explain the why, and that is during the conference committee last session there was an inadvertent error which resulted in the counties being short-changed in the revenue that they would receive on the tribal agreement that was made and the benefits that counties suffered accrued to the state, and I had conversations with both the House and Senate chairman of that committee, that conference committee, and they both agreed that that was an inadvertent error in the drafting of the amendments. They did not mean to do and the net result is that the counties, Montrail County, most in particular, loses a fairly substantial amount of money to the state based on how this agreement was configured and this an attempt to get that rectified so that the county who is responsible for a major portion of the roads on the reservation receives what would be their appropriate and normal distribution where under the normal distribution flow and the oil tax distribution. I am not sure I can explain it much more explicitly than that. It was an inadvertent error, they agreed that it wasn't intended, the county should have received the money as opposed to the state.

V. Chair Bowman: Was the error in the percentages they were suppose to get ? Where was the error then?

Rep. Skarphol: The error is in the calculation when the tribe's money is taken off for the distribution the calculation was made after the tribe's money was taken off. If the calculation had been made on the whole amount the amount of money going to the county would have been greater. The tribe's money would not be decreased by this bill. The tribe will get the same amount of money.

V. Chair Bowman: That County shall be held harmless?

Rep. Sharphol: Right, it went to the state instead of the county, that particular portion and in the year that I was talking about this with Montrail County, 2009, I believe it was a $400,000 difference, obviously the fiscal note (attached Testimony attached # 1) is very different today because the change in production.

Chairman Holmberg: Thank-you very much. Senator Cook will speak and this is a friendly amendment from the policy committee.

Senator Cook, District 34, Mandan: I am not going to explain the friendly amendment from this policy committee, but Carlee from the State Treasurer's office will because it's very friendly but it might be a little complicated. I will speak to two issues, the intent of keeping the counties whole, that is something the tax committee embraced, we've got to make sure that we do it right. I visited with Carlee this morning and there is a little glitch as far as the NDCC is concerned to make sure we do it the way we want to do it. I believe it not only affects the revenue to the gross production tax that is divided between the state and the local governments but we also have a little fix for the Extraction Tax as it applies here. I will speak to the other amendment we put on. Rep. Skarphol is correct, that's in SB 2047, the House amended that differently than we sent that over to them. We put the way we sent it into 1268. These issues are very closely related and it's important that we just get them on the table at the same time.

Chairman Holmberg: And 1247 is one that the Senate passed overwhelmingly. (He meant 2047).

Senator Cook: 2047 was passed over unanimously and we can put that to rest and deal with one conference hearing.

Carlee McLeod: Deputy State Treasurer: There are two parts to this amendment, the first Section, this was drafted from the engrossed version, it does not conflict with the Senate amendments and so Legislative Council told me that was the proper way but I did point out on this amendment where you could find it in the copy you may have with the Senate amendments. We have changed the language, there were two bills that came over, or that came through the House to hold the counties harmless, one had a retroactive clause, one did not. The retroactive bill failed however, the wording of that bill was probably better for enforcement purposes because the language in 1268 as you see it says that we have to treat that tax as the full amount. However, the gross production distribution is split into two parts, if you want to make it as simple as possible, the first part is the 1% off the top, the second part are the 4%. The way that the bill is drafted you have before you only deals with that 4% and to keep it whole with the entire amount of revenue coming in under gross production you'd need

to have it applied to both sections. This language is clearer to do that. The paragraph. So questions on that part?

Chairman Holmberg: Are there questions on that part of the amendment?

Carlee McLeod: To the mix that's been set out in both of those formulas and so we need to remove that language among political subdivisions to keep with the intent.

(RECORDER STOPPED FOR A SHORT PERIOD OF TIME AT THIS TIME SO THIS STATEMENT BY MS. MCLEOD WAS TYPED AS BEST AS POSSIBLE DURING THE HEARING)

Carlee McLeod: The second part is the tribal revenue. We have been doing some research with the Attorney General, it is local branch however both are distributed among ? We believe that legislation was intended to keep it true, so we need to remove that.

Chairman Holmberg: Are there any questions? Do the Finance and Tax people understand this? Thank God.

Senator Christmann: I don't have a question on that but on the discussion that Rep. Skarphol had I do before Ms. McLoud is done.

Chairman Holmberg: Are there any questions on this amendment?

Senator Christmann: Maybe on the amendment but this was not discussed in Finance and Tax, this is since then, correct?

Carlee McLeod: This was discussed briefly in the committee, however, the amendments was moved by Senator Cook later on the flood portion and I talked to him afterwards and he said it was inadvertent that it was left off so it was meant to be included.

Senator Christmann: On the original bill when Rep. Skarphol was here, if we are dealing with percentages and the county isn't getting theirs', but it's not going to have an impact on the tribal revenues, it seems like not everybody can be dealing on percentages, so does the tribe get their share per barrel, and the state and county and subs split theirs' by percentages, or is everything on percentages but we're just choosing to hold the tribe harmless?

Carlee McLeod: The tribe still gets their percentage. Everyone still gets their percentage, however we make up a fake percentage, if you will, to make a 100% total to determine what the counties 80% through the tiers would look like and so at the end of the day if you take their number and try to show that that's the exact percentage in law that's there now, it won't be true. So you're right that the percentages for the county will not be true, nor will the state. I know that's probably not making a lot of sense so I am trying to think of the best way to explain that.

Senator Christmann: How is the tribal share, if there is a $1M worth of revenues there, how is the tribal share determined?

Carly McLeod: Depending on if it's trust land or non-trust land it's either 80% that goes directly to the tribes or 50% directly to the tribes. The remaining 80% or 50% stays with the state and that's the money that has been trickling through the distribution.

Senator Christmann: And then this county gets a percent of the state's share?

Carlee McLeod: Yes, that's correct.

Senator Christmann: And then where did we go wrong? Why didn't that happen?

Carlee McLeod: The reason that is happening, I believe that the philosophy behind this change is that the agreement between the tribe and the state was between the tribe and the state and so the amount coming through to the state is lowered because of that agreement. The counties are being distributed their percent based on that lower amount, not on the actual total revenues collected and so I believe the intent of the time was that the state would take the hit there.

Chairman Holmberg: Anyone else going to testify on 1268? If not we will close the hearing. What is the wish of the committee? We have an amendment before us.

Senator Wardner moved the proposed amendment that was presented by Senator Cook and the Tax Department. Seconded by Senator Warner.

A roll call vote was taken on the proposed amendment: Yea: 12; Nay: 0; Absent: 1.

Senator Fischer moves a Do Pass as Amended. Seconded by Senator Wardner.

Chairman Holmberg: Would you call the roll on a DO PASS AS AMENDED and send it back to Finance and Tax.

Senator Christmann: One thought on this as we do things with various groups or entities as a state to promote economic development I think it is wise for the state to realize when we are entering into all these agreements that we do always trying to entice someone to do something that it's the state's pockets that that enticement is going to end up coming out of whether that's the way it's originally written or not so I think it's a good lesson for us. I think we are doing the right thing here though.

A ROLL CALL VOTE WAS TAKEN ON A DO PASS AS AMENDED ON HB 1268. YEA: 12; NAY: 0; ABSENT: 1. MOTION CARRIED. The bill goes back to Finance and Tax, Senator Dotzenrod carries the bill.

The hearing was closed on HB 1268.

Prepared by the Legislative Council staff for
Senate Appropriations
March 31, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1268

In addition to the amendments adopted by the Senate as printed on pages 912 and 913 of the Senate Journal, House Bill No. 1268 is further amended as follows:

Page 1, line 1, after "57-51-15" insert "and subsection 5 of section 57-51.2-02"

Page 1, line 21, replace "For purposes of this subsection only, "annual revenue collected under this" with "For taxes under this chapter imposed on oil and gas production within the Fort Berthold Reservation, the allocation to the county as determined under this subsection must be based on the entire amount of state and tribal taxes collected on that production, the allocation to the state general fund must be reduced accordingly, and the allocation to the Three Affiliated Tribes of the Forth Berthold Reservation must be as determined under the agreements entered under chapter 57-51.2 without any reduction under this subsection.

SECTION 2. AMENDMENT. Subsection 5 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. The allocation of revenue from oil and gas production taxes on the Fort Berthold Reservation must be as follows:

   a. Production attributable to trust lands. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state.

   b. All other production. The tribe must receive twenty percent of the total oil and gas gross production taxes collected from all production attributable to nontrust lands on the Fort Berthold Reservation in lieu of the application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state must receive the remainder.

   c. The state's share of the revenue as divided in subdivisions a and b is subject to distribution ~~among political subdivisions~~ as provided in chapters 57-51 and 57-51.1."

Page 1, remove lines 22 through 24

Page 2, remove lines 1 through 5

Renumber accordingly

Date: 3-31-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1268

Senate APPROPRIATIONS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Cook amendment 11.0098.01002

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By P. Wardner Seconded By Warner

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) 12 No 0

Absent 1

Floor Assignment

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

Date: 3-31-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1268

Senate 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 Fischer Seconded By Wardner

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

Total (Yes) 12 No 0

Absent 1

Floor Assignment F & T Dotzenrod

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

REPORT OF STANDING COMMITTEE

HB 1268, as amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1268, as amended, was placed on the Sixth order on the calendar.

In addition to the amendments adopted by the Senate as printed on pages 912 and 913 of the Senate Journal, House Bill No. 1268 is further amended as follows:

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Page 1, remove lines 22 through 24

Page 2, remove lines 1 through 5

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

CONFERENCE COMMITTEE

HB 1268

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
April 11, 2011
#16469

☒ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Fort Berthold Reservation; and to provide an effective date.

Minutes: *See attached amendments.*

Chairman Froseth: We will start with a discussion of the amendments to HB 1268. Could the Senate explain the amendment and the reasoning behind it?

Senator Cook: I believe all we did to 1268 was attach the language from 2047 and to tie these two issues together. I think the big discussion here is the flood control monies to the counties.

Chairman Froseth: The Senate amendment turned the flood money back into a grant program. Then we changed it back to the present distribution formula then your amendment changed it back again.

Senator Cook: That's correct. I think the difference is that the position of the Senate wants the money to go to the counties just as the federal law requires it to do and to meet the needs as the federal law requires it to do but with as much flexibility as possible so that we could identify needs out there and fix the needs rather than have money go there that might go to a political subdivision that doesn't have as many needs as another one then they have more money than they need and it sits in a fund. I don't think that does any good as far as meeting the infrastructure needs that we have out there when it can get to some political subdivision and sit there in a bank account. You were told that something that we did was something we cannot do but we haven't been told that.

Chairman Froseth: I visited with the treasurer's office and with the AG's office and putting it into a federal grant fund as your amendment does doesn't meet the federal code of how this money is to be distributed. I don't know if you received copies of that or not. The treasurer's office wants some clarification on that code and how it's supposed to be distributed. I have an amendment that does that. By reading the federal code the granting system doesn't meet that code's specifications. It has to be distributed back to the taxing entity that lost land taken by the U.S. government when Lake Sacajawea was formed. That

land was flooded and was lost to their counties and school districts and so forth and it has to be sent back in proportion to the amount of land that was lost.

Senator Cook: I'd be happy if you'd share the information you have. When we looked at it we never saw in the federal code anything that spoke about being shared proportionately to the land.

Chairman Froseth: I didn't get a written opinion from the AG's office; I just received a verbal opinion from the attorney that deals with the federal code regulations. I can get a written statement if you desire to have one.

Senator Hogue: We had some discussions on this on the Senate side. A representative from the treasurer's office provided some of the legislative history that the AG's office or the treasurer's office found. I think it is supportive of what the Senate did. The law was amended in 1946 and if you look at the legislative history Congress increased it to 75% and they wanted to provide maximum flexibility to the states to distribute this money to not only the schools and roads but to general county purposes. I think the actual federal amendment supports the idea that the federal government was trying to get maximum flexibility to the state legislatures. I think that is what the Senate is trying to do by putting it in the impact fund. As soon as you start applying a mathematical formula to who should get these monies in exact proportion to the land they lost then you run into the anomalies where a school district gets $22 million that they can't even spend. That's where the Senate was coming from. We've created this impact fund for a reason and it's to allow somebody to use some common sense and discretion and distribute it to where the needs are and not according to some mathematical formula.

Representative Shirley Meyer: In the federal code it states that when such property is situated in more than one state or county the distributed share to each from the proceeds of such property shall be proportional to its area they are in. That is the portion of the federal code that the formula is based on and why those monies have to go back. One of the problems and the disagreements that we had on the House side are the areas that have lost these dollars for 60 years, they had to make up those lost property tax dollars for that long. In the case of the New Town school district they lost 42,000 acres for 60 years. They have gotten a bump but in all the testimony that we've heard I don't think there's been one dollar that has been misused or misappropriated. It is difficult to apply for these impact grant funds. The New Town school district is not going to get the amount of money that they were entitled too. These dollars really hit needs that they've been trying to supplement for a long time. In the case of New Town they've lost all their state foundation aid, $3.7, and all their equity payments, $700,000. Those are monies that directly benefited the state and we don't give those to New Town anymore. I think all those things have to be considered. In visiting with the townships out there the monies that they've been given have been used for their infrastructure needs and I don't think there's been one dollar that's been misused. Why are we going to make them apply for grants? I don't know what the logic would be.

Senator Cook: I don't want you to think that we thought there was any misuse of dollars. I think there are more dollars available in some areas than one can use. For a township that loses the vast majority of its township to get proportionately that much more money to take

care of what little bit is left compared to a township that has the vast majority of its township and roads to take care of. I would like Representative Meyer to read that statement that she read about proportionment because I believe that deals with when you have a political subdivision or a county or something that is located in two states.

Representative Shirley Meyer: "That when such property is situated in more than one state or county the distributive share to each from the proceeds of such property shall be proportional to its area within." When I read that I think it means when it is situated in more than one county. It would apply also to a state but that's federal code and that's why it makes trying to put this into the impact grants it doesn't comply with the federal statute.

Chairman Froseth: That's the same interpretation I had too. If it does cross county or state lines it would be distributed in that proportionment. I think one issue that got the waters a little cloudy was the amount of money that the counties received back in 2009 and 2010. They received huge sums of money and that money was just about all from oil lease money. That land had never been leased for 40 or 50 years and the counties weren't getting any money off that because there was no income coming from it. All of a sudden these oil companies started leasing land under there and Mountrail County got $22 million in 2009 and 2010. That was a onetime payment for the lease and that land is all leased up now so there will be no more money coming in on that proportionment. This past six months they got $1.4 million and that's from royalty money and that money will continue to come but it won't come in the large sums that the onetime lease money does. There won't be nearly as much money to divide up amongst the whole school districts and counties. I think there was some misinterpretation in our interim committee and in this session about large sums of money and windfall checks coming in because that won't be happening.

Senator Cook: Do you think mineral owners get more money from the leases than they do the royalties?

Chairman Froseth: No. Eventually their royalty money will amount to more over a period of years. This land hasn't had any income for the past 50 years until there was leasing activity then the lease money started coming in. The school districts and counties lost the tax revenue under that property since the U.S. government took the land and flooded it.

Senator Cook: We're not trying to take this money and spend it elsewhere in the state. The money is still going to the counties and the school districts that lost land to the lake. I believe there will be enough money to take real good care of every school district and road out in those counties.

Chairman Froseth: My point is "What's fair?" A school district that lost so many acres and now has to apply for a grant to compete with everybody...there are still a lot of acres that aren't bringing in tax revenue to the school districts and now they have to apply for a grant for their share of money in grant form that might not be as equal to the number of acres they lost and the revenue they lost in those acres. Whether they are getting oil royalties and mineral royalties that is not really the point here. If I own some minerals and I get the royalty check then that's mine. If you think it should be shared with everybody that is a point we could argue about but it's actually that school district's property and they deserve that money, they shouldn't have to fight for it through a grant program.

Senator Dotzenrod: In the distributions that are currently made 50% goes to the schools, 25% goes to the county, and 25% goes to the townships. We've heard stories about some exceptionally large recipients of the money. Has there been any of the subdivisions there that really got shorted that would liked to have gotten money that needed money and are still short or is it just a case where everyone got a pretty good share? I'm thinking there's really no reason to have a grant program. A grant program may solve the problem if you had distributions made where someone really didn't get their share. It appears that everyone has gotten good payments out of this and there really isn't any way we can change that whether we want to or not.

Representative Shirley Meyer: In response to that we did have some townships that did very well but they did the right thing and dedicated their monies to the roads and townships. When that happened that freed up more money for Mountrail. The massive amount of impacts that are out there but when you had those three or four townships they got substantial dollars. These gentlemen did the right thing, they met and said we will handle our township road repair and then it freed up more monies for the county in Mountrail so that they could assess the needs out there and apply them accordingly. You're right, there's no need for a grant program because the counties and townships that did benefit from that it just released a little more money for the impact needs for the other parts of the county. That's why we felt it is really being handled well the way it is. It's really not true that these counties are getting more money than they can ever spend. In the case of the New Town school they were in desperate need of different school facilities including a cafeteria, gymnasium, and everything and we were going to have to pay for that on a state level and now we don't have too.

Chairman Froseth: If a school district lost 100 acres but they still had 800 acres in their school district they would still be getting property tax off that 800 acres but they lost income off that 100 acres. That's what this distribution does; it gives them the income from those 100 acres that they had lost.

Senator Dotzenrod: If they lost 800 acres they would have 100 left then they would be getting a huge portion because the rules call for distribution based on the acres you lost. If they lost 800 acres and had 100 acres left they would have a fairly small school district without many students because they lost that, it was all under water, but the payment they would be getting would be astronomical and would be very large and have no relationship at all to their school district because it isn't there anymore.

Chairman Froseth: I justify by the fact that they lost income from those 100 acres for the last 40 or 50 years so they have a lot of ground to make up. They had to tax the rest of the district more because they lost the remnant from those 100 acres for that many years.

Senator Dotzenrod: If you had two school districts and one lost 800 acres under water and had 100 left and you had another school district that lost 100 acres and had 800 left the one that has 800 left has a lot more financial responsibility, a lot more bills to pay, and a lot more things to finance then the one that has 800 acres of it gone. That seems like a problem. I agree with your idea that they've gone a long time without money and they need

a catch up but the way we're distributing it appears to be not much relationship to what their needs are.

Chairman Froseth: I guess most of the school districts that just have 100 acres will have probably consolidated with some other school district by this time.

Senator Hogue: You described it a couple times as a windfall. This problem and revenue did not reveal itself until we started the federal government started distributing significant amounts of income. Prior to about four years ago this was just a little revenue stream that didn't get anybody too excited. It seems to me that when you start distributing over $1 million to townships with less than six square miles and to school districts with one school district getting $22 million and the next school district over gets less than $100,000 there is a fundamental inequity there that we should as policymakers try to address. I'm hearing form the House side is to stick to a rigid formula that will give it in direct proportion to the land that was lost and I think the Senate approach is to take a look at the needs because that is our job as legislatures. We are to provide for the needs of local governments. I think the best policy is to look directly at needs and have them addressed specifically rather than adhere to this specific and rigid formula that produces very inequitable results when you travel from one school district or one county to the next. Our chairman has said so often is that roads don't stop at county lines and school districts overlap all the time so why are we trying to retain this rigid formula. I just don't understand that.

Representative Shirley Meyer: The original intent in 1268 was to hold the counties harmless in the oil and gas compact that we signed with Fort Berthold. Is the Senate in agreement with that portion?

Senator Cook: I think the issues are related.

Chairman Froseth: The other issue in 2067 is the payment back to the school districts that was miscalculated last biennium. I think that's the only thing that's left in 2067 now.

Senator Cook: 2047. We have a conference committee on 2047.

Chairman Froseth: I had amendments proposed to roll that into this bill also so it would all be in 1268.

Senator Cook: Can you share the amendments?

Chairman Froseth: Distributed amendments .01004 of April 8, 2011 and reviewed. Please see attached amendments. It takes everything out of 2047 and puts it into 1268. There are three issues; the flood money distribution, hold the counties harmless, and the money that should have gone back to the Fort Berthold reservation. Also included is the section that deals with the money that the school districts get from the county's share of the distribution.

Senator Cook: Where's that part?

Representative Shirley Meyer: It's subsection 3 on page 2.

Chairman Froseth: It's the distribution for the Three Affiliated Tribes.

Representative Dwight Wrangham: I'm having a little trouble seeing how the two issues are connected. Could someone enlighten me on that?

Senator Cook: What two issues?

Representative Dwight Wrangham: 1268 and 2047 and the Fort Berthold issue.

Senator Cook: They both deal with money to the counties that would be affected by this bill.

Chairman Froseth: 1268 originally just dealt with money that goes back to Fort Berthold. It was a misinterpretation of the money that was distributed to the counties. A portion went to the Fort Berthold Reservation that wasn't distributed right and that's what 1268 did originally.

Senator Cook: 1268 changes the distribution formula to oil producing counties. We're talking about the same counties and oil money to these counties.

Chairman Froseth: They are somewhat related I guess.

Representative Shirley Meyer: 1268 was just a correction. When we did oil and gas compact with Fort Berthold the counties were to be given their percentage before the split out of the state's share and somehow that was changed. Legislative Council has acknowledged that was an error and 1268 was just a correction to that. They will get some monies but they should because that was part of the compact that we voted on and agreed to and it was just an error.

Senator Cook: 1268 changes current policy and code whether it's a correction or the motive is a correction or not.

Chairman Froseth: It changes the intent. It doesn't matter to me if you want to deal with 2047 and 1268 separately.

Senator Cook: Are you the same conference committee for 2047?

Representative Glen Froseth: No.

Senator Cook: We are.

Chairman Froseth: No further questions. Closed hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
April 12, 2011
#16513

☒ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Fort Berthold Reservation; and to provide an effective date.

Minutes: *No attachments.*

Chairman Froseth: I will ask the Senate if they are ready to accept our amendments.

Senator Cook: We had a discussion on this and it was real close but we are not.

Chairman Froseth: Inaudible as speaker wasn't on right away...which deals with the school funding formula and on page 4 it deals with the payment to the Fort Berthold Reservation where there was an error made last session. Are you in agreement with those two sections?

Senator Cook: I will speak for myself but I think the biggest issue we have to resolve first and then the other two will fall in line is the issue of the flood control money. When we look at the money that came in from the leases you can see Mountrail County had $20 million in 2008, $30 million in 2009, and $22 million 2010 and that was divided up among the school districts and the townships. When you look at that money that came in for leases what do you suspect that money might look like for royalties when that starts coming in? We're all going to agree that it's going to be something sizably more than that do we not?

Chairman Froseth: On what basis? On a distribution basis or a yearly basis?

Senator Cook: The money first comes to the county and then we have to decide how we distribute that but when we look at the total money that could be available from flood control that would go to the counties the way you had amended do you have any idea how big that number could be?

Chairman Froseth: At this point I don't think we can. It depends on what the production will be. If the production continues and development continues over the years as it has it

could be quite sizeable but oil development might be at the mercy of several different factors. Oil development might be cut off at any time so that's kind of an unknown.

Senator Cook: Let me ask you this, we are going to pass something here and then we're going to go home for two years. It's my understanding that the rigs are lined up along the lake waiting to start drilling. When you look at what you get for lease payments and then your greatest anticipation is the royalty that will start coming and then continue to come but what if that's $50 million that came to Mountrail County year after year after year. Is it your position then that 50% of that went to schools and that these schools should continue to get that type of revenue? Is that what you are defending?

Chairman Froseth: Royalty money belongs to the mineral owner. Whether this money comes back to the county or school districts or an individual it still belongs to the landowners and that taxpaying unit. I don't really see what the objection of having that money going to those counties and districts that lost that tax revenue in the county and the school districts. It is a replacement for the valuation lost to those entities.

Senator Hogue: I want to go back to our discussion yesterday in talking about the windfall. What I heard from the House was that they should not lose this revenue because they have always been receiving it. In 2008 Mountrail County got $20,000 from this fund so it's not as though the Senate is taking a big source of their funding for their schools and roads. They got $20,000 in 2008, $20,000 in 2006, $20,000 in 2005, and then from 2008 they went from $20,000 to $30 million. $20,000 to $30 million. From a policy perspective how do you defend the idea that we shouldn't as policymakers try to make sure that money doesn't go directly to that one political subdivision and try to provide that money where it is actually needed within these flood control lands.

Representative Shirley Meyer: You can't look just at income isolated over here. In order to generate $30 million or $50 million in oil revenue the amount of impact that it cost Mountrail County is absolutely unbelievable. A small township got $4.4 million and it sounds huge but they dedicated that entire $4.4 million to fixing 10 miles of road to pave it because it's on the way for a water depot so we can continue to allow the fracking. It didn't cover the cost of 10 miles of paved road. It has to be put in perspective. They aren't taking this money and bankrolling it and using it foolishly. For every dollar that Mountrail County gets those are less monies that the state has to provide. There has not been one complaint from any person, county commissioner, or any school district. I don't know why you would put it in a system where they would have to once again apply for a grant and proportionally they would have to give those monies back. It just causes a six month delay on trying to fix their infrastructure. If there had been one problem anywhere I would feel differently about this but it's been used for four roads and for paving roads and repairing township roads that are devastated.

Chairman Froseth: That money is being used for infrastructure damage. When you look at the big picture that money also saves other money coming out of the oil and gas trust fund that can be used for purposes across the whole state. Otherwise those counties would be demanding more money from the state and more money from an oil and gas trust fund to repair their infrastructure. In essence it is saving other tax dollars that go to a lot

broader use across the state that would probably otherwise have to be funneled into those counties.

Senator Cook: Along that line you had asked what the original intent was on this bill and that was making sure the money for Fort Berthold Reservation is distributed amongst the counties. If you have a county out there that's getting flood control money of $50 or $60 million a year wouldn't it be wise then to take some of this other money that's coming into the state from the production tax. And instead of allocating it to that county allocate it to other oil producing counties that have roads needs of themselves without the potential to fix them with some of this flood control money.

Chairman Froseth: I think we have in our budgets $15 or $16 million that's going from the permanent oil and gas trust fund to other nonproducing counties across the state.

Senator Cook: I was talking about flood control money and we have a formula that divides money out to all the oil counties. If one of those counties is fortunate enough to be getting large amounts of money from flood control money wouldn't it be wise to somehow take the dollars that are coming in to the oil producing counties from the production tax and use those monies in other counties so that we can better meet where there are needs? Or would you suggest that all those monies still go into the same counties?

Chairman Froseth: I think because of this money going to these counties that is being done. I think it is freeing up other money from the oil production tax to go to other counties across the state.

Senator Cook: How?

Chairman Froseth: Because of the budget this year where we have $50 million that is going to nonproducing counties.

Senator Cook: Where is it anywhere said that the amount of money a county gets from the production tax is contingent on what they get from flood control money? In other words, where is there something that says if you get a lot of flood control money this other money you would have got without it is going somewhere else?

Chairman Froseth: This money here specifically has to go back to the counties. There is some question about whether the granting program would meet the federal guidelines and with permission from the committee Tom Trenbeth is here from the Attorney General's office and has been studying this and doing some research so I would like to have him clarify the intent of the federal code in regard to the distribution of the monies.

Tom Trenbeth, Attorney General's Office: My comments would be limited to the plain reading of the federal law under 33 usc 701 C3 which has to do with the allocation of expenditure of these funds for flood control that result from flood control by the federal government. 75% comes back here to the state but it is how it is distributed that appears to be generating some discussion. It's fairly clear from reading the statute that those funds have to come back into the counties which lost the use of the property which resulted in the funds. The bill as it presently reads would seem to restrict that universe to a smaller

number of counties than the universe it's intended under law because it seems to restrict it to oil and gas impacted counties which doesn't cover the number of counties that would be covered under the plain reading of the law. In addition there is an indication of that interpretation in the present budget of the federal government under the Department of Interior which says, "Flood controls payments to states are shared according to the flood control act of 1936 which provides 75% of revenue collected be shared with the state in which it was collected. These funds are to be expended as the state legislature may prescribe for the benefit of the public schools and roads in the county from which the revenue was collected or for defraying any of the expenses of county government." That says to me that it's a prorata situation, you have x number of dollars that are accountable to McKenzie County for instance then those dollars have to be allocated by the legislature to McKenzie County or for whatever purposes the legislature determines. If it's for roads or partially for roads and partially for schools or if there is some limitations on how the schools can use it or what roads the county can use it on those seem to be all within the power of the legislature to determine. The numbers of dollars that go to the particular counties that had suffered the detriment also need to realize the benefit.

Senator Cook: Explain what is wrong with the manner in which we are distributing money to these counties by as a state legislature appropriating that money to the impact grant fund for those people that are in control of that grant fund to see that it is spent for the benefit of those counties which I believe is exactly what we are doing.

Tom Trenbeth: I'm looking at 1268 with Senate amendments, 98.03000. It says that the state treasurer shall transfer the monies allocated to the state under 33 usc 701 c3 to the oil and gas impact grant fund to be held in a special account within that fund and made available through grants by the energy development impact office only for the benefit of oil and gas development impacted townships, school districts, or county government. That appears to be a smaller universe than what is mandated under the federal law.

Senator Cook: Because we are saying only counties that are impacted by the development and that excludes Barnes, Morton, and a few others. So we would have to do it so it is available to all counties that lost land then.

Tom Trenbeth: The standard of being an oil and gas development impacted entity narrows the scope of the federal intent.

Chairman Froseth: It still has to be distributed prorata, a portion of the land that each county lost.

Tom Trenbeth: That would be my interpretation.

Chairman Froseth: And based on the income coming in from those lands.

Tom Trenbeth: Don't get too far field on me because the federal government will give you a list of the amounts that are attributable to each of the counties. I think that's more than a guide I think that is mandated.

Chairman Froseth: But what I'm saying is that federal dollars coming in from Mountrail County oil production cannot be distributed to Walsh County.

Tom Trenbeth: My understanding is that it has nothing to do with oil production.

Chairman Froseth: No but the income.

Tom Trenbeth: This has to do with a specific set of circumstances implemented by the federal government back in the dam days and building the dam and compensating those governmental entities that lost productive ground.

Chairman Froseth: The income from that land in Mountrail cannot be distributed to land lost in Walsh County.

Tom Trenbeth: If by income you mean the amount that comes from the federal government under this program that's attributable to Mountrail County needs to go to Mountrail County for whatever purposes the legislature determines it needs to go there.

Senator Cook: I would disagree with that. All of this oil is owned by the federal government. All the mineral leases are owned by the federal government. It doesn't matter where the oil is drilled if it's drilled on land that was formerly in Mountrail County or McKenzie County or whatever all of that money comes to the federal government and then they give 75% of that money back to the state for us to allocate to the counties proportionally based on land that counties lost. So what you're telling me when you're saying it's too narrowly defined is this money that comes which is a result of leases or royalty, regardless of what county that land used to be in, is put into this one pot and then this pot has to be divided amongst all of the counties that are affected by the flood control act.

Tom Trenbeth: I'm not sure I understand the argument because I'm not sure I understand the depth of the situation that you understand. My comments are based on what I think is a plain reading of the federal law plus the course of practice by the federal government over a time period seems to follow my interpretation of the state law and plus the interpretation that apparently that is appearing within the present federal budget.

Senator Cook: But we don't know when we get the check whether that check is a result of oil drilled on land that used to be in Mountrail County or some other county. We have no idea.

Tom Trenbeth: I will defer to people that actually receive those funds and how they're earmarked. My understanding is that the funds that are received for this program are designated as having been generated by a particular county. That would be something that the treasurer's office has more experience at than me.

Senator Hogue: Have you had any conversations with Mr. Walstad about your plain reading of the statute?

Tom Trenbeth: I have not. My conversations have been with several of my attorneys who have been researching this plus a representative from the treasurer's office.

Senator Hogue: If the conference committee agrees that it has to be exactly proportional do you see any problem with the legislature then saying that county based on the amount of income that they get from this revenue source would not be eligible for any impact fund monies or taking an offset in our gross production taxes.

Tom Trenbeth: That question is really beyond the scope of my preparation for my comments this morning and is something I have to look at separately.

Representative Shirley Meyer: In response to that, the impact grant for the 17 oil and gas producing counties was $8 million. There was $60 million in requests and the state land department and Jeff has done a very good job in looking at the dire needs out there and granting the money. But $60 million in requests for $8 million and granted that is going up to $100 million if these monies in Mountrail they just do that automatically we don't have to tell them that they won't apply. It also gives Jeff the ability to say there is Mountrail whose needs are being met by this flood control money and he can allocate those grants elsewhere. I don't feel as a legislature that we have to micromanage those monies. There will never be enough money to handle all the impacts there but when you can pull Mountrail out of the impact grant process it gives a lot more monies to the other 16 oil and gas producing counties and it happens automatically. I don't understand why we would want to micromanage that because the local entities know what they need much more so than we do.

Senator Hogue: I was looking at the statute and I was wondering if you could tell me the language that is the plain language that requires a precise proportional distribution of the oil and gas revenue from Mountrail County that has to make sure it all goes back to Mountrail County and not all of the counties affected by the Garrison Dam.

Tom Trenbeth: I understand where you're going Senator. I recognize from looking at that federal statute how it could be interpreted in two ways one that it would need to go back to the universe from once it was generated you wouldn't have to go back to the county from where it was generated.

Chairman Froseth: Carlee, would you make some comments on the previous question?

Carlee McLeod, Deputy State Treasurer: The question was about the total of royalty monies or revenue from oil and gas in these counties. This information comes to our office each month and is broken down by county by the revenue that is generated within that county. We don't have to do any sort of thinking to know which county it goes back to, we just read what is given to us and then distribute it that way.

Senator Cook: Where is money generated that goes to Morton, Griggs, Emmons, Burleigh, and Barnes County come from?

Carlee McLeod: I believe that's the information you wanted from Mr. Roller. He has the total acreage but didn't have the total land so I've requested that information be brought

down to you. I can only surmise it would be coming from the Lake Oahe area or some of those lands.

Senator Cook: Not for Barnes or Griggs.

Carlee McLeod: Forgive me, I don't know all of my geography of North Dakota so I don't know what water is in that area but it would be in land that was taken for flood control or navigation purposes.

Senator Cook: That is somehow generating some revenue. That's my question.

Chairman Froseth: It could be some irrigation fees or some crop land that on low water years the crop land is used for pasture land or hay land that is rented from the federal government to private individuals for a fee.

Representative Dwight Wrangham: We heard testimony that in some of those areas there are grazing fees that they collect.

Chairman Froseth: We have the federal wildlife refuge and they rent pasture land. It's part of their rotation system of environment protection and rents pasture land out of the loss of refuge to local ranchers. Those fees are then probably distributed. No further discussion. Meeting adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
April 13, 2011
Job # 16575

☒ Conference Committee

Committee Clerk Signature Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Fort Berthold Reservation; and to provide an effective date.

Minutes: *No attachments.*

Chairman Froseth brought HB 1268 before the committee.

Chairman Froseth: I sat in on the hearing on SB 2047 this morning. I think there was a little bit of a consensus coming from that Conference Committee in regards to this bill. I think we should take a look at what direction we should go since both bills are tied together. Would you like to work on melding the two bills together, or separating them? Working with 2047 as it came to the Senate, and 1268 as it came to the House? SB 1268 as it went to the Senate only had the flood money and the distribution to schools in it. 1268 dealt with the money that went to counties and distributed to the Fort Berthold Reservation. Committee, what do you want to do? Work with one bill, all three parts? It would be simpler, or otherwise put the context back in the original two bills that we dealt with.

Senator Cook: The one thing that is in 2047, kind of by itself, is the school part of it. It doesn't do us any good to have two conference committees a day on the issue of flood control money. The conference committee sitting here needs some time to do a little homework between meetings. If you want to take 1268 and just get rid of the bill, you have accomplished it down to one bill. You are free to do that if you would like. I would just as soon that we continue to work on this.

Representative Shirley Meyer: HB 1268 contains the fix for the counties in the oil and gas compact that we signed with the tribes. That is not in 2047 anywhere. The intent of 1268 was just to rectify a drafting error of Legislative Council when that Compact was designed. The counties were to be held harmless in that legislation. They were to be given their percentage of the oil and gas tax before it was split between the tribes and the state. There was an error in drafting, and Legislative Council has testified to that repeatedly. HB 1268 was JUST the fix to fix that error. It would work, if that were the only issue in here. It is not in 1247 anywhere.

Senator Cook: If you want to take this up to the floor to get rid of this to get us down to one bill, you can do so. We can still deal with the issue that was in 1268 and 2047.

Chairman Froseth: I passed out an amendment at our last meeting, .01004, and that puts all three parts in one bill, 1268. I think it would be easier to work off of one amendment like that.

Representative Shirley Meyer: I think it would be so much easier to address them separately, as they are two entirely separate issues. 1268 is the fix that should have been done, and everyone has agreed to that. If you just leave that issue in 1268, it will work. In 2047 if we have the flood monies in there and the school fix. We can keep working on that. 1268 if we just have it the way the Senate sent it over, it does that fix, and then we can work on the school issue and the federal flood monies in 2047.

Senator Cook: With all due respect to Rep. Meyer's opinion, we are not going to separate the two issues. They are tied together. So, any discussion on that just delays our efforts in getting to the final end product.

Chairman Froseth: Let's move on then and continue the discussion on the flood control money. That seems to be where most of the disagreements are. It seemed to me from what I heard in the hearing this morning on 2047, that there was a little bit of an agreement that the money should go back to the county that lost the land. The disagreement portion is how the money should be designated to be spent in those areas. I visited with Rep. Drovdal and also called the county commissioners of Mountrail County. We thought it would work fine if we just distributed all the flood money back to the county, and then let the county work with the school districts and the townships with the distribution. They would distribute it as needed and required in their individual areas. That is the idea on the table.

Senator Cook: That has always been our intent is to get the flood control monies back to the counties. We believe that the money that is put on here is money that would go back to them. You have a different opinion on what our legal requirements are. We won't just change our opinion because the House tells us we are wrong. Senator Hogue is doing some research on what our ramifications are. We have had discussions with Mr. Trenbeth from the Attorney General's office. We will need to have a few more conversations to find out for sure to what degree we will continue to argue our position, or to what degree we have flexibility on this. But, ultimately the intent is to get these monies to the counties that lost it. Our position here is to make sure that we are as flexible with that as possible. The solution that you just offered is a vast improvement and offers much more flexibility.

Chairman Froseth: Everyone I've talked to seems to think that it would work and are agreeable to it. I think that if we could simplify this and let the counties handle it; it would be satisfactory.

Senator Hogue: I want to get the House's feeling on getting some direction. If Mountrail County Commissioners got $30 million, what level of confidence do you have that, that any of the money would go to the school districts?

Chairman Froseth: I am totally confident that it would. I have spoken to all three of the commissioners there, and I am confident that is how they will use it. There won't be $30 million; that money is gone. It might be ½ million. They distribute the money every month, and I would say it will be between one and two million dollars a year. Maybe more, but it is hard to say. One other thing about the grant program that was brought out, Williams County just got a few hundred dollars. How is the grant program going to work in a county that only gets a few hundred dollars or a few thousand dollars for all the entities to apply for grant money? It won't even be worth the paper work to apply for the grants. There are a lot of different situations between Mountrail County and the other counties that receive some money through this program.

Senator Cook: Would you say the most money a county would get through this would be one to two million dollars a year?

Chairman Froseth: I don't know for sure. The Bakken wells are big producers when they first come in. Then they taper off 50% the first year and another 50% the second year. The production goes down to an average of about 200-250 barrels a day. They might start out at 2000 barrels. The second year they are at 1000 barrels. The third year they are 500 barrels and continue to go down to the 200-250 barrels a day. Nobody knows at this point how much it will amount to, but it will not be any of the big windfalls that they saw through the leasing money. That leasing money, as far as I know, has been distributed and spent.

Senator Dotzenrod: If the revenue goes to the counties as is suggested here, would the county commissioners have anything to go by to guide them on how they should distribute this, or would they be on their own? Would they looks at federal law to give them some guidance? I am curious as to how they would make the decisions, if they have more applications than they have money.

Representative Shirley Meyer: I can weigh in on that. I have made this point several times today. You have to look at their track record, which is excellent. There hasn't been one disagreement that I know of, and I know a lot of them personally. The township officials went to the county officials, and it was a win/win for everyone. The county offered the township help to pave a section of road that needed to be paved desperately, so we could keep hauling water out of there. They don't federal or state guidance. They have done the right thing. These lease bonuses are going to be your biggest chunk of money up front. These monies will level off. I don't think that we will see this $30 million dollar payment again.

Senator Dotzenrod: Then, they are free 100% to use their judgment on these revenues? There are no rules they would have to comply with or criteria to meet? They would just rely 100% on their track record and their good judgment. Is that correct?

Chairman Froseth: It says in federal code that it is for the purposes of schools, counties, and townships. I think we could have legislative council draft up some language that would specify they must use part of this revenue towards those purposes. I don't know exactly how they would state that. I don't know if we want to spell out percentages. Then they would distribute it the way the legislature determines. So far, it has been ½ to the school

districts, ¼ to the county, and ¼ to the townships. It is up to the legislature to determine that. That is what we are trying to do here, I guess. We can put legislative intent in there.

Senator Dotzenrod: It may be difficult to try to direct them in any way. It might just be simpler to say that the legislature would expect that they would follow the guidance of the federal legislation and leave it at that.

Chairman Froseth: The largest area is Mountrail County, and they had the most land lost when the federal government took the land. A big share of that land came off the reservation. New Town lost three towns by the flooding and all the lands along the river. The federal government established New Town, so they could all move there. The federal government also built a new school in about 1950. It is that school that was replaced with this money. If they hadn't had the money to use, the federal government would have had to build it. I don't feel that the spending has been unwarranted. We can do something to make sure that the counties will direct those monies toward those purposes. I don't know if we need to spell out the percentages.

Representative Shirley Meyer: If we're going to be putting all this into 2047, is the Senate accepting of the fix with the Indian Compact? Because, that currently is not in 2047 anywhere.

Senator Cook: The Indian Compact is not in this bill, is it?

Representative Shirley Meyer: That is what was in 1268.

Senator Cook: You are talking about the allocation going back to the county?

Representative Shirley Meyer: Yes, and that is not anywhere in 2047, and you indicated that it is all going to go on 1247. So, I am asking if the Senate is objecting to the fix that we had in 1268.

Senator Cook: I will say it again. They are related to what we do with the flood control money, so we will deal with it all at the same time.

Chairman Froseth: Would the Senate be accepting of getting an amendment drafted to try to state the intentions of the distributions back to the counties? Or, do you want to get some further clarification?

Senator Hogue: I am not comfortable. I know you two have personal relationships with the local county officials, but I can't agree that's good policy to rely on personalities and relationships to make sure the money is distributed the way that we want it to be distributed. This is a policy making branch of government, and we should decide that. I need to do more research. I would like to find out how many school districts are in the county and how many townships are in the county, before I would feel comfortable committing to a specific amendment. We have a distribution formula now, so why we would put too much of a concentration on the county commission, I don't think that is good policy.

Chairman Froseth: We could change the distribution formula. If the schools are getting 50% now, maybe they don't need 50%. At the time this was established, it goes back to 1946. Maybe now we can change the allocation. Maybe it could be 75% to the county and 25% to schools. That might fit today's needs better than the 50/50 back in 1946.

Senator Cook: How hard would it be to find out how many school districts existed before the dam went in and how many don't exist today?

Chairman Froseth: I don't know if the DPI would have that information. We could check and see. There aren't that many school districts affected now because there has been a lot of consolidation. Mountrail County has two that I know of, New Town and Stanley.

Representative Shirley Meyer: This is not the same as our oil impact funds. It is a totally different issue. These school districts and counties lost this revenue for 60 years. As a state we didn't come in and make a fix with that. You can identify this as a windfall or not, but I am really hung up on the issue that WE have to decide the best use and not that local entity. Why would the legislature know the uses better than that local entity? I don't see why we micromanage those monies. They are not like our oil and gas impact fund, which there is certainly never enough money in there to address all of the counties needs. This is such a specific instance, where we are not factoring in the 60 years of lost revenue to those school districts. Nobody came up and had a fix for them then. Now, when this happens we want to step in and tell them how to use it.

Chairman Froseth: There are only three counties that receive a lot of money: Dunn, McKenzie, and Mountrail. Mountrail's portion will be equal to Dunn and McKenzie's in future distributions. I don't know if the treasurer's or tax department will have the number of acres that the distribution is made to.

Carlee McLeod: I gave you copies of those.

Chairman Froseth: I do have the chart on the number of acres. Senator Hogue, bring the information back, if you want to do some more research. Let's try to get this resolved by the next meeting.

The hearing was closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
April 15, 2011
16669

☒ Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

A bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Fort Berthold Reservation; and to provide an effective date.

Minutes:

Chairman Froseth: The only thing in 1268 when it left the House was the portion that dealt with the correction to the counties that the monies went back to the Fort Berthold reservation. The House did not amend that. The Senate amended in the flood money portion.

Representative Shirley Meyer: 1268 was a fix that legislative council said was a drafting error. That was the only issue that came out on this. 1268 is just dealing with these monies going forward. The way the oil and gas compact with the three affiliated tribes in the state of North Dakota had agreed on and as we as legislators agreed to in a vote.

Chairman Froseth: At this point negotiation between these two bills would probably be easier to have the Senate recede from their amendments with 1268 and we go back to the original version.

Senator Cook: The one issue that is separating us is dollars that are going into counties to fix problems. There are dire needs especially in the oil-producing counties that need to be fixed and we need to get money there to fix them. The only difference is from the Senate side we want to have some accountability that the money is going somewhere to get things fixed. We need to figure out a way to compromise.

Representative Shirley Meyer: I agree with you. 1268 is just a technical error that needs to be fixed. It deals with roads on the reservation that needs to be fixed. This is a fix that was just an error in drafting. We voted on this and agreed to this. They took away the retro activation application that I had originally in my bill. Right now it is about $4.4 million that the counties will not receive to help on these roads on the reservation.

Senator Cook: The problem is how we're going to be accountable in how we're going to get them their money. I'm talking about flood control money.

Chairman Froseth: I can't agree to withholding money as it is money that is owed to them, and I think it is money they badly need. If you want some accountability, maybe there is a mechanism you can build where they report what that money is being spent for back to the treasurer or legislative management or whoever. Rep. Meyer brought out a point that they have to have their money in place before they can apply for matching funds for a lot of these projects. The big influx money has already gone out and has been spent.

Senator Hogue: You said that they badly need the money but if they accumulate $10 million which for one of them is twice their budget, how badly do you need that money?

Chairman Froseth: Are you referring to the school district?

Senator Hogue: I am. Describe for me how these counties "badly need the money."

Chairman Froseth: I believe there are two school districts that had to ask for permission to carryover the funds into the next year or biennium because they couldn't get the proposed work they were planning. They couldn't get it done in the amount of time they had to where they had to report their ending fund balances. It is hard to find contractors to do the work on a timely fashion.

Representative Shirley Meyer: Did you receive the testimony from Mark Bluestone? New Town is building a new school with those monies. Between asbestos and black mold, the state of North Dakota would have had to build the school. They did give us a breakdown of how those monies have been spent. Along with it they have lost $4.7 million, all state aid. They lost their equity payment, their foundation aid payment. That goes back to the state. They aren't getting any of that.

Senator Cook: Since this money was held back until such time the flood control money came in so it could give them a steady stream in the years ahead, they wouldn't run into that problem.

Chairman Froseth: It probably wouldn't be that easy to plan ahead.

Senator Cook: If there was a sizable windfall of dollars that came in there and were put into the fund, it would be very easy to plan.

Representative Dwight Wrangham: I'm getting a little confused on where some of the problems are. I think what we are talking about right now is the money from the federal government for the flooded lands. The House has offered amendments that would have taken the direct funding to the school districts out of that. It would go to the county and then the county could distribute it as needed. If there was a school district who didn't need the money, the county wouldn't have to allocate it to that school district.

Chairman Froseth: That was the intent of that language in 2047 and it seemed to me that was the direction the committee wanted to go. Let the county distribute it to the county and

let the school districts and the townships apply to the county and work with the counties with their division of those funds rather than have the state set 50% to the schools. Maybe 50% to the schools is probably the wrong formula anymore. I would say it would be. At the beginning of this the schools probably needed the bigger share.

Senator Dotzenrod: The way I look at it we really don't have a lot of choices. These monies that come from the areas that were flooded are almost a requirement that we are going to have to put them back to get that money back to the places it came from. If it is going back to where it came from, how much flexibility do you have inside of that? My way out of that is to give it to the counties. That avoids the school district problem that we have seen with revenues probably being more than they should. When 1268 came into the Senate, it was strictly the Fort Berthold effects with those roads. The Senate was 100% behind that. We have amended in this flooded land issue. We have the flooded land issue, here and in 2047. To get things moving, we should take that out of one bill or the other. I would be in favor of taking it out of 1268. If we need to get started, I could **move that the Senate recede from the Senate amendments to HB 1268.**

Representative Shirley Meyer: Seconded.

Chairman Froseth: I believe it would be a lot simpler if we get these separated. I would support that motion in regard to this.

Senator Hogue: I would speak against the motion. There are three issues and we need each other's help to resolve. The Senate needs help on one, and you need help on two.

Representative Shirley Meyer: To me these issues are so totally separate. 1268 is absolutely no more than a fix that was an error. It has not one thing to do with the flood control monies. The counties came to us and said we accept that this was an error and we'll move forward with it. Legislative council has agreed to this.

Representative Dwight Wrangham: I am going to support the motion. I'm here to pass forth the best legislation I can.

4 YEAS, 2 NAYS. MOTION FAILS.

The meeting was adjourned and will be rescheduled.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
April 18, 2011
16729

☒ Conference Committee

Committee Clerk Signature Carmen Hoeft

Explanation or reason for introduction of bill/resolution:

A Bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Fort Berthold Reservation; and to provide an effective date.

Minutes: You may make reference to "attached testimony."

Chairman Froseth opened the conference committee meeting on HB 1268. What are the committee wishes? It is pretty hard to do anything with this until 2047 is finalized as far as I see. If you would like to discuss the bill as it came out of the House, you would have to recede from your amendments and go back to the original House version that dealt only with fixing the payments to the county and the Fort Berthold Reservation.

Senator Cook: I think your first statement is correct. There is no use in doing much with this until we figure out 2047.

Representative Shirley Meyer: Back to the information I passed out. Mountrail County maintains 93% of all the roads on the reservation and the BIA only maintains 7% of the roads on the reservation.

Chairman Froseth adjourned the meeting and will reschedule.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
April 19, 2011
16773

☒ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A Bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Forth Berthold Reservation; and to provide an effective date.

Minutes:

Chairman Froseth called conference committee to order. Clerk took role and quorum declared. He opened hearing on HB 1268. Are the Senate conferees interested in working with HB 1268 as it was amended in the Senate and sent back to the House? That is the bill we did not concur on for this committee. 1268 had distribution of flood money into the grant program. It also carried the hold harmless for the Fort Berthold distribution of funds.

Senator Cook: I didn't know we had another option.

Chairman Froseth: The other option is SB 2307. This morning our House conferees worked on new language for the flood money proposal which I distributed to each of you this morning. Any comments on that proposal? We're trying to take into consideration all the aspects that we've reviewed like sending the $4M to the counties and earmarking the balance of it. The only difference in this is that it doesn't go into a fund in the treasurer's office. It's earmarked to go into a fund in the county level (road and bridge fund) to be used for matching state and federal dollars.

Senator Cook: The original bill had the money going into the impact grant fund. What if we put the first $4M into the counties and after that, put it into the impact grant fund with a particular county's dedicated name on it, allowing the county to apply for grants for roads and bridges only so that this extra money over $4M would not have to be considered for schools, etc. Thus, for instance, if they got a road project, they can apply to get it and get the money and everybody knows how much money is going in there.

Chairman Froseth: I believe this would accomplish the same thing except instead of putting it in to a grant fund in the state treasurer's office; it would be put into their road and bridge fund to be used for matching grants. The problem with putting it in the grant fund in the treasurer's office is that it would not qualify for them having this money on hand to use to write and apply for grants (state and federal matching grants). I think they have to have

that in their account. This is based on the information we received from two of the County Commissioners.

Representative Shirley Meyer: I believe you received the correspondence from the Dunn and Mountrail County Auditor. I spoke with them yesterday and they had indicated that they do have to have those monies before they can apply for these projects. They have to be held in their road and bridge fund which is where the money has to be in order for them to bid out the projects. I had that information printed off for all of you and assumed that you received it.

Senator Hogue: Yes, I did receive it. Does the House have any information on what the cost trends have been over the past 3 years to re-gravel and seal roads?

Representative Shirley Meyer: All of our gravel was condemned in Dunn County because it has arenite in it. It was a huge hit to Dunn County. We went from $1.75 a yard last year to $4 a yard this year and it's going up higher. They haul out approximately 200,000 yards a year and the costs have gone through the roof on this. There is cost of $6-7M overlay on the Dunn center road that's going north and if they do not get the money to do that, that road is going to be condemned. There's a huge amount of oil traffic there, but the road is so unsafe. Right now, there is a sign that says 'cross at your own risk' near the bridge north of Dunn center, because the county does not have the money to rebuild it. It is not safe to drive across so instead of fixing that or addressing that situation, they put up a sign so they are not liable. They have 44 miles of roads scheduled for the next 2 years at a cost of $300-350,000 per mile. If they don't get the monies to do that, they have to close them. This weather has not helped anything. Anytime there is a rig move in weather like this, the road restrictions on the state highways are diverted onto the township and county roads. The costs have tripled to what they were seeing in 2007.

Chairman Froseth: There are estimates from late last fall on pg 12 of this book we have. They have 19.8 miles chip sealed on various paved roads in Mountrail County with an estimated cost of $594,000 ($30,000 per mile). (provided other examples) 12 miles of grating, graveling and overlay at a cost of $12M. 6 miles of grating, gaveling and overlay on the west side of New Town, costing $8.3M. 9 miles on east side of New Town of grating, graveling and overlay, costing $11.7M. The cost of immediate concerns in Mountrail are over $46.7M. About half an hour before this meeting, I received a phone call from Greg Weimer, one of the foremen for Eagle Operating (local oil field production company in Kenmare). About two years ago, they had 20 employees in 3 rigs in the field. Today, they have 120 employees with 16 rigs in the field and are looking for more people with difficulty finding them. The oil companies can hire new employees for an extra $6-10 an hour, which they can afford. Mr. Weimer says the traffic out there is nonstop with safety concerns. The truck drivers that they often get from other states don't obey traffic signs or load limits. Adding to the safety concerns is that there aren't enough patrol men and deputy sheriffs to do the police work and enforce the laws. He says that there is littering all over the place. With the spring and how wet it's been, they just pull the trucks through the roads with whatever they can find to hook onto the trucks. I think we have to send whatever dollars we have available to help this devastating situation.

Senator Cook: I don't know if passing this bill either way will make all those problems disappear. Mountrail County has $13M in the bank and will be getting more money for roads from the impact grant. Are you insinuating that there is not enough money to do the $46.7M worth of road repairs?

Chairman Froseth: I'm not certain if there is or not. I would presume that there isn't.

Senator Cook: Do you know how much money Mountrail County is going to get this next biennium? We sent them a sizable amount of dollars this biennium. They have a lot of projects that need federal matching dollars as well. We're not talking about flows in roads because it can't fix for lack of money. The problem is managing taxpayer's money so we know it's going in there and actually fixing problems. I agree that the roads need to get fixed, but just sending a whole bunch of money out there and saying we did our job, isn't enough. I don't understand the issue with sending them the first $4M and have the rest of the money sitting there, available for any projects that they don't have the money to pay for.

Chairman Froseth: Because having the money sitting there doesn't help them to write grants for state and federal assistance. They need the money in their account to do that. I have no problem with sending the money to the counties. I think they're doing a tremendous job at trying to manage the money. In addition to buying gravel for the roads, they need to buy deputy sheriff's vehicles that are 4 wheel drive pickups so they can get across the roads to do law enforcement, for instance. Are you interested in this proposal?

Senator Hogue: I am not.

Representative Shirley Meyer: You're leaning toward having everything over $4M go into the state land department and then they can keep it identified per county, available under impact grants. They can apply for it through the granting process.

Senator Cook: Yes.

Senator Dotzenrod: As a practical matter, if the granting process were done, how much time would there be between the time the county requested the money for a project that they needed to have done and before they get the money?

Chairman Froseth: I don't know that information. Mr. Engleson, can you answer that?

Jeff Engleson, State Land Department: With the new structure and the Land Board making these grant decisions now instead of this individual, we have been having Land Board meetings every other month, so I think within 2 months we could turn it around.

Senator Cook: Let's not lose the fact that when counties are looking at fixing roads they don't just wake up one morning and say let's fix the roads tomorrow. There is a whole lot of planning that goes into it, from the engineering and getting it in line for federal money. I don't see any problem with keeping the money in the impact grant fund, that would prevent money from coming there when it's time to pay a bill or make a decision.

Representative Shirley Meyer: That's why I provided the information to you. You can't do these things over night. You have to have monies in your road and bridge fund in order to even start bidding the projects. They have to keep money there and those monies have to build up before they can even bid them out. That's their problem. They don't want to have to hire another grant writer. As state legislators, we are basically forcing them to become a grant writer. You mentioned before that they are swamped. It's no longer a part time job for these commissioners. They are not grant writers and yet they have their engineers and planners in place. In order for that to happen, they have to have enough monies in the road and bridge fund. That is what the missing component is here. As long as they put it in that fund and they are local controlled, why would we know better than those individuals living out in the county?

Chairman Froseth: The Treasurer's Office sends out these checks for flood money out on a monthly basis. So, putting it through the grant process would delay the projects 2 months and sometimes with the short construction and traveling season, they don't have 2 months. Due to no further comments, we will adjourn and reschedule.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
April 20, 2011
16797

☒ Conference Committee

Committee Clerk Signature Julia Frojo

Explanation or reason for introduction of bill/resolution:

A Bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Forth Berthold Reservation; and to provide an effective date

Minutes:

Chairman Froseth called conference committee to order. Clerk took role and quorum declared. He opened the hearing on HB 1268. I have no new proposals. Does the Senate have anything new to offer?

Senator Hogue: I asked Mr. Walstad (Legislative Council) to prepare amendments along the lines of what Senator Cook suggested yesterday which was to fix the Fort Berthold Reservation problem and fix the school district problem. The amendment states that the first $4M of the flood control monies goes to the counties in their discretion to use as they please and anything over $4M in a biennium would go to the impact fund which the governor signed recently. That impact fund and how it's coordinated is law now, so the balance would go into that fund and it would have the name of the county on it to apply for those funds. The money would be awarded based on the discretion of the board that administers the impact fund. I got those amendments back, but there was a mistake so Mr. Walstad is in the process of fixing the amendments.

Chairman Froseth: Are you sure that would qualify to the federal code guidelines if the money when into impact fund?

Senator Hogue: We have had this discussion before. I think the legislature could take that money and provide it to a different political subdivision. The compromise position with the House was instead of putting it into impact fund and channeling it to wherever the impact fund felt was necessary, was to restrict it to that county. The federal statue doesn't say when the money has to go to the county and percentages. Thus we have the discretion to say who it goes to in the county and when it goes them.

Chairman Froseth: I would want to make sure and run that through the Attorney General's office before we do that. Discussion?

Representative Shirley Meyer: I'm puzzled by the concept of when we know it's going to go to Mountrail, Dunn or McKenzie and they're going to be identified, then for the granting process, I can't follow the logic of why they would have to go through another step, if they know they are going to get the money anyway and the board will approve it anyway because the money has to go back to that counties. I can't follow what we are trying to accomplish other than more of a delay is versus the concept of them being able to keep it in the road and bridge fund. Without that, you can't make your federal matches.

Chairman Froseth: Yesterday it was brought up by the Land Department that they could probably process that grant in 2 months time, however that 2 months time might create a lot of complications if you got a project that needs to be bid or a bid that needs to be paid and they don't have the money available. This will open up counties to problems with not fulfilling their obligations to a contract in timely payments or receiving the money to make the payments. This may end up in lawsuits or penalties.

Senator Hogue: I think what I am hearing is that I shouldn't present those amendments; is that fair to say?

Chairman Froseth: I think that's fair to say as I would not consider them, but I don't know what the rest of the committee thinks.

Senator Cook: I suggest that you communicate with folks in the county that do the planning. I've communicated with them and they don't plan these things in short period of time. They are well thought out. I'm sure the projects that they are going to be doing this summer have been identified long ago. I would encourage Senator Houge to pursue the amendments and have them at the next meeting so we can move them and get on record where everybody is at with these amendments.

Senator Dotzenrod: We've met a number of times now and we are having a hard time making progress. The money should go to the party that's responsible to manage and spend the money. What are we really trying to achieve by not allowing this money to flow as it should to those individuals that have the responsibility to mange, spend and budget for it and to have the responsibility to keep that infrastructure viable and usable. There must be a belief that if we interfere with the process of allowing those dollars to flow to the people that have the responsibility to manage it and spend it, that there's a benefit to that. I'm wondering if I could get a clearer picture here of what the problem is with allowing that to go ahead.

Chairman Froseth: I see no problem at all.

Senator Hogue: In the Finance and Tax committee we saw the application of a mathematical formula that produced completely disparate results within the county. You had a school district that got $20M and you had the next district over that got $10,000. It doesn't make sense that one has $20M of needs and the other has $10,000 worth of needs. The first idea was to rectify application of a rigid formula that doesn't work. We saw this impact fund expanding and who better to assess the needs than a group of individuals that can look at all the money that is coming in, all the needs and the evolving situation that's happening in that county. The second thing is why did we create the legacy fund?

Why does the legislature have to create a legacy fund? We can manage our oil impact money. It's because we need to have some barrier in place; some restraint for these extraordinary revenues. That's why 55-60% of the people in ND think it's good policy to have barriers when there is extraordinary revenues. It's the same reason we have 401Ks. They save for the future because they know it's just good policy.

Chairman Froseth: The reason there was disparity in the monies going back to school districts and various portions of different counties is that the money was allocated in proportion to the amount of tax base that each entity lost in the county. In that circumstance that you are alluding to, the one school district had very few acres in that county which is why they didn't get more than 10% of the money.

Senator Cook: I'd like to ask Senator Dotzenrod's question in a different manner. What is the fear of having the dollars going into the impact fund? Let's say there's $20M that gets put into the impact fund that's tagged for Mountrail County. Do you have a fear that as you apply for grants out of the impact fund that the impact fund won't consider grants from the $100M that we budgeted there and they'll take it out of your $20M fund first?

Representative Shirley Meyer: For those of us who lived out there, we saw what was happening with the infrastructure in 2007. It left overnight. We had roads that were fine and they were gone in a year. In 2009, we were nervous about it and we got the impact up to $8M. To put this money in perspective, that will do 8 miles of road. If you gave the whole impact fund to what the needs are in Dunn County, it wouldn't even begin to start to it. We keep making these adjustments, but the thought out there that's there's so much money that these counties can't spend doesn't even begin to address the needs in the infrastructure. They've got to have monies on hand so they can make a state and federal match. They haven't been able to do that. If we just allow those counties to have those dollars, true, it will relieve some of the pressure off the impact fund for the other 15 counties out there and that's what we are saying. When you talk about the disparity with the school districts, I would encourage you to go to Stanley and Parshall and you will see that not one of them begrudged New Town getting one nickel. Because New Town is getting that money, they get to build a school that the state would have had to build.

Senator Cook: Or the federal government. I don't know if that really answered the question. Let's just assume there's $20M that comes in above the $4M for Mountrail County and that goes into the impact grant fund. Are you afraid if Mountrail County had $20M worth of request s in there, that it would simply come out of their $20M and that none of it would come out of the $100M that's there? If that did happen, that would free up more dollars for Stark or Williams County.

Representative Shirley Meyer: Yes. In addition, when we keep doing this we are forcing these counties to hire grant writers. They do not have anybody sitting there that can simply whip out a grant. That is what we are creating. It's hard enough with the impact dollars when they've got to put together grants, but they've got to hire it. They will have to hire a grant writer to do this. The money is theirs. It's coming back to them. Why have to hire a grant writer to get their money back? Even if it does free up, $100M doesn't even begin to address the impacts out there. If they can keep their federal flood money, it will ease up on

the other counties. Perhaps that fear is out there, but it's more of this requiring them one more step that they've got to hire one more person to get their own money back.

Chairman Froseth: We are thinking it's going to be huge amounts of money in the next few years and I don't see that. In 9 months, Mountrail County got $1.4M so they're probably on track to get about $2M this year. I don't know where you are getting $20M. Probably when they get all infrastructure needs repaired (which will take years and years), then there might be extra money that will accumulate. At this time, I see the demand being there for at least 15 years.

Senator Cook: If you're correct then there's nothing to worry about.

Chairman Froseth: But why do we want the state to micro manage it?

Senator Cook: As far as hiring grant writers to write grants, if we look at the number of grants that were written for the impact dollars that were available this session, the number of grants that were written that did not become successful, the grant writers were all in place and they're going to be writing them and they are doing it right now.

Senator Hogue: It sounds like we're going to meet again. I'm getting conflicting information about the assertion of Representative Meyer that money has to be sitting in an account to match grants. Could you get me the contact information for the person that is telling that to you that there has to be the money in the account in order for them to qualify for matching grants?

Representative Shirley Meyer: I provided that information to you yesterday. It came from Dunn County auditor, Mountrail County commissioner and Mountrail County auditor (Joan Hollekim). They cannot bid these projects unless they have those monies on hand. The e-mails I shared with you yesterday confirm that.

Representative Wrangham: I see the legacy fund as being something totally different. I see that as somewhere where the state of ND is taking taxpayer money and putting it in a fund for future use. When we capture these funds and retain them at a state level, we are taking money that belongs to the area that was affected.

Chairman Froseth instructed **Senator Hogue** to have amendments ready for the next meeting. He adjourned the hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
April 21, 2011
16812

☒ Conference Committee

Committee Clerk Signature Julia Lfeigle

Explanation or reason for introduction of bill/resolution:

A bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Fort Berthold Reservation; and to provide an effective date

Minutes:

Chairman Froseth called conference committee to order. Clerk took role and quorum declared. He opened hearing on HB 1268. Does anyone have anything new to present?

Senator Hogue: I talked to Mr. Reinhard Hauck (Dunn County auditor) and he seemed to contradict what we've been hearing. The flood control money, for instance, in 2011 has nothing to do with the roads that are constructed in 2011. This is because they have no idea how much money they are going to get in a certain year. That is reflected in the spreadsheet we got. The money went from $20,000 to $200,000 to millions. They put that money into a fund and once that money comes into the fund, they use that in the planning purposes for the next year's road construction season. As Senator Cook said, when they plan these things out, it's a year to an 18 month process. They kind of know how much money they are going to get from the highway fund. They have a little bit of information of what they are going to generate themselves, but they don't know the amount of the money that comes from flood control. Thus the flood control money always goes into the next year's budget for the next year's road construction season.

Chairman Froseth: I believe that was the understanding we had in visiting with Mountrail commissioners that they bankroll this money until they have enough to meet their match on future projects that they are planning.

Senator Hogue: What I had been hearing from the House is that this money must be in their account for current operations to match current, ongoing road construction projects and that is not the case. Because of its uncertainty, the money goes into planning for the future years. This became relevant when we were talking about whether we put it into an impact fund and would ask them to apply for that. It wouldn't affect their planning process because it's not money they are using for current operations in any case; whether it's $20,000 or $20M. Because of the uncertainty of the amount, they can't plan for it and it goes into future operations, so they would have the time to apply for grant. I also learned

that for all their projects, they have an engineer and the engineer does the grants. The impact fund grants aren't the only grants they have to apply to. Thus, whether it is a federal grant, a matching grant, etc., the engineers are always involved in preparing that grant. Mr. Hauck rebuffed the notion that this puts a burden on the county. Preparing the applications is part of the road engineers' jobs.

Chairman Froseth: It might not affect their planning but they still have to have their share of the matching money in their procession before they can actually bid a project, is my understanding. I still think the best resolve is that amendment we offered two days ago that is a compromise of distributing $4M for the benefit of schools, counties, and townships and the remaining distributions (if there are any), go into the counties road and bridge fund to be used for matching federal dollars. That leaves it in the counties', which is the opinion as well of every person I've talked to. Why should we dispute the way our elected county officials want things done? They manage their own business so why should we try to micro-manage it? If we want to try to get this resolved, I think that is the way we are going to have to go. I just can't support tying up those monies through another system of writing grants and applying for money that deservedly belongs in their account.

Senator Hogue: (Distributed amendments 11.0098.01011 and reviewed. Please refer to attached amendments) This amendment puts all three of the issues that are in 1268 and 2047 and combined them into one and fixed the two problems that the House perceives and fixed the one problem that the Senate perceives. I moved amendment 11.0098.01011. The amendment would be that the Senate recede from its amendments and further amend HB 1268.

Senator Cook: Second

Representative Shirley Meyer: On pg 2, will the monies from the county that go into the impact grant fund be restricted per use the same way they are currently? Impact dollars are restricted to use funds for secondary impacts such as buildings and any kind of services for social impacts. Will these monies when they are put into the impact grant fund have to suffer the same restrictions that currently they're restricted to now?

Senator Hogue: I wouldn't look at it as a restriction. When we look at the current laws, we got 50% going to the school and 25% to the county. In the impact fund, we opened it up. For example, if there are impacts to a park district because people are staying squatting in the park, they can apply for impacts. Under the current law, they can't do that. A park district wouldn't be eligible for any money. Any of the other political subdivisions that levy don't get any of this money under existing law. Through the impact fund, I suppose they could.

Representative Shirley Meyer: Those monies over $4M are going to go into the impact grant. The impact grant right now has restrictions on those impact dollars (now it's going to be $100M). There are limitations. You cannot apply for grants for any kind of secondary impacts through those funds. Will those dollars over $4M from the flood monies have to be held to the same kind of restrictions that are currently in place?

Senator Cook: The section of law that puts the first $4M to the county and the rest to the impact fund references 701C3. That would define the restrictions and you can see in that law that they can use it for expenses of county government. Some of the restrictions that apply to the other $100M impact grants would not apply to this. There could not be a restriction that was more burdensome that any restrictions that are in the federal law.

Representative Shirley Meyer: The monies that the counties can apply for currently through the impact grant fund are restricted to the use. When you take these dollars over $4M, regardless of where they came from, and you put them in the impact grant fund, they're going to be restricted use. Currently, under the federal law, they can use these for government services, build buildings, etc. If you take these monies over $4M and put them in the impact grant fund, according to this language, those uses are going to be restricted because our impact grant currently has restricted uses on what those grants. There is no language in here that would allow them to use those monies for anything other than initial impacts. I'm going here with buildings. That language does not clarify that. Once you put that in the impact grant fund, then they're stuck there. It's the same thing as applying for an impact grant. The counties would be eligible to get those dollars on all these impacts that are very real and out there (buildings, social impacts).

Senator Cook: I don't believe they are but we could put some more language in there to clarify that question.

Chairman Froseth: We have a motion to move the amendment with a second. I would like to have some more time to review it. We will table that motion for another meeting. Meeting adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1268
April 21, 2011
#16836

Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to allocation between counties and the state general fund of oil and gas gross production tax revenues from production within the Fort Berthold Reservation; and to provide an effective date.

Minutes: *See attached amendments 11.0098.01011.*

Chairman Froseth: We are here for the tenth time. When we left we had a motion on the floor for the Senate to recede from their amendments and further amend with amendment 1011. Is there any further discussion on that amendment?

Senator Hogue: I had ordered an additional technical amendment to that amendment but I have not received it yet. The purpose of the amendment was based on the conversation I had with the Treasurer's Office that indicated that when they get the money the federal government doesn't segregate pasture rent from oil royalties; it all comes in one check. I thought it made good sense and they suggested that the money shouldn't be segregated because there isn't a way to do it and it really doesn't affect any other issue because the amount that comes in for the pasture rent and that type of stuff wouldn't be anywhere close to the cap we were talking about.

Chairman Froseth: I had some conversations too and found some problems in a couple different areas. I question the part in section 1 subsection A where it talks about the distribution to the schools on an average daily attendance. I don't know if that meets the federal code either so I question that. We either take a vote on this amendment or if you would like to withdraw your motion I would accept that also and if not we could take a vote on it.

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

Chairman Froseth: Any other amendments to offer? I would go back and offer amendment 1004 and 1007 as a combination of those two that I offered on April 8 and April 14 if you are interested. Does everyone have that? Actually 1004 has all three parts in it. 1004 amends all three of the sections that we've been discussing on this bill. It would probably have to be updated. The main body in section 1 starting on page 2 lines 1-5 is the

Fort Berthold fix and it also goes into the distribution of the school funding that was done in error two years ago. That would take care of all the sections involved in these two bills that we've been discussing. Are you at all interested in a motion to go ahead and have these bills redrafted and support them?

Senator Cook: Not at this time. You can certainly have them redrafted but I would certainly like to take a look at the corrected amendments that Senator Hogue is going to offer. The only reason I voted no against the last motion was simply to get that technical correction on that.

Chairman Froseth: If those changes are what he described I don't think I'd be interested in it.

Representative Shirley Meyer: I make a motion to disband the conference committee.

Chairman Froseth: We have a motion to dissolve the conference committee. Do we have a second?

Senator Cook: Seconded.

A roll call vote was taken: YES 5 NO 1 ABSENT 0
MOTION CARRIED.

Meeting adjourned.

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1268 as (re) engrossed

Date: 4-11-11, 4-12-11, 4-13-11

Roll Call Vote #: _____

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) _____

- ☐ 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: _____ Seconded by: _____

Representatives	4-11	4-12	4-13	Yes	No		Senators	4-11	4-12	4-13	Yes	No
Chairman Froseth	✓	✓	✓				Senator Cook	✓	✓	✓		
Rep. Wrangham	✓	✓	✓				Senator Hogue	✓	✓	✓		
Rep. Meyer	✓	✓	✓				Senator Dotzenrod	✓	✓	✓		

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1268 as (re) engrossed

Date: 4-18-11, 4-19-11, 4-20-11

Roll Call Vote #: _____

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) _____ -- _____

☐ 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: _____ Seconded by: _____

Representatives	4-18	4-19	4-20	Yes	No		Senators	4-18	4-19	4-20	Yes	No
Chairman Froseth	✓	✓	✓				Senator Cook	✓	✓	✓		
Rep. Wrangham	✓	✓	✓				Senator Hogue	✓	✓	✓		
Rep. Meyer	✓	✓	✓				Senator Dotzenrod	✓	✓	✓		

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1268 as (re) engrossed

Date: 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) --

☐ 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: Sen. Dotzenrod Seconded by: Rep. Meyer

Representatives	4-15			Yes	No		Senators	4-15			Yes	No
Chairman Froseth	✓			✓			Senator Cook	✓				✓
Rep. Wrangham	✓			✓			Senator Hogue	✓				✓
Rep. Meyer	✓			✓			Senator Dotzenrod	✓			✓	

Vote Count Yes: 4 No: 2 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION FAILED.

Prepared by the Legislative Council staff for
Senator Hogue
April 20, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1268

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 21-06-10, subsections 2, 3, and 4 of section 57-51-15, and subsection 5 of section 57-51.2-02 of the North Dakota Century Code, relating to allocation of revenues from the leasing of federal flood control lands and allocation of oil and gas gross production tax revenues; to provide for a legislative management study; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-06-10 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The state treasurer shall pay the moneys from sources other than mineral leases, bonuses, and royalties which are allocated to the state under 33 U.S.C. ~~701(c)(3)~~701c-3 to the counties ~~entitled to receive them in proportion to the area of~~that contain the land ~~in the county~~ acquired by the United States for which compensation is being provided under 33 U.S.C. ~~701(c)(3) as that area bears to the total of these federal lands in the state~~701c-3. A county receiving an allocation under this ~~section~~subsection shall disburse the moneys received as follows:

~~1.~~ a. One-half must be paid to the school districts in the county which have lost land subject to taxation because of the acquisition of lands by the United States for which compensation is being provided under 33 U.S.C. ~~701(c)(3)~~701c-3 in proportion to the area of these federal lands in each district as that area bears to the total of such lands in all of the school districts in the county. If, however, all of the land in a district has been acquired by the United States, that district's proportionate share of the funds allocated under this ~~subsection~~subdivision must be paid ~~into the county tuition fund and expended according to the law governing that fund~~to the school districts in the county in proportion to the school districts' relative shares of the average daily attendance of all school districts in the county.

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

~~3.~~ c. The final quarter must be allocated among the organized townships, if any, which have lost land subject to taxation because of land acquisitions by the United States for which compensation is being provided under 33 U.S.C. ~~701(c)(3)~~701c-3 and the county for road purposes in proportion to the area of these lands in each township as that area bears to the total area of these federal lands in the county. The county must be allocated a similar proportionate share based on

the area of these lands in the county not within an organized township.

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto.~~

2. The state treasurer shall transfer the moneys from mineral leases, bonuses, and royalties, which are allocated to the state under 33 U.S.C. 701c-3, to the counties entitled to receive them in which land has been acquired by the United States. Transfers to a county under this subsection may not exceed four million dollars in a calendar year and any amount exceeding that limit for a county must be transferred to the oil and gas impact grant fund, to be held in a special account for that county within that fund and made available through grants by the energy development impact office only to that county.

SECTION 2. AMENDMENT. Subsections 2, 3, and 4 of section 57-51-15 of the North Dakota Century Code are amended and reenacted as follows:

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

   ~~a.~~ (1) The first two million dollars must be allocated to the county.

   ~~b.~~ (2) The next one million dollars must be allocated seventy-five percent to the county and twenty-five percent to the state general fund.

   ~~c.~~ (3) The next one million dollars must be allocated fifty percent to the county and fifty percent to the state general fund.

   ~~d.~~ (4) The next fourteen million dollars must be allocated twenty-five percent to the county and seventy-five percent to the state general fund.

   ~~e.~~ (5) All annual revenue remaining after the allocation in ~~subdivision d~~paragraph 4 must be allocated ten percent to the county and ninety percent to the state general fund.

   b. For taxes under this chapter imposed on oil and gas production within the Fort Berthold Reservation, the allocation to the county as determined under this subsection must be based on the entire amount of state and tribal taxes collected on that production, the allocation to the state general fund must be reduced accordingly, and the allocation to the Three Affiliated Tribes of the Fort Berthold Reservation must be as determined under the agreements entered under chapter 57-51.2 without any reduction under this subsection.

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

population of more than six thousand. Any amount received by a county exceeding ~~five million three hundred fifty thousand dollars is credited~~the amount to be allocated under subsection 4 must be allocated by the county treasurer to the county infrastructure fund and allocated under subsection 5.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. AMENDMENT. Subsection 5 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. The allocation of revenue from oil and gas production taxes on the Fort Berthold Reservation must be as follows:

a. Production attributable to trust lands. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state.

b. All other production. The tribe must receive twenty percent of the total oil and gas gross production taxes collected from all production

attributable to nontrust lands on the Fort Berthold Reservation in lieu of the application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state must receive the remainder.

c. The state's share of the revenue as divided in subdivisions a and b is subject to distribution ~~among political subdivisions~~ as provided in chapters 57-51 and 57-51.1.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - OIL AND GAS REVENUES TO POLITICAL SUBDIVISIONS. During the 2011-12 interim, the legislative management shall consider studying revenues to counties, cities, school districts, and other political subdivisions from oil and gas taxes and from oil and gas leases, bonuses, and royalties and the appropriate use and allocation of those revenues. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 5. EFFECTIVE DATE. Section 1 of this Act is effective for revenue allocated to the state under 33 U.S.C. 701c-3 on or after the first day of the first month after this Act is filed with the secretary of state. Sections 2 and 3 of this Act are effective for taxable events occurring after June 30, 2011.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1268 as (re) engrossed

Date: 4-~~20~~21-11 am, 4-21-11 pm

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 11.0098.01011
- 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) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Hogue Seconded by: Senator Cook

Representatives	4-20 HJ	4-21 HJ		Yes	No		Senators	4-20 SJ	4-21 SJ		Yes	No
Chairman Froseth	✓	✓			✓		Senator Cook	✓	✓			✓
Rep. Wrangham	✓	✓			✓		Senator Hogue	✓	✓			✓
Rep. Meyer	✓	✓			✓		Senator Dotzenrod	✓	✓			✓

Vote Count Yes: 0 No: 6 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION FAILED.

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1268 as (re) engrossed

Date: 4-21-11

Roll Call Vote #: 2

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) --

- ☒ 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: Rep. Meyer Seconded by: Rep. Wrangham

Representatives	Yes	No	Senators	Yes	No
Chairman Froseth	✓		Senator Cook	✓	
Rep. Wrangham	✓		Senator Hogue		✓
Rep. Meyer	✓		Senator Triplett	✓	

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

MOTION CARRIED.

REPORT OF CONFERENCE COMMITTEE

HB 1268: Your conference committee (Sens. Cook, Hogue, Triplett and Reps. Froseth, Wrangham, S. Meyer), having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

2011 TESTIMONY

HB 1268

Testimony #1 p. 1
Read by Mark Fox

TESTIMONY ON HB 1268
HOUSE FINANCE AND TAXATION COMMITTEE
January 19, 2010
Tex G. Hall "Red Tipped Arrow", Chairman,
Mandan Hidatsa and Arikara Nation Tribal Business Council
Fort Berthold Indian Reservation

Mr. Chairman and Members of the Committee, My name is Tex Hall, my traditional name is Ihbudah Hishi, "Red Tipped Arrow". I am honored to present this testimony as the Chairman of the Mandan Hidatsa and Arikara Nation Tribal Business Committee. Yesterday our Tax Department Director, Mark Fox, presented written testimony to this Committee on my behalf regarding HB 1198. In that testimony I stated that I generally support any legislation that allocates additional tax revenue to areas impacted by the oil and gas boom in western North Dakota. However, I opposed HB 1198 in its current form, because it did not ensure that the MHA Nation, whose lands lie in the heart of the Bakken Formation, receives its fair share of tax revenue from production on the Fort Berthold Indian Reservation, to help mitigate the massive toll that the oil and gas industry is taking on reservation trust lands, infrastructure and resources. I urged an amendment that would provide what I believe to be a fair process to allocate the additional tax revenue among the affected counties and the MHA Nation. As a preferred alternative, I urged an amendment to Chapter 57-51.2 to provide that the MHA Nation receives 80% of the tax revenue derived from production from trust mineral acres on the reservation. Such an amendment would level the playing field by equalizing the percentages shared by the State and Tribe from production on reservation trust and non trust lands.

Testimony #1 p. 2

Because the language and intent of HB 1268 seems to be essentially the same with respect to the revenue reallocation provisions, I reiterate my request for an amendment as detailed in yesterday's testimony on HB 1198. I ask that the Committee consider that testimony as part of this Bill, and incorporate that testimony into the record for HB 1268. Thank you.

A

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

Kelly L. Schmidt
State Treasurer

House Bill 1268
Neutral Testimony
Committee: Senate Finance and Tax
Date: March 16, 2011
Carlee McLeod
Deputy Treasurer

Chairman Cook, members of the committee:

For the record, I am Carlee McLeod, Deputy Treasurer for the Office of State Treasurer.

We have a concern with the interpretation of the wording of this bill. We understand that the intent of the bill is to treat the Tribal Oil and Gas Gross Production revenue similarly to non-Tribal collections within the distribution method of this chapter.

However, the wording of this particular bill is inconsistent with that intent. In treating the Tribal collections under subsection 2 as "the full amount of tax under this chapter applied to all wells within the county, including any such wells located within the Fort Berthold Reservation," there is an inconsistency in that the other allocations are subject to the deduction of subsection 1, making subsection 2 represent 80% of the full tax. Tribal collections, however, would be treated as 100% (without the deduction of 20% represented in subsection 1).

For purposes of clarification, we suggest adopting an amendment to substitute the wording of HB 1198, which is as follows:

> Page 1, line 21, replace "For purposes of this subsection only, "annual revenue collected under this" with
>
> > For taxes under this chapter imposed on oil and gas production within the Fort Berthold Reservation, the allocation to the county as determined under this subsection must be based on the entire amount of state and tribal taxes collected on that production, the allocation to the state general fund must be reduced accordingly, and the allocation to the Three Affiliated Tribes of the Fort Berthold Reservation must be as determined under the agreement entered under chapter 57 - 51.2 without any reduction under this subsection.

Page 1, remove lines 22 through 24

Page 2, remove lines 1 through 5.

Renumber accordingly

HB 1198 also included a retroactive application, and the house chose to use the bill without the retroactive application to move forward this policy. However, the wording of HB 1198 is more consistent with the intent to "hold the counties harmless," and would avoid interpretation that differs from legislative intent.

Thank you.

Prepared by the Legislative Council staff for
Representative Froseth
April 8, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1268

Page 1, line 1, replace "subsection 2" with "section 21-06-10, subsections 2, 3, and 4"

Page 1, line 1, after "57-51-15" insert ", and subsection 5 of section 57-51.2-02"

Page 1, line 2, after "to" insert "allocation of federal flood control mineral lease revenue and"

Page 1, line 2, replace "counties" with "political subdivisions"

Page 1, line 3, remove "from production within the Fort Berthold Reservation"

Page 1, line 4, remove "and"

Page 1, line 4, after "date" insert "; and to declare an emergency"

Page 1, after line 5, insert:

"**SECTION 1. AMENDMENT.** Section 21-06-10 of the North Dakota Century Code is amended and reenacted as follows:

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

The state treasurer shall pay the moneys allocated to the state from leasing of land acquired by the United States under 33 U.S.C. ~~701(c)(3)~~701c-3 to the ~~counties entitled to receive them in proportion to the area of the land in the county acquired by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) as that area bears to the total of these federal lands in the state~~treasurer of each county in which such leased lands are located to be used for the benefit of public schools and public roads and to defray part of the expenses of county government, as provided in this section. A county receiving an allocation under this section shall disburse the moneys received as follows:

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

2. ~~One-quarter~~One-half must be paid to the county for road purposes to be expended as the board of county commissioners shall determine. One-half of the amount retained by the county under this subsection must be expended as directed by the board of county commissioners for infrastructure projects by or on behalf of organized or unorganized townships.

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

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto.~~"

Page 1, line 6, replace "Subsection" with "Subsections"

Page 1, line 6, after "2" insert ", 3, and 4"

Page 1, line 7, replace "is" with "are"

Page 1, line 21, remove "For purposes of this subsection only, "annual revenue collected under this"

Page 1, remove lines 22 through 24

Page 2, replace lines 1 through 5 with "For taxes under this chapter imposed on oil and gas production within the Fort Berthold Reservation, the allocation to the county as determined under this subsection must be based on the entire amount of state and tribal taxes collected on that production, the allocation to the state general fund must be reduced accordingly, and the allocation to the Three Affiliated Tribes of the Fort Berthold Reservation must be as determined under the agreements entered under chapter 57-51.2 without any reduction under this subsection.

3. The amount to which each county is entitled under subsection 2 must be allocated within the county ~~so the first five million three hundred fifty thousand dollars is allocated~~ under subsection 4 for each fiscal year ~~and any~~for the first time three million nine hundred thousand dollars for a county with a population of fewer than three thousand, four million one hundred thousand dollars for a county with a population of three thousand to six thousand, and four million six hundred thousand dollars for a county with a population of more than six thousand. Any amount received by a county exceeding ~~five million three hundred fifty thousand dollars is credited~~the amount to be allocated under subsection 4 must be allocated by the county treasurer to the county infrastructure fund and allocated under subsection 5.

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

b. Thirty-five percent of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. AMENDMENT. Subsection 5 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. The allocation of revenue from oil and gas production taxes on the Fort Berthold Reservation must be as follows:

   a. Production attributable to trust lands. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state.

   b. All other production. The tribe must receive twenty percent of the total oil and gas gross production taxes collected from all production attributable to nontrust lands on the Fort Berthold Reservation in lieu of the application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state must receive the remainder.

   c. The state's share of the revenue as divided in subdivisions a and b is subject to distribution ~~among political subdivisions~~ as provided in chapters 57-51 and 57-51.1."

Page 2, line 6, replace "This" with "Section 1 of this Act is effective for revenue allocated to the state under 33 U.S.C. 701c-3 on or after the first day of the first month after this Act is filed with the secretary of state. Sections 2 and 3 of this"

Page 2, line 6, replace "is" with "are"

Page 2, after line 7, insert:

"**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly