2011 HOUSE FINANCE AND TAXATION

HB 1458

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1458
February 2, 2011
#13849

☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to establishment of an energy infrastructure development office and grant program and an energy infrastructure development fund for deposit of certain oil and gas gross production tax revenues; relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to provide an appropriation; to provide a continuing appropriation; and to provide an effective date.

Minutes:

See attached testimony #1, #2, #3

Representative Skarphol: Sponsor. Support. Please refer to attached amendments, testimony #1. Obviously it's a major issue in western North Dakota to repair the infrastructure. What this piece of legislation does is to give the money to the folks who need to spend it rather than sit in Bismarck and make them come down here and ask for it. We leave some portion of it here under the management of what is proposed to be called the Energy Infrastructure Development Office. That is the hope of most of us who appropriate money that that is what this will do is fix infrastructure. That's not confining it merely to roads, we do envision cities using it for water and sewer for whatever the cities needs are. For the counties and townships obviously we expect it to fix roads. That's the issue we've been hearing about and that's the expectation that we would have of this bill. It may be necessary to include some language which more clearly defines the legislative expectation to the process that would be utilized for the grants awarded in this section. In other words, my vision is that the grant dollars that are left in here are not intended to be given away simply because they are there but to be strategically utilized to try and address the issues that are unable to be addressed on a single county basis, on a single township basis, and thereby this bill does allow for them to be carried forward so if there is a need for a larger amount of money to address some particular issue they could accumulate some money. The grant process from my perspective and from the leader's perspective is that this is not about making sure all the money that is in here is spent in one biennium or in two biennium because this does in fact extend over two biennium at which point it is sunset and will have to be revisited. Referred to the attached bill.

Representative Shirley Meyer: On page 3 under the allocation that it is true about the federal flood and there were only two counties that were affected; Dunn and Mountrail. They had 30 years of lost revenue after that land got flooded. Both of them had a onetime spending and if they hadn't been able to use that they would have been to the state asking for it. On page 4 number 3, does this put back into place the caps that we fought so hard to remove last session?

Representative Skarphol: No, this does not. This addresses a need to try and hold the schools harmless. This isn't perfect and we will never have it perfect because as populations change somebody could move from one category to another. It's something we may need to continue to address but this is the best faith effort we found possible.

Representative Shirley Meyer: Still on page 4 where there is crossed out language "federal aid" and underlined language of "federal aid", is that just an error?

Representative Skarphol: No, it is not an error. I challenge you to figure it out. That's what I was looking for earlier that I couldn't find. If you look really close there is a hyphen in the part that was over struck.

Representative Shirley Meyer: On the top of page 6 with the mining industry you indicated that the date to be used for that, and I've had an issue with that because of subcontractors and hot shot companies and that kind of thing, those percentages are never counted and you eluded to that. The data that will be compiled with the $100 thousand from Job Service, will this bill be implemented before that data because under that there is Minot and Dickinson who will never qualify and they have a huge amount of impact from the subcontractors and different oil and gas development with the Bakken and the subcontractors who don't qualify under the mining exemption.

Representative Skarphol: On page 6 I don't believe is where you are referring to but anyway in response to your question I guess I didn't get into that level of detail, I was primarily concerned about the trucking but we can certainly have that conversation to try and ensure that happens. There are prohibitions on what Job Service can do within federal guidelines so we will have to work with Job Service on that and figure out a correct appropriation to put on the bill. Section 5 subsection a for example, that is the requirement in law where you have to have a 10 mill levy in order to be eligible and I think that's what this is about is some clean up language. I think it is some differences in section and subsection numbers that have to be referenced.

Representative Shirley Meyer: On page 7 will those monies be allowed one lump sum payment and they can be used how they wish?

Representative Skarphol: Yes. I believe there is language here that specify that it will be sometime in September. September is when they receive their first allocation for the new fiscal year.

Representative Roscoe Streyle: Same page, same section, when I read the original bill it showed that Mandan was going to get $4 million and Minot $4 million which really disturbed me but this bill doesn't include any money to Mandan. Why was there only $4 million to Minot instead of the $5 million that the Governor proposed?

Representative Skarphol: I guess it was based on the fact that we anticipate that the number of private covered employment engaged in the mining industry in Minot was probably less than it was in Dickinson. As Minot's employment grows and we develop the new criteria that Minot's dollar amount earned would grow as well I guess personally there was a sense that Minot had just received $15 million from the federal government for a project with regard to their oil park and that they had received subsequent money from state government earlier to help develop that. For the time being we felt it was more important to take care of Williston and Dickinson.

Representative Roscoe Streyle: Going forward they could potentially get more with the other section of it. Why can't we just specify that in the bill? Why can't we just say Minot, Dickinson, or Williston?

Representative Skarphol: Very seldom do we name a name. We don't use proper names as long as we can avoid them.

Representative Shirley Meyer: On page 7 section a, aren't these reported currently to the Tax Commissioner, the amount received by the county and federal mineral lease bonus and royalty revenue allocations? I'm focused in on the federal mineral leasing, isn't that done currently?

Representative Skarphol: I believe that there is probably some type of reporting of it. Our intent here was to get more adequate reporting of it and more specific reporting of it. We also would like to see some degree of information on the utilization of it.

Representative Shirley Meyer: Would you develop a reporting requirement where they would have to justify the expenditures under that for federal minerals?

Representative Skarphol: There is a discussion taking place on the other side of the hall what the federal law actually requires with regard to the utilization of these dollars. From my perspective we thought it was important that we got the best information available so that in the event we wanted to make a change that we have the necessary data to properly evaluate what is appropriate. There is a suggestion that has been made that for example, the money that Mountrail County received could by still complying with federal law have been distributed to all counties having federal land around the reservoir that would not have necessarily have gone to just Mountrail but could have been distributed to all. It's an effort for us to get the best information.

Representative Shirley Meyer: On the top of page 9, the last line, grants under the subdivision must obtain prior approval from the budget section of legislative management. They only meet quarterly and wouldn't that cause more delay again? Isn't this adding another level of asking again for a grant?

Representative Skarphol: I think that is twice as often as the impact offices delivered money.

Representative Shirley Meyer: I was just looking at language to say if these grants come in that this budget section could meet more often just to handle the grant requests so that you don't have this delay.

Representative Skarphol: Based on the fact that political subdivisions quite probably will receive an additional $80 million out of the existing formula and they will received probably close to $70 million in the 80% of the 80% here that I would think the grant applications that we receive would not be all that imperative that the decisions be made on weekly basis but rather quarterly would be sufficient.

Representative Wayne Trottier: Will the townships need or have the expertise to do the grant applications?

Representative Skarphol: It would be my intent that the applications wouldn't come from the townships but rather from the counties in somewhat of a consolidated basis. The counties are really the ones that are to oversee the townships role in this rather than have somebody from state government in Bismarck having to visit every township road in western North Dakota.

Representative Shirley Meyer: I'm on page 10 section a on the transfer, is there any monies currently in the oil and gas impact grant fund?

Representative Skarphol: That is merely a formality in closing out that particular fund.

Representative Steven L. Zaiser: You were talking about the need of pooling projects so they would be large enough and if we couldn't find a contractor that wasn't busy in the states we could attract a nationally regional contractor, is that right? We could pool projects? I also want to commend you for the accountability aspects. I think they are critical and as we go on and evaluate and if you don't have information to determine if changes are needed then you are not going to be able to make those appropriate changes. I just commend your focus on that aspect.

Representative Skarphol: We have at least one county in the west that has money in the bank, oil money in the bank that they haven't been able to spend because they couldn't get a contractor. We have another county who would like to buy five more patrols in order to more adequately blade their roads but they are uncertain they could hire the people to get it done. If we are going to make an effort to try to bring someone in we have to have a large enough dollar amount accumulated to make it attractive to a contractor to make that move. There are substantial costs on moving that heavy equipment. That's the logic behind that particular aspect of this bill.

Representative Drovdal: Co-sponsor. Support. Please refer to attached testimony #2. This bill is a new approach to funding some of the impact caused by the exploration of oil and gas. This bill and the Governor's proposal which is HB 1012 are the most important pieces of legislation for the oil and gas counties, cities, townships, and schools that we will have before the entire session. It is very important to the area from which I come from. Over the last several sessions this committee has had tons of information regarding the development of oil and gas. This is the committee that the decision should be made at because you have the institutional knowledge. It is important that you understand both the proposals you have even though you have only one bill before you which is HB 1458. I do have a cheat sheet that I would like to pass out. This gives you a little background on what the Governor's bill does. Please refer to attached testimony 2a and 2b. There are several issues on this bill that I hope are properly addressed in the final proposal that reaches the floor from this committee. The federal flood dollars bill was incorporated because of the Garrison Dam. That was 60 years ago. Those townships and counties lost those tax dollars. It's been six decades they have not received the funding from those federal flood dollars. Many people in the oil field feel that this 10 year lease which the federal government puts out is the only lease they are going to get because by that time a well will be drilled and we are already seeing exploration on the lake and those leases will be tied up. This is a onetime bonus but still there were several cases that it was quite a bonus and it did lead to some problems. We are capping the schools at 10 times what they would have gotten before the land went under water and before the state did the property tax relief which was fair because it was a 10 year lease. We don't have the same counties, the school serves up to 800 students and the townships have sometimes less than 10 people in them. Why are we capping one and not the other? That is a discussion we didn't have time to get in to but it's one of the problems that need to be addressed. Two years ago when we passed the oil impact dollars there were about 40 rigs running in North Dakota. The price of oil was low, around $40 or something, in fact, we as a legislature were concerned because the price of the oil was so close to the trigger we were within about two weeks of the trigger kicking in and that would have had a tremendous impact on the revenue the state was going to be getting. It was quite a concern two years ago when we did that. When we listen to the impact last session we heard about roads and most of the people working there were local people and in many cases local companies. We didn't hear about a lot of other impact so we dedicated the impact to taking care of those roads. That was our focus and we did a good job at it. What happened is the unforeseen by anybody was the turnaround in oil prices. They are currently at $91 and something a barrel and going up. There are roughly 170 rigs running in the state right now. We heard a rumor of up to 70 more rigs coming into the state. Today the impact not only affects the roads but it affects everyone, everything, every organization, every entity, and every service whether it's public or private in western North Dakota. One thing that we did was focus this bill on impact caused by oil and gas. One of the concerns that I had was the grant writing. I don't want to have the townships, counties, and cities to have to hire somebody and use that oil impact money so they can compete with other people to get these grants. We want this money to go to fixing things not to salaries to write for grants. Maybe we can't avoid that because we do want accountability. One of the things that this bill does is that it takes the schools out of being able to apply for any infrastructural grant program at the county level. There is a sentence in there that they will be able to apply for the state impact grant. Schools would like just to be able to apply for that county infrastructure grant funds for impacts other than just buses and repairs. This is a very important bill. I have the figures on the federal flood money. Please refer to attachment 2b.

Representative Shirley Meyer: We were told from Representative Skarphol that the grants for city street design and construction projects must be given priority among awards. We have so many secondary impacts that we don't get to count under the oil and gas impact. It's so easy to see a road or a bridge that is washed away but our social service costs, police, and fire like in Dunn County has gone up 2,000%. When these grants are given priority where can the secondary impacts that we really aren't allowed to count anywhere where can they be given for that in this legislation?

Representative Drovdal: You raise a good point. Certainly I am aware of the additional costs they have with the social services, fire, and law enforcement and it's true that the priority on this part of the bill is for roads. We have to remember that the other formula is still out there and there is going to be quite a few of additional dollars; I think we're going from $71 million from last biennium to $150 million. That formula will be set out to and hopefully that will address a lot of those costs too. This primary focus is on the roads and allowing the other formula that will stay in place even after the four years to continue to address the other needs.

Aaron Birst, Legal Counsel for ND Association of Counties: Support. Please refer to attached testimony #3.

Michael Zish, Research Analyst with ND Job Service: We would be the entity providing the employment data related to this bill. I just want to inform you on what we provide. What goes into the figures currently that provide mining industry as a percentage of private employment and what we can do in the future. I just want to add some light to that, currently the provision reads "mining as a percentage of total private employment at certain tiers." This bill as it stands adds more layers to this and more tiers. We realize the way this currently stands is not perfect. Mining specifically excludes many things that we know are specifically included or specifically related to oil and gas activities; dedicated trucking, engineering, consulting, leasing of equipment, wholesale trade, these are all industries in the state with employers specifically dedicated to oil and gas. We could pick this up and we would pick this up under the second tier that is being discussed in this. It would be quite an improvement. The method we have now is crude but with the current classification system that the Bureau of Labor and Statistics used and Job Service uses is what we're forced to use but we realized that is could be improved. I would be happy to explain to anyone here outside how that could be done and done well.

Chairman Wesley R. Belter: Is there some clarification language that you think is needed in this bill or are you comfortable with it as written.

Michael Zish, Job Service: the clarification language that I would suggest would be not to include the specific word "transportation" as an addition to mining. We could call it oil and gas related activity because that would be broad enough to allow us to capture those fringe industries. We may be surprised at some of the fringe industries that are indeed dedicated to oil and gas and we would be able to gather them in. I would hesitate to use something as restrictive as what is in there.

Chairman Wesley R. Belter: Would you prepare some language that you would feel comfortable with?

Michael Zish, Job Service: I would be happy to.

Representative Shirley Meyer: When we were meeting with Job Service two years ago we were told by them that it couldn't be reclassified because of the Bureau of Labor and

Statistics. We were working on an amendment at that time that we could reclassify these things because of the change in what's happening out there with the current oil production. Job Service indicated to us that we can't do that because then you don't fall under the Bureau of Labor and Statistics designation. Was that wrong or right?

Michael Zish, Job Service: I believe I was the one that told you at least indirectly and that is exactly the truth. We cannot altar the North American Industry classification structure that we classify all businesses in the state. However, we are going past that and that is where the additional funding would allow us to go out and ask a more generic question and then we would start flagging individual businesses as being involved in oil and gas activity. It has nothing to do with the core code that they would have because some of them are going to be slam dunks and anybody that is going to be in mining we wouldn't even need to send a questionnaire out to it's these fringes that we would and then be lumping them into a new group instead of the industry class that we are bound to.

Representative Shirley Meyer: So you're saying we can now create a new classification or group or subdivision under that division?

Michael Zish, Job Service: What we are suggesting is flagging a secondary flag on companies that would identify them as being related to oil and gas, either first tier which is the mining but it would allow us to bring in the second tier which is the support and the vendors. It isn't a matter of giving them a new industry classification it's just that we're throwing out another flag or another group.

Representative Shirley Meyer: This group will count towards the percentage under this 1458 toward the cities?

Michael Zish, Job Service: That's exactly what it would be. As I read this quickly this morning it looks like we'll go current until such time we would be able to conclude the research and then it would be simple matter of changing the language to be "those grouped by Job Service as being oil and gas related as a percentage of total private employment" or whatever the wording would be then. It would be a nice elegant wording and from our perspective it would be relatively easy to accomplish.

Representative Patrick Hatlestad: Basically what you're saying is that Job Service would take the $100,000 in a sense and become a consultant to do things a little differently and then merge it with some of the data that you already have?

Michael, Job Service: That's an excellent question however we are the only entity able to do this research and to do is purely because we have the data base. The 27,000 employers in the state that have unemployment insurance accounts with us, we have their micro data. It would not be a matter of us going out and asking a question like a consultant would. Assuming we have thrown the net wide enough we control the universe data base so we would be able to go out there and send questionnaires out in a very thoughtful manner to the businesses in the western part of the state specifically and possibly in the eastern part of the state. We would know that we questioned everyone; it wouldn't be a cluster analysis or what a consultant would have to do and assume that they know what the industry looks like. We are the only entity that has control of that data and we would be allowed to send this questionnaire out.

Representative Patrick Hatlestad: Basically what I'm saying is you do your job according to the federal guidelines. This is going to take you out beyond that. In a sense you are doing a lot more than what the feds allow. We are kind of like hiring to do that additional information?

Michael Zish, Job Service: It isn't so much that we're going outside the guidelines, we certainly aren't doing that. We are held by some pretty strict guidelines in what we can do, however, we are allowed to do special research for special needs and this would be an excellent example of one of those research abilities that we would be able to do that we currently have done. We see the need and realize some of the shortcomings of the data we do provide so this would be an opportunity to remedy that and it would be something new that we currently don't do but would certainly be allowed for us to do with the Bureau of Labor and Statistics.

Chairman Wesley R. Belter: No further testimony. Closed hearing on HB 1458.

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HB 1458
February 8, 2011
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Explanation or reason for introduction of bill/resolution:

A Bill relating to establishment of an energy infrastructure development office and grant program and an energy infrastructure development fund for deposit of certain oil and gas gross production tax revenues; relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to provide an appropriation; to provide a continuing appropriation; and to provide an effective date.

Minutes:

See attached amendments #1 and testimony #1.

Chairman Wesley R. Belter: Distributed amendments. Please refer to attached amendments #1.

John Walstad, Legislative Counsel: I'm not sure if you want me to walk through this amendment or what you would like me to do?

Chairman Wesley R. Belter: I think we should walk through this amendment.

Representative Shirley Meyer: As you walk through it could you point out the differences between the last hog house we had and this one?

John Walstad: Let's walk through what is here. Reviewed amendments 11.0392.01006.

Representative Shirley Meyer: With that issue it is still going to have a $1.2 million cost it just isn't in this bill, correct?

John Walstad: Yes. I don't know about the $1.2 million figure. The appropriations committee will have to take care of that part I assume in the land board appropriation. Continued to review amendments.

Chairman Wesley R. Belter: There are no changes in the first section last two paragraphs?

John Walstad: I think only in the name of the Infrastructure Development Office. Continued to review amendments.

Representative Steven L. Zaiser: Representative Skarphol talked about this grant program and how they might be grouped together since the projects were so big and they might not be able to get contractors. Are there some dollar amounts used as guidelines? Are there dollar amounts to determine whether they would go regional versus staying in state or is that just a discretionary decision?

John Walstad: That isn't specifically addressed but flexibility is built in so that those decisions could be made as projects arise. Continued to review amendments.

Chairman Wesley R. Belter: Is the treasurer's office going to get back to you?

John Walstad: I hope so. Apparently, it is not easy to figure out. The payments come from the federal government. The federal government provides a little bit of information with the payment. The state auditor's office obtains the information and gives it to the treasurer. There is some difficulty tracking where the money is coming from and what property it is attributable to. The money is being distributed now so somebody has got to know.

Representative Lonny B. Winrich: What does it mean in the description of the formula "to multiply by the current general fund mill rate"? If the mill rate is 185 do you multiply by 185 or by .0185?

John Walstad: 185 mills in decimal form is 1.85% of taxable value. It is to represent 10 years of the property tax revenue that would have been generated by those lost acres.

Vice Chairman Craig Headland: There is no change in there from the last draft?

John Walstad: Depending on which draft. I don't remember if the 01 draft had this, I don't think it did.

Chairman Wesley R. Belter: I think this is identical to the 01

John Walstad: Those payments to school districts are the first thing that is done. Under certain circumstances that could eat up all the money that is received by the county and then there wouldn't be anything else. There is a limitation here that those payments to school districts can't exceed 50% of the balance on hand in the fund. The remainders either 50% or possibly more than 50% if those school payments are less than ½ go for infrastructure development by the county and can be used for grants to school districts for one time expenditures. Continued to review amendments.

Representative Shirley Meyer: Under this section with the federal flood control monies that we received previously they were used to shore up a lot of impacts from everything from EMT to whatever. Would this prohibit the secondary impacts to use the federal flood control monies?

John Walstad: I think you are. In addition the money that the county receives would have to be used for infrastructure development so the county would be limited to that function also.

Vice Chairman Craig Headland: I'm looking at the two drafts the 01 and this one and the first draft says it may not exceed 50% of the annual deposits in the fund and the new draft says it may not exceed 50% of the balance of the fund. What is the difference?

John Walstad: I don't recall a discussion of when the change was suggested. It has something to do with when the money arrives and when it is measured.

Representative Glen Froseth: This flood control money is not included in the $102 million?

John Walstad: That is correct. The reason is that by federal law these revenues go back to the county where the land is producing the revenue. The fortunate county is getting a lot of payments but it is not available to all the counties that are affected by development. Continued to review amendments.

Representative Shirley Meyer: I'm still on the first 1%. Is the oil and gas research fund in here or not?

John Walstad: The oil and gas research fund is not in this section of law. That is a separate section and it isn't addressed in this draft. What it says is from the money from the gross production tax that would otherwise go to the state general fund. This is after all this is over with, whatever is set by law to go to the general fund 2% of that up to $4 million per biennium goes to that fund. This draft would not affect that. Continued to review amendments.

Representative Shirley Meyer: The only city that would qualify for the $10 million would be Williston?

John Walstad: Under current statistics Williston would be the only one. However, another city could qualify if their percentage of employment engaged in mining rose to that level.

Representative Lonny B. Winrich: I think this is in a future section of the bill but we are going to adjust the formula and determine again how they are going to count the number of people employed in mining, are we not?

John Walstad: Yes we are. There is money in here for Job Service to do that. Continued to review the amendments. There is a mistake in there on page 7 the second paragraph from the bottom where the word "energy" is over struck but something is wrong with the underscoring there. "Energy" should have been followed by something else. I'll make a note. It never said "energy development impact office". I inserted the language for the energy development infrastructure office, the name got changed and "energy" had to come out. It should have disappeared instead of showing up as over struck. I will fix that. Continued to review amendments.

Representative Lonny B. Winrich: Which cities get cut out of this by the $7,500 or more restriction? I assume Stanley does since you haven't mentioned it.

John Walstad: Stanley does. Watford City would not qualify due to population numbers. I don't think there are any cities that are right under $7,500.

Representative Shirley Meyer: Is there a reporting requirement such as on page 7 I see the reporting requirement for the counties. Under section 4 on page 8 is there the same reporting requirement for how the monies are spent for the city?

John Walstad: No, you are reading that correctly. City reporting would not be required.

Representative Shirley Meyer: That would then in just one lump sum that is given to the city based on this percentage?

John Walstad: That is correct. The payment is intended to happen once a year.

Representative Steven L. Zaiser: It seems to me that this is counterintuitive because they probably have more staff capability than towns would have to fill out reports to do the accountability.

John Walstad: I can't argue with you. It is something that never was mentioned to me. I don't know if it has even been considered that cities would have to report.

Representative Glen Froseth: There are only three cities that could qualify; Williston, Dickinson, and Minot. Dickinson could reach that top level quite easily with the number of employment and Minot could possibly but they are a long way from that percentage of employment that would qualify them for the maximum payment.

Representative Roscoe Streyle: In the previous section when you talked about $2.5 million until 2015 and after 2015 if the numbers are exactly the same $800,000?

John Walstad: Assuming Minot is at 2% then the payment would be $800,000 beginning in 2015.

Representative Shirley Meyer: The reporting requirement for the counties there is a concern because each county has different royalties handled differently in different time requirements. Under this language will they have to develop a format that all of the counties are going to be using? Is there a standard format or are they going to accept the report in the form that the counties are sending?

John Walstad: In that first paragraph in subsection 7 the format is to be prescribed by the tax commissioner. That is what has been done now. this was the first cycle of reporting and there were some problems in trying to capture the first year of the new allocations and things that based on county choices on when money is allocated or the infrastructure fund grants are allocated. That may have happened either before or after the reporting deadline that was imposed in the first year. I would expect that when we get into consecutive years of reports that problem will go away. Those expenditures will show up in this year or that year and when a full year snapshot is taken consecutively those differences between counties will show up somewhere. It won't look like one county is not spending the money for the purposes intended; it will be on the next year's reporting cycle.

Representative Roscoe Streyle: Getting back to page 7 and 8, the new Job Service expanded data isn't going to be used until 2015?

John Walstad: That is correct. They have to make some agreement with the federal government about how they report.

Representative Roscoe Streyle: Four years to get that data? In talking with Job Service I didn't get that impression but I must have misunderstood.

Representative Shirley Meyer: Under Job Service data currently the oil and gas related private employment; do they get those statistics currently under the taxes that they file? Is that how that data is determined currenlty?

John Walstad: How Job Service pulls the data?

Representative Shirley Meyer: Where is this data from Job Service coming from? I'm on the top of page 8.

John Walstad: I hope it's based on real statistics. I don't know how they gather information and identify who is or who is not oil related.

Representative Roscoe Streyle: When I talked to Job Service they said they were going to survey. He used the example if you have a trucking company that is hauling water it probably doesn't qualify now but say 16 of those 20 trucks are in the oil field hauling water that portion of employment would then be included in the expanded job service definition. That is how he explained it to me. I don't know what he meant by survey though.

Representative Shirley Meyer: That's my point. We're looking at a bill that is going to be implemented by August 1 so here is this data where cities are going to be given up to $10 million or not and it is based on data that we don't have.

Representative Roscoe Streyle: It would be based on current data which is very old and not including any expanded industries nor to proportionate the percentage of your business that is actually in the oil field but doesn't fall under the job service data at this time.

John Walstad: Continued reviewing amendments.

Representative Shirley Meyer: In reading this I tried to look at the county road and bridge levies, (inaudible as speaker wasn't on).

John Walstad: That is what I was trying to explain. The fact that is says road and bridge it is not intended to mean just the road and bridge levy because counties can levy from at least four different sources and spend the money for roads and bridges. The intent is here for anything they levy for road and bridge but not road and bridge. What if we said county infrastructure?

Vice Chairman Craig Headland: How do you come up with a fair average?

John Walstad: The average is individual counties. You look at Mountrail's total levies for infrastructure for the previous three years and average them out and the current levy is to be at least that average amount or more. That is what is intended.

Representative Steven L. Zaiser: You're talking about the cumulative money spent on roads from any or all of those roads related funds, the farm to market, the road and bridge, etc. Is it any or all as long as they meet the requirements?

John Walstad: That's what I was trying to emphasize that the language is supposed to be read expansively for wherever they are getting property tax money and they are using it for infrastructure. Maybe a word change would be in order.

Chairman Wesley R. Belter: To the best of your knowledge, everyone would qualify?

John Walstad: I really don't know because it uses averages. My assumption is that those levies are gradually increasing in impacted counties.

Vice Chairman Craig Headland: We're taking the average of that county's levies but if taxable value has increased and they've chosen to lower those levies then they still are collecting the same amount of dollars then this would kick them out. We're looking at other legislation that would possibly require them to go down to that prior year's levy, are we not? So I don't know if this is going to work.

John Walstad: It could cause a problem if the math doesn't work out right for some county and then they could lose that 80%.

Vice Chairman Craig Headland: We're forcing counties to raise their property taxes because we are forcing them to take all that taxable value. We won't allow them to lower their mill levy if they are getting more money.

John Walstad: If there is going to be an influx of money available to counties they should at least keep up local effort.

Representative Glen Froseth: Is there any way to determine how much this pool of money is 15% that would be distributed under this formula.

John Walstad: It's $80 million.

Chairman Wesley R. Belter: $64 million in a and $16 million in b.

Representative Lonny B. Winrich: Can you say anything about the Upper Great Plains Transportation Institute? What does it mean to say we are going to follow that plan?

John Walstad: Upper Great Plains delivered a report for $400 million of spending for infrastructure improvements over a period of time. I'm not sure it is detailed enough that you could use it as your absolute building block but I think that it is included here as a marker to be used by counties, DOT, infrastructure development office in allocating money where there is some discretion. The objective would be to make the recommended improvements and someone in this chain of command will have to make decisions about what comes first. You can't try to do all the projects at once as there aren't enough contractors. It doesn't make sense to only do a portion of a highway and leave the rest; it should be consistent. They need to be consecutive and usable and then tie them into the state highway system. There are some complicated decisions to be made. It is just put in as a beacon that will shine enough light on everyone so they make the right decisions. Continued reviewing amendments.

Representative Shirley Meyer: When you're giving priority for city street design construction projects the impact fund that we have currently is what most of our counties were using for fire, ambulance, EMT; the secondary impacts. In reading this I am getting the impression that when you are giving priority to the street design and construction the secondary impacts won't be eligible or they won't be given priority?

John Walstad: Energy infrastructure development needs, I'm not sure if that includes fire, ambulance, EMT, etc. I think it might take a stretch of interpretation to do that. Perhaps you are right and that funding wouldn't be available here. Maybe cities then have to change what they use their property tax dollars for.

Chairman Wesley R. Belter: I understand that this 80% that is allocated in proportion to the amount of oil production amongst the counties? It's not written in there but the sponsor had indicated that it is proportionate to the production.

John Walstad: There is a huge oversight here. We have nothing in here to decide how much each county gets.

Representative Shirley Meyer: Isn't that what the granting is doing? Every county regardless of its production is going to have to write for a grant from this new law.

John Walstad: The 20% portion is grant money and the 80% of that money to counties is allocated directly to counties. It doesn't say how much each county gets.

Chairman Wesley R. Belter: This is not allocated through grants is it?

John Walstad: Subsection a is not but subsection b is. Sub a needs some direction on how much each county gets out of this percentage.

Representative Shirley Meyer: When you tie it back into one when I read this I assumed it was done proportionally. They did a county by county survey. Although it doesn't state that under subsection a I thought that is how the 80% of funds were going to be distributed according to the Upper Great Plains Transportation Institute study that was supposed to keep continuing. Is that a wrong interpretation?

John Walstad: I guess based on the language that is here that is the best argument you could make for how much each county gets but that is not a very precise thing for the treasurer's office to work with to split money. I think something more needs to be provided here to make those allocations. Continued reviewing amendments.

Chairman Wesley R. Belter: In a. that is a direct payment and I believe there is about $5 million in that?

John Walstad: I don't remember the number but I thought it was $6 million some. I'd have to redo the math now that the revenue number has declined to $80 million. $6.4 million and 2/3 of that would be $4.1 something so there would be $4.1 available in subsection a for per well payments. I don't know if that is enough money based on the number of wells that are out there.

Representative Shirley Meyer: A township that receives these dollars is it where the well was spudded? Like with the 12-80 spacing it is going to cross or a 25-60 spacing you're going to have more than one township involved. Is it where the well was spudded or is it across the spacing unit?

John Walstad: I think the only way you can read it is where the well is so spacing units are disregarded. Continued reviewing amendments.

Representative Shirley Meyer: The monies that are in there currently that have been obligated, those don't get touched or reconfigured in any way, do they?

John Walstad: The intention is that obligated money wouldn't be affected. The language "unobligated balance" if there is money in there that isn't committed to something then that is what would be transferred. The fund is to be closed out so committed money is going to have to go somewhere.

Representative Shirley Meyer: Where would those monies go, to our counties or townships?

John Walstad: I don't know. I haven't looked into that in depth. I would assume they would have to go to whoever they are committed to. I don't know if there are commitments made over an extended number of years that someone has to administer.

Representative Shirley Meyer: I've only looked into Dunn County where they're committed but because of projects taking long to get contractors and such and they don't want to hold it in their county general fund and you certainly don't want to give it to the contractors. Is there a provision that it just goes to the county and then will that show up on the report that they have to file that shows they have all this money in there? I see that as a problem in filing their report.

John Walstad: I see a potential problem there as well. I don't know what the answer is. The treasurer's office told me to put that provision in so they can close that fund. It may be that there are some loose ends to tie up when that happens or the closeout would be delayed until such time as those commitments are fully complied with.

Chairman Wesley R. Belter: When John concludes the treasurer's office is here so we can ask some questions then.

John Walstad: Continues reviewing amendments.

Representative Shirley Meyer: But this does not include the $1.2 million for the office, this is in addition to the $1.2 million?

John Walstad: I'm not sure. You would have to ask the sponsor. I don't know if this number is to be reduced to fund the office appropriation or not. One thing it is reduced for is $350,000 to the Upper Great Plains Transportation Institute and that money is intended for to update the report on transportation infrastructure improvements and for them to monitor the progress on implementing what is on the report now. That would then tie into that recommendation that the infrastructure development office would make to the budget section relating to how much funding is made available in year two of the biennium. Continued reviewing amendments.

Representative Glen Froseth: I see some problems with the cities. I know the city of Stanley has had an upgrade of their city street infrastructure, they tore up their whole main street and put in new water and sewer and repaved it. They reached their bonding indebtedness paving for roads this past year. Under this bill they will not get any funding because it is all dedicated to roads and bridges infrastructure. What they need right now is an update additional space in their lagoon system and they won't be able to use funding from this bill for that purpose, would they?

John Walstad: Whether that's infrastructure or not, I'm not certain. Water and sewer I would guess is infrastructure.

Chairman Wesley R. Belter: It is the intent of the sponsor that the money can be used for infrastructure. I don't know if the language is clear but it can be used for infrastructure.

John Walstad: There is no definition of what that is.

Chairman Wesley R. Belter: The reason the sponsor wanted to make sure that roads were important because roads are an issue which people can stop through a process of rejection. Putting in sewer and water I know there is no mechanism for people to stop. The intent was that you can use it for either but the priority was streets. We will probably have to have the sponsor come down and defend it.

John Walstad: Maybe the committee wants to add in there "What is infrastructure?"

Representative Patrick Hatlestad: Since Stanley has already done the work and bonded for it could they then use that money to pay off the bonds and use their general fund money elsewhere?

John Walstad: I would think so.

Representative Steven L. Zaiser: I was going to suggest that we define infrastructure. I agree with the general definition of things that a lagoon is part of a water treatment system and generally regarded as infrastructure. In terms of being able to protest out a project if the water and sewer system of a lagoon can be protested out if it's funded via a city wide assessment. That would be the only way it could be protested out.

Representative Shirley Meyer: I was just concerned about the street designs and the construction projects and what is given priority. It's the secondary projects that we are having trouble getting funding for.

John Walstad: I guess I don't know. I was told to put it in there and here it is. Now you have to see what is appropriate or not.

Chairman Wesley R. Belter: We're trying to get Representative Skarphol down here to answer some questions. I think we had some questions for the treasurer's office in section 2.

Representative Shirley Meyer: Has the Treasurer's Office determined where the monies will go from the loyalty payments versus the lease royalty payments?

Carlee McLeod, Deputy State Treasurer of North Dakota Treasurer's Office: The federal money coming in has caused some confusion among many legislators. North Dakota Century Code is what calls the federal money coming in either flood or mineral. They really are pursuant to two separate federal codes. The money here listed in 33usc 701 c 3 does include some mineral royalties but it is under what is called flood money in our North Dakota Century Code under 21-06-10. The mineral royalty monies that we refer to in another section of code 15.1something that is just a separate code from the federal side so you will see a mix of flood dollars and mineral royalties stemming from these lease payments under this 33 usc 701 c 3. I have learned that the larger amounts that Mountrail County received in the past couple of years were the result of some bonus money. If you look at the current trends for this fiscal year they are significantly down in dollars, maybe around $1 or $2 million. I have not found out what we can expect in the future as far as what revenue is coming in from those.

Representative Shirley Meyer: These monies were a result of when the land was flooded so for 40 years these schools districts, townships, and counties lost all property taxes on those acreages?

Carlee McLeod: This particular program started in the early 90s but it was from the flooding from the Lake Sacajawea lands. We do receive payments under the same section of federal code for other areas in the state which have been flooded but this particular section affects the oil and gas counties. The flooding happened long before the federal money started to flow through.

Representative Shirley Meyer: When that fund is closed where are the obligated dollars going to go?

Carlee McLeod: That particular section is more of a mechanical issue so we won't close that fund out until the obligated dollars have been spent. The unobligated dollars will go into this new energy infrastructure development grant fund. The reason we've asked for this is there have been a few funds over time that have changed names and legislatively the practice has been just to change the name and then it is called something different in the future and some people refer to it back to its old fund name versus it's new name and we're left with no fund that exists with that name. The practice of closing out this fund and then transferring the unobligated dollars the balance of that into the new fund which you were all just renaming was to provide more clarity in the transfer of dollars. I think last session there was a bill that was passed out where one fund was called by four different names in the same bill and we're hoping to avoid that.

Representative Shirley Meyer: Even though by law the obligated funds are going to remain in that fund?

Carlee McLeod: The date says as soon as feasible after June 30, 2011 so what I would imagine is as soon as the land department pays out the obligated funds they will let us know and we will do the official close out of the fund then transfer the unobligated dollars at that time. We won't be noncompliant with the law because we have the soon as feasible language in this.

Representative Shirley Meyer: And that could be years?

Carlee McLeod: I suppose it could be. Given the need for these grants and the fact that there was only $8 million in the fund this biennium that we are talking about it is highly doubtful it will be years where they will be sitting on a few hundred thousand dollars that have been obligated. The need is to get this money out to the counties to be used. If it's years two years from now you can all address the situation if there is money still there.

Representative Lonny B. Winrich: On page 8 of the amendment section 5 paragraph 1 where it talks about the State Treasurer would allocate 80% of these funds and so on, we had some concerns on the last requirement that the county is ineligible for any funds under this subsection if it is current year property taxes for county road and bridge purposes do not equal or exceed the average property taxes for county road and bridge purposes for the prior three years. Mr. Walstad indicated that was intended to be interpreted broadly even though there is a county levy called the road and bridge levy there are several other sources that could be used for road and bridge purposes and all of those should be counted. In your opinion is that clear and would the treasurer interpret it that way?

Carlee McLeod: There is similar language that happened in a levy situation dealing state aid to libraries a few years ago where it was hung on a specific numeric value and it resulted in many libraries having their funding cut off so the legislature came in and fixed that language. I need to compare this language to that to see if that is the fix that was established at that point. That would help us interpret the language. Right now we have the 10 mill levy requirement that each county has to certify to us that they either meet or they do not. There is no guidance to how they determine how they meet that or not and if they certify yes then that is all we can do under law is take that yes. If they come to us with their numbers and how they got them and it makes sense we will probably be bound by that sort of interpretation. If there is still any sort of doubt we will go to our attorney general for guidance to help us solidify the law. My hope is to do that before you are all out of here so maybe we can do some clarification so it's not open to interpretation.

Representative Lonny B. Winrich: Could you suggest some better language for that section?

Carlee McLeod: I will absolutely do that once I dig into that a bit.

Representative Shirley Meyer: Are there any counties that would be ineligible to receive these dollars?

Carlee McLeod: To the best of my knowledge I can't answer that right now but there may be one or two. I'd have to go back and look. Right now all they have to certify to us is that they are levying 10 mills so as far as historical data I don't have that at my fingertips.

Chairman Wesley R. Belter: I believe it was your intent that cities could use the grant money for infrastructure needs other than roads.

Representative Skarphol: On page 8 towards the bottom section 2? I have no objection that cities use the money for whatever they wish. Under the current scenario cities can put in new water and sewer lines and assess the citizens for it and there cannot be a protest of that assessment. Also I understand that if the city decides to put new pavement down there can be a protest that would prohibit the new pavement that would require the city to patch what they cut open. I would hope the decision would be made to fund the lagoon if it is legitimate in one city and if there was only enough money to cover the overlay of the other city then that would be given priority over the water and sewer lines. If the city is going to borrow some money I would hope they would borrow the money for something that can't be protested. It's merely a device to try and provide some guidance to the granting office as to what the legislative perspective was on this. It is strictly an issue that was brought to my attention by the city of Tioga in a discussion about their potential $17 million project. If a group of citizens protested the overlay we have to go through the public hearing process. This gives total flexibility to the granting entities but in the situation where there is a conflict that it be given to the aspect that could be protested and potentially delay the project's completion.

Representative Shirley Meyer: When you're writing these grants and you write a priority that is what is going to get funded. When you state that is the priority maybe Tioga's streets are really bad and maybe Killdeer's lagoon has just as much of a need, wouldn't it be better to just allow your new office to make those calls as you look at each one instead of prioritizing it in the bill before you are looking at any grants?

Representative Skarphol: All too often there is not enough legislative direction given. We leave it up to the rules committee or the other entities to make the decisions and then when we as legislators come back we are disappointed in the actions that were taken. I'm not suggested that we prohibit anything with this language and if the committee desires change the word "must" to "shall". I'm suggesting that if you have to make a choice between giving money for something that can be delayed because of a minority of people in the community and you have an option of funding one or the other and one of them could have major implications if delayed and the other couldn't I would assume the correct decision for us to make is to do the one that would be of most service to the community as a whole.

Representative Shirley Meyer: That's my point. Maybe even if you take "must" and make it "may" so that is a call that can be made locally and then approved by the new energy office. In reading this language you are aware that under the impacts we've always used those dollars to fund fire, fire stations, ambulance, EMTs, etc. In reading this I don't see where those projects or those needs secondary impacted would be allowed to be funded under this.

Representative Skarphol: Twelve percent of $100 million is $12 million in my mind and $12 million is 50% more than has been available for those needs over the last several bienniums. This $12 million is specific to cities so it can't be harvested to counties or townships so I would submit to you that there is much more capability in this bill that there has ever been in the past. Obviously if it doesn't cover the needs of our communities we will revisit it again in two years. We are not going to produce a perfect piece of legislation that is going to satisfy every need.

Representative Steven L. Zaiser: Would ambulance, EMTs, fit under the infrastructure base? I would assume it would but I just would like your interpretation.

Representative Skarphol: In the current environment there are several oil companies that have been solicited really hard to donate money for those needs. At some point in time I think the industry has paid their dues with the taxes they pay and that we should step up to the plate and do what needs to be done. With these dollars available to the communities to do things in over a period of time I would hope it would free up other dollars in the community to do some of the things you were suggesting such as ambulance, EMTs, etc. We are not capable of doing everything for everybody in this bill or in any other appropriations.

Vice Chairman Craig Headland: Could you explain the appropriation again?

Representative Skarphol: My vision of what this does is appropriate $17 ½ million out of the general fund to cities over 7,500 per year; $10 million to Williston, $5 million to Dickinson, $2 ½ million to Minot. It also appropriates $102 ½ million to be distributed as per the formula on pages 8 and 9. In round numbers if we use $100 million instead of $102 ½ million the county's portion of that $100 million would be $80 million in total, $64 million of which would be distributed immediately on whatever date Mr. Walstad and the treasurer's office suggests based on a prorated basis to the counties as per production produced on a given date. If that is not clear then it needs to be cleared up. The other $16 million that the counties are eligible for would be in a grant fund that counties could jointly or individually apply for strategic needs that aren't or were not included in the Upper Great Plains Transportation Institute study, so that is 80% of the $100 million. Twelve percent of that $102 ½ million would be set up in the fund for the cities under 7,500 to be requested based on need and awarded based on the evaluation of the office. Eight percent would be for the benefits of the townships to be distributed based on the number of wells in the townships and oil counties and that would amount to about $5.2 million out of that 8%; 8%

out of $100 million is slightly over $8 million. The remaining portion of that would be eligible to be requested by counties to be utilized for either enhancing what is being done by the townships within oil country or to be utilized in contiguous counties for damage done from oil traffic as a result of oil traffic. Those counties wouldn't typically be compensated but would deserve some type of reimbursement for those township roads in my mind. Then the continuing to the process for the first year of the biennium there would be a $70 million appropriation minus $350,000. The $350,000 is used to update and monitor the plan and whatever the formula change generates which is estimated currently to be $80 million so there would be $150 million approximately that would be accumulating over the next 12 months. That money could conceivably be released in whole or in part by the office and with the approval of the budget section in the event that progress is sufficient to warrant just releasing the money or in the event that progress is not being made then the option would be for the office to do an RFP with a substantial amount of that money (county portion) to try and attract some other major contractor to come in and do the work. The effort or the purpose of all this is to get the work done.

Chairman Wesley R. Belter: You gave us the $17 million for the cities and $102.5 million and then the additional $70 million.

Representative Skarphol: The additional $70 million will not be distributed until there is a decision made at the end of the next biennium so that won't go anywhere. The $120 million will be distributed at the start of the biennium.

Representative Shirley Meyer: Does the $172.5 million include the $1.2 million in this appropriation for the office?

Representative Skarphol: I'm not appropriating $102 million to the office. I'm appropriating the money to be distributed to the cities and the counties and the townships. The office merely has responsibility over the grant process. They have no role in distributing the money. The money will only be distributed by the treasurer's office. The $102 million will be distributed to the counties, cities, and townships. The $17 ½ million will go to the large cities. The only role the office has is to accept the grant applications, evaluate them, and make the awards.

Representative Shirley Meyer: On page 1 where the director may employ staff and fixed staff compensation and the director has to be knowledgeable in matters of state and local government and infrastructure development. I'm assuming those are going to be paid positions. Is that in the $172 million appropriation in this bill? These people aren't going to work for free.

Representative Skarphol: That would be taken care of in the budget for the land department.

Representative Shirley Meyer: But that is in their budget?

Representative Skarphol: I have not added it to the budget, it will have to be worked out through the appropriations process if this bill is approved it will be taken care of in conference committee I assume at the end.

Representative Patrick Hatlestad: In here you have a reporting requirement for the counties but not for the cities, is that an oversight or not necessary?

Representative Skarphol: My concern with reporting was with regard to the lack of what I perceived to be credible information presented given to us in the last reporting environment. I would assume if we so desire and you so desire we could ask the cities to verify the utilization of their monies as well. I wouldn't have an issue with that but I did not include it because I didn't feel it would be likely it would be used for any purpose other than what they have to do. The same assumption could be made about the counties but I don't have the same comfort level.

Representative Lonny B. Winrich: The 80% of the funds that are to be allocated directly to the county you indicated it would be about $64 million to fund county infrastructure development projects. How would that be allocated?

Representative Skarphol: There probably should be some language to the effect that it would be allocated based on a prorated basis of production.

Chairman Wesley R. Belter: The 80% that goes to the counties is a direct allocation and not going to be through grant process?

Representative Skarphol: That is correct. I would have no issue with a hold harmless type clause that would make the presumption that a county is in compliance unless they lower their mill levy for road and bridge purposes. We have been paying all counties under the current formula with the requirement that they have the 10%.

Representative Shirley Meyer: If we took out "for the prior three years" would you have any objection to just removing it and going forward? When you put in the prior three years it does kick three counties out of compliance. Going forward they would have had to levy their monies and it wasn't a provision of where you're going retroactively backwards.

Representative Skarphol: I was of the impression that the taxation interim committee had a discussion about this issue. They did not bring forward any legislation that would seem to indicate at least to my knowledge that any county had been out of compliance. If you read what is in legal documents you would have some questions and that is a little disturbing if someone is trying to circumvent the intent. Let's just clean up our act on everybody's part and move forward.

Representative Lonny B. Winrich: When I asked that question of the treasurer's office my understanding was that Carlee indicated that under some other section of law counties are required to certify to the treasurer that they levy 10 mills for road and bridge purposes. Would that certification be sufficient for your purposes here or do we need to go beyond that?

Representative Skarphol: It would be my hope that no oil county is disqualified from being eligible for these dollars. For me to say yes to your question I don't want that to disqualify someone. I think there is a least one county who would have some difficulty certifying that with a great degree of certainty.

John Walstad: Representative Meyer had asked the question if the grants were being dedicated to infrastructure and it is the language that is there and it doesn't necessarily address EMTs, and other things that have traditionally been funded from other grant fund. The other grant fund will still exist with $8 million in it. That fund will not be limited to infrastructure. That may relieve some of the concern. This new program will take some of those requests that went to that fund out. Most of it has gone for township roads lately. Townships will now be receiving some money and access to grant funds.

Representative Shirley Meyer: The $8 million per biennium or $4 million per year that oil impact fund will stay there and it will be implemented the same way through the state land board or will the grant application have to go through this new board?

John Walstad: The land board will retain the authority over grants under this new office structure. The land board will still be the ultimate decision maker on awards.

Representative Shirley Meyer: Correct, but if the oil impact fund stays in place who authorizes the $8 million that is going to stay there, will it go under this new director to be handled differently?

John Walstad: I don't know who the new director will be but the energy development impact office as it now exists will be eliminated by this measure. The new infrastructure development office will be in charge of that $8 million fund and various grant programs in here that are new.

Representative Shirley Meyer: Will these grants then be handled the same way with the new director or will they have to submit to the reporting requirements and the same structure that the new monies will be used?

John Walstad: The bill doesn't do anything to change how the $8 million fund is to be used except it will be a different office of administration. The land board will make the ultimate decision on those and on the other grant programs that are being created here.

Representative Glen Froseth: There is no new appropriation for the next biennium is there?

John Walstad: The money is listed here and there is a transfer provided as in current law. I don't know if a separate appropriation for that impact has been made in the past or not.

Representative Patrick Hatlestad: What about on page 10 section 8, doesn't that eliminate that fund?

John Walstad: That is the existing fund. That will be retired at the end of the biennium. On page 3 the $8 million per biennium instead of oil and gas impact grant fund $8 million will go to energy infrastructure development grant fund.

Representative Steven L. Zaiser: Going back to the discretionary grant fund, does section 1 when they authorize the development of that office also set up the criteria and authorizes that office to handle that program and establish criteria?

John Walstad: I'm wrong; at the bottom it says "to meet energy infrastructure development needs" so we get back to that issue of what is infrastructure.

Chairman Wesley R. Belter: I think we've found a few areas of concern.

Representative Shirley Meyer: In visiting over the break with Mr. Walstad, in going back to the $8 million impact fund the question in reading this on page 3 it does get transferred to the energy infrastructure development grant fund so that it would be under the same requirement that it had to be used for infrastructure, correct?

John Walstad: I don't there would be a statement anywhere stating what the money has to be used for because the statement that currently applies is repealed at the end of the bill in the current energy development impact office. That language has not been moved over to apply to this $8 million grant fund and there is nothing anywhere in the bill that says what happens to the grant fund. The bill deals with the development fund not the grant fund. So something is needed in here to cover the $8 million fund and what I would suggest is that I take the language that has been there forever for that $8 million. It talks about basic governmental services and defines what not a basic governmental service is. The $8 million fund is segregated and is not comingled with any of the other funds available.

Chairman Wesley R. Belter: I think we'll just start on page 1 and walk through the bill and where we see concerns John can help us. Let's go to page 1. Is there anything there that needs our attention?

Representative Dave Weiler: I don't imagine at this time you would accept a motion for an amendment to delete section 1 is there?

Chairman Wesley R. Belter: No. At this point I just want to clarify the existing language. Any concerns on page 2?

John Walstad: (inaudible because he wasn't at the speaker)

Chairman Wesley R. Belter: On page 2, 21-06-10 dealing with the concern from the treasurer's office anything needs to be done there?

Carlee McLeod, Treasurer's Office: We were not concerned with anything in that section.
(Inaudible as she was not at the speaker)

Representative Bette Grande: In section 2 the point had been brought up that we were talking about some of the federal funds and if there were some federal issues that needed to be dealt with prior to redistribution. That was the clarity we were looking for.

John Walstad: I think the issue is in this 21-06-10 is there more than lease and bonus money flowing through here. If there are royalty payments flowing through where there may be a stream of lots of money flowing constantly then replacing 10 years of property taxes every year for school districts might be a little excessive.

Carlee McLeod: Yes. The way that 701 c 3 is worded mineral royalties can be included in that. That is the federal law. I don't know if you all have been provided with that paragraph but I can give that to you. I can't tell you what the income stream will be from that I can just tell you what we've been seeing.

Representative Shirley Meyer: Until that happens why address it now if we don't even know what the impact will be?

Chairman Wesley R. Belter: That's a good point. Any concerns on page 3 or page 4?

Representative Shirley Meyer: Under this amendment will the schools still be allowed to apply for a grant under the county infrastructure fund?

John Walstad: I don't think so. I think current law allows them to apply for school bus grant money but that is struck out over on page 6 in the middle. The county infrastructure fund won't be available to school districts at all anymore.

Representative Shirley Meyer: Was there a reason for that?

John Walstad: You're getting into political decisions again.

Representative Steven L. Zaiser: Would the county be able to apply for these funds on behalf of the school? I know that has been done in other grant aid.

John Walstad: I would say no. On page 7 at the bottom the word "energy" should disappear. I will take care of that.

Representative Shirley Meyer: Would there be a better way to make a report?

Ryan, Tax Department: If this current reporting structure would be left in place one option would be is to put it in line with the calendar year which would make it in line with the county's books. The only fallback to that is that you would not have the result of that report in time for the session. Another option would be to have the counties report their revenue and expenditure report that they are required to do by law now to include all revenues and all expenditures and not just gross production tax dollars and where those monies went and other funds. It doesn't capture everything but that would be up to the committee to decide if that is what you would like to do with this.

Representative Glen Froseth: I was on the understanding that legislature wouldn't necessarily have to review these reports rather it would be legislative management would review them at their quarterly meetings.

Ryan, Tax Department: That may very well be true. It is an annual report they aren't monthly filings. Timing of when that comes out would depend on who actually reviews the report but it is legislative management.

Representative Shirley Meyer: But the problem lies with this reporting requirement that unless you do it with a calendar year there are such different reports that come in at different times and to try to capture that with the deadline it ends up where counties looks like they have huge dollars in the fund because some have come in after the reporting requirement so it throws the report off. Isn't that the problem with the different timing?

Ryan, Tax Department: Funds that are left over from the infrastructure fund revert back to the county road and bridge fund. The cutoff for this report currently does not reflect that amount because it isn't in line with the calendar year. That is one recommended change that would improve this current reporting form to an extent and another option would be requiring a revenue expenditure report if that is the wish of the committee.

Chairman Wesley R. Belter: Do you want to work with John Walstad with that?

Ryan, Tax Department: Sure, I would be happy to.

John Walstad: In the middle I need to plug in some language about prorating the money on the production levels.

Representative Shirley Meyer: In section 4 I don't believe those numbers exist. I don't know how this data is going to be determined. I know I'm in an oil related business, however, my taxes in no way reflect that unless I'm surveyed and I'm a tiny little part in a huge cog that's working out there and we don't in any way reflect an oil and gas related private employment. So I don't see how that data can plug in to work for those cities unless it is based on some other revenue stream I'm not aware of.

Representative Mark S. Owens: Section 4 doesn't even begin until after June 2015. That's one of the allocations for the $100,000 for Job Service to create that information to do exactly what you're asking, Representative Meyer, because you are correct it doesn't go into enough detail right now.

Chairman Wesley R. Belter: The other issue is the prior three year in section 1 or has that been resolved?

Carlee McLeod: I can get you some language by the end of today.

Representative Steven L. Zaiser: It only seems right that the city should have the same reporting requirements that the counties have.

Chairman Wesley R. Belter: I think the intent was there but some of the smaller cities don't have the capability for these reporting requirements. It could be a burden to the county but to a small city it can be pretty overwhelming and I think that's the reason why.

Representative Steven L. Zaiser: I agree with that and perhaps it could be just for the larger cities.

Representative Wayne Trottier: In Section 1 page 8 where it says "property taxes levied for county road and bridge" and I believe John prescribed that county infrastructure should be in there rather than county road and bridges, is that right?

John Walstad: I think that would be an improvement.

Representative Lonny B. Winrich: I would like to see what language Carlee comes up with because the treasurer's office is going to have to interpret this.

Carlee McLeod: I will go work on that right now.

Chairman Wesley R. Belter: Just provide that to Mr. Walstad.

John Walstad: (inaudible as he wasn't at the speaker)

Vice Chairman Craig Headland: In visiting with Representative Skarphol his intent was to have everybody participate.

Chairman Wesley R. Belter: We don't want to exclude anybody.

Representative Patrick Hatlestad: Why not delete everything after 2010 in that section?

Representative Shirley Meyer: Then it would revert right back to what it has currently, 10 mills have to be....could we plug that language in here after 2010?

John Walstad: That wouldn't apply to this money.

Chairman Wesley R. Belter: We don't want to make any county ineligible so maybe you and Carlee could come up with some language.

Representative Patrick Hatlestad: If we don't want to make any county ineligible then why have this in here at all?

Vice Chairman Craig Headland: You want to assure that they are levying at least as much as they had prior. So you will need some kind of language in there.

Chairman Wesley R. Belter: I would agree that we would want the oil producing counties to be levying 10 mills in order to be eligible.

John Walstad: I could just lift the 10 mill language out of the gross production allocation formula and plug it in here.

Vice Chairman Craig Headland: But we'll need to know if it's going to kick out any county.

Chairman Wesley R. Belter: This isn't the final passage so I'm sure we'll hear more as the process goes on.

Representative Shirley Meyer: I mentioned this under Section 5 subsection 2 I would like to see where those projects "may" be given priority instead of "must." I would rather see this go to local control and they can decide what they need in their city.

Vice Chairman Craig Headland: I would tend to disagree. This is intended for road infrastructure and we have the $8 million other impact fund that other things would be eligible for. I don't think that it's exclusive to roads but I think the intent is to give the roads priority.

Representative Glen Froseth: I think if you just remove the last two lines that would help clarify.

Representative Lonny B. Winrich: I think that sounds good to me because we talked in the previous section about a section pertaining to the other $8 million impact grant and that was to be used for...we used the same language in current law. Those could be used for things like ambulances and emergency services.

Chairman Wesley R. Belter: You want the more specific language?

Representative Lonny B. Winrich: No. I like Representative Froseth's language. John, what was the language we used before?

John Walstad: Basic governmental services.

Representative Lonny B. Winrich: That would be the phrase used to describe the $8 million that's going to be put into this but it will preserve this fund and go to infrastructure.

Representative Shirley Meyer: There will always be a greater need than 12% because of the impact out there. If you put a priority where city street design construction projects are always going to be funded and the other city needs would never get funded.

Chairman Wesley R. Belter: Do you think we should put a priority in here?

Representative Dave Weiler: I would suggest that. I am in agreement with Representative Froseth.

Chairman Wesley R. Belter: All those in favor of Representative Froseth's idea for the amendments? **A voice vote was taken: MOTION CARRIED.**

John Walstad: Is the committee interested in providing a definition of infrastructure?

Various Representatives: Yes.

John Walstad: What would you like the definition to be?

Representative Lonny B. Winrich: I don't know if we really need to do this. I'm not sure if we really want to be precise with these definitions. When you get into it being interpreted it usually ends up with unforeseen consequences.

Vice Chairman Craig Headland: Vehicles are not infrastructure are they?

Chairman Wesley R. Belter: No.

Representative Dave Weiler: You talked about basic government services and that part of this money would be available for this. I assume that means basic government services that are impacted by the oil industry, correct?

Representative Lonny B. Winrich: That's my understanding.

Representative Dave Weiler: This is impact only.

Representative Lonny B. Winrich: Still relates to oil impact for oil producing counties.

Chairman Wesley R. Belter: As long as you use the word infrastructure I don't know if we need to clarify further. When I'm talking about infrastructure I'm talking about roads, sewer, and that type of thing. If we get into situations in the future where they start interpreting that much more liberally then I guess we'll have to deal with that. I would assume that there is a basic understanding of what infrastructure means.

Carlee McLeod: Please refer to attached testimony #1. That is similar to the language that is there for the library.

Chairman Wesley R. Belter: I think this language would probably eliminate some eligibility, would it not?

Representative Lonny B. Winrich: It seemed pretty clear that Representative Skarphol's intent was that all the oil and gas producing counties should be eligible for these grants. Why put anything in there that disqualifies? This is all going to the oil and gas producing counties anyway. Why not just remove the sentence that starts with "However a county is ineligible for any funds"?

Vice Chairman Craig Headland: Because we don't want them taking these funds and lowering their levies.

Representative Shirley Meyer: I would suggest that after December 2010 on that line plug in the language about the 10 mills that Mr. Walstad referred to then it is clear that they have to levy 10 mills in their road and bridge fund in order to be eligible for these grants. Then it is clear and it will plug right in from the production tax formula. To me it is just a clarification.

Chairman Wesley R. Belter: John, can you make it work that way?

John Walstad: Heck yeah.

Vice Chairman Craig Headland: I think that would be fine as long as we are not excluding some counties.

John Walstad: That 10 mills standard has been the standard to get funding for the last four years and it hasn't knocked anybody off the list yet.

Chairman Wesley R. Belter: You're saying we don't really need to include that because it's already in the rules?

John Walstad: It wouldn't apply to this money but I can take that same provision and put it here and the counties would know then this is the standard and it applies to this development fund money and (inaudible) tax; the same standard on both ends.

Representative Shirley Meyer: Then you would get away from your worry of them not dropping their mills to nothing and they know what the standard is and it hasn't kicked out anybody so far so I think you have it covered.

Representative Glen Froseth: The other aspect of that is that if the county hasn't levied those extra 10 mills they probably don't need the work to be done so they probably don't need those impact dollars either. There are some oil producing counties that aren't in the dire need of road repairs as some of the other ones.

Representative Steven L. Zaiser: I think Mr. Walstad talked about some of the counties were levying those 10 mills in different funds. Some of them were road to market and some were in the road and bridge fund. Isn't the intent that they cumulatively put in 10 mills to all those funds? So by defining that one fund are we potentially creating a problem?

John Walstad: The language I would be lifting here lists those things you said; farm to market, federal aid, county road and bridge. It doesn't specifically say those levies it says for those purposes.

Chairman Wesley R. Belter: Any other concerns on page 8 or 9?

Representative Shirley Meyer: The thing that is problematic for me here is under 12-80 spacing or 25-60 spacing, you're going to be crossing township lines. When you're not looking at unitization of this you're going to have a county that is going to get the money for the well where the well head is and could be getting oil from the townships that are adjoining it that aren't going to get any money. To me I see this as a problem unless it was allocated differently. It is where the well head is sitting that is who will be getting an annual payment of $5,000, however, you're in additional townships where they don't have the well head but their oil is there. That could be an issue. Occasionally, we have them crossing county lines.

Vice Chairman Craig Headland: Section B on top of page 9 it talks about those counties will oil but it also mentions including townships that have no production of oil and gas. Does that cover those townships?

John Walstad: In the example that Representative Meyer if that spacing unit crosses a township boundary the well head is in one county the township would get $5,000 for that well head. If the other township has no other well heads they would be eligible for funding in this grant program but they would get a direct payment. I think the information Representative Skarphol was working with came from the industrial commission and they can identify by township where the well heads are but to identify by township drilling units how much is in each one and how to split money from two wells and drilling units I think it would get complicated fast.

Representative Glen Froseth: I think Representative Meyer had a good idea but I think it would be a distribution nightmare. If you have a well head in the corner of a township and the trucking may go through two more townships to get to the main terminal you could be distributing money in fractions to two or three different townships. I understand the dilemma but I think it would be difficult to do.

Representative Shirley Meyer: I was wondering if there was some way of addressing that under subsection b where the ones that have the well head or are lucky enough to have the well site on theirs would be ineligible for the funds from the townships that don't have the well head. There should be a breakdown. If they do not have the well head then there should be some guarantee that they can get these grants because they don't have the payment that the townships with the well head is receiving. Maybe it is as simple as saying "must be awarded" instead of "maybe awarded" because I see where the townships in a would be eligible for also to apply for the grants. The townships under section a are getting the direct grant because they have a well head but then there is no provision to disallow them under section b to apply for the grants. It is a fairness issue.

Chairman Wesley R. Belter: From my perspective it would be difficult to solve every problem that came about.

Representative Shirley Meyer: If you have received monies under subsection a you no longer can apply for the grants under subsection b; something that simple. I don't think it would be difficult it would just show that these ones that don't have a well head could be more eligible for these grants.

Vice Chairman Craig Headland: If you've got the well head aren't you going to have the greater impact?

Representative Shirley Meyer: When you have it there your township and county roads is a case where Dickinson has a huge impact but doesn't have any well heads there.

Chairman Wesley R. Belter: Could I get some consensus from the committee, do you want to leave it as is or follow Representative Meyer's suggestion?

Voice vote taken to adopt Representative Meyer's suggestion—MOTION FAILDED.

Representative Shirley Meyer: On page 9 where all of these have to be determined by the budget section of legislative management, isn't this going to create a nightmare with this approval? After you've already had this approval from the director and this new commission do you have to have it again approved by the budget section?

Chairman Wesley R. Belter: My suggestion would be that this bill will have to go to appropriations. I think maybe I would like them to hash this out and see if they want that responsibility or not. Any other concerns on page 9 or 10?

John Walstad: Representative Skarphol talked about that $172 ½ million that $70 million of that would be available only in the second year of the biennium. I didn't make that provision here so I need to change some language as I'm requiring it all to be spent in the first year.

Chairman Wesley R. Belter: Anything else? No further discussion. We will let Mr. Walstad work on these amendments. We will come back in this afternoon.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1458
February 8, 2011
#14225

☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to establishment of an energy infrastructure development office and grant program and an energy infrastructure development fund for deposit of certain oil and gas gross production tax revenues; relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to provide an appropriation; to provide a continuing appropriation; and to provide an effective date.

Minutes:

See attached amendments #1.

John Walstad, Legislative Counsel: Distributed and explained amendments 11.0392.01007. Please refer to attached amendments #1.

Representative Shirley Meyer: Under that language any of our social services directly related to the cost, can those be used for those cases?

John Walstad: I'm not the decider but I would say that is a sociological impact and then not fundable. Continued reviewing amendments.

Chairman Wesley R. Belter: Back on page 7 you took out the word "energy".

John Walstad: A big change on the bottom of page 7 subsection 7 this is the reporting provision. The tax department made some suggestions on changes and they are incorporated here. First of all, rather than stating a fiscal year it was changed to a calendar year basis. Then the language in subsection a about what kinds of information is included in the report a copy of the county statement of revenues and expenditures was added. Continued to review amendments.

Representative Steven L. Zaiser: What is the turnaround time of the reporting from the counties to the state?

John Walstad: That's at the beginning of subsection 7 and it says within 60 days after the end of the calendar year the county commissioners will file this statement of revenue and expenditures. Then in subsection b the information is listed on the infrastructure fund spending. Ryan said the 60 days could be reduced to 30 days as this would make information available sooner in the session.

Representative Steven L. Zaiser: That wouldn't be onerous on the counties I think that would be advantageous to be utilized in the session because then we would have that information essentially by now.

Ryan, Tax Department: Ken Herman worked very closely with the counties on the current reporting and the unaudited revenue and expenditure reports as of December 30 would be more easily compiled than the current reporting system. It could be a 30 day time frame and then 15 days for us to put them together and to counsel so they are available to session earlier. Based on feedback from the counties we believe we could provide the reports a little sooner than the current reports because the current reports have to be generated as they are not currently completed by the counties because it's a new report and the revenue and expenditure reports are something they already do and are typically available in 30 days.

Chairman Wesley R. Belter: In subsection 7 we could go to 30 days then?

Ryan, Tax Department: Yes.

Chairman Wesley R. Belter: Is everybody in agreement with this?

VOICE VOTE to change the amendment from 60 days to 30 days—MOTION CARRIED.

John Walstad: Continued to review amendments.

Representative Glen Froseth: On page 9 subsection 5 in the last five lines that says "the amount that may be expended from the energy infrastructure development fund after August 31, 2012….." Is that going to slow down the flow of the dollars and be kind of a cumbersome process? I don't know how often legislative management meets, I'm thinking they meet at least quarterly but they may have to meet monthly to review these grants and make final approval of them.

Chairman Wesley R. Belter: I think this morning I suggested that this may be a battle for the appropriations committee could discuss.

Representative Shirley Meyer: If there is one thing that is a clear policy decision it is that one. I think it violates the constitution. That is always a question about our budget section and with this it is calling into question of violating the constitution by having this in here. It's a policy decision.

Representative Steven L. Zaiser: I feel much the same way as Representative Meyer. I think that it makes the process more cumbersome in a step that is unnecessary. Why couldn't just the development office make those decisions? We have other state departments that handle money. It would seem to me that the budget section need not be involved.

Vice Chairman Craig Headland: I am supportive of what they are trying to do. This is a whole lot of money that we're appropriating of the citizens of North Dakota and I think they and legislators for the most part would like to have some legislative oversight. I think Representative Skarphol alluded to that and that is why he had it drafted in there.

Representative Shirley Meyer: We are not appropriating this money. If we don't trust the director of this new energy development office to make the correct calls then we shouldn't be having this office with that director. Here it is another check and another reporting requirement that is going to delay this process. These funds are needed critically out there yesterday. If you're going to have the budget section meet they are not meeting monthly now and this will force them to do it.

Vice Chairman Craig Headland: I believe this is only for the second year's money. So they'll be $102 million going out right away. This is just giving the legislative budget section some legislative oversight on that second year's allocation.

Representative Steven L. Zaiser: Then am I correct to assume that this is a one second year process or is it going to be every second year of a biennium?

John Walstad: It just says after August 31, 2012. That means every year until the sunset date.

Representative Steven L. Zaiser: To me not only does this create a cumbersome process but what happens if the director makes a recommendation and does the budget section, can they overrule him? It's kind of like throwing him under the bus.

John Walstad: What Representative Skarphol expressed was that after the first year of this upcoming biennium with the amount of money that is turned loose in the field for infrastructure improvements when the first year comes to an end it will necessary to take a step back and look at what is been accomplished; how much of the money that was available is still available and determine how much of the $150 million for the second year is even going to be usable in the second year. That is the reason for that budget section oversight thing.

Representative Shirley Meyer: Is it constitutional?

John Walstad: I may have to argue the other side of that one at some point but it is certainly questionable.

Representative Mark S. Owens: To me it just basically follows gap procedures. I'm sure you've heard of places like Enron didn't do where you have dual control over money being spent. To answer Representative Meyer's question about constitutionality everything is constitutional until it's challenged if we pass it.

Representative Steven L. Zaiser: After the explanation given by Mr. Walstad to me it would seem the first year after 2012 would perhaps be the most important time when we would have redundancy where we have a recheck of re-evaluation. After we get into a rhythm I wouldn't think that wouldn't be as necessary. Maybe the second year of the biennium would make sense so I would think it would sunset after the first biennium.

Chairman Wesley R. Belter: We can always change it next session.

Representative Shirley Meyer: I don't want to have the counties forced into a law suit and we would then have to go through the same thing we did with the schools. With the amount of money we are dealing with here and that provision I think you are just going to force the issue.

Chairman Wesley R. Belter: We are not going to act on this today. Is there any other discussion?

Representative Shirley Meyer: On the bottom of page 9 concerning the board of university and school lands, is that required a vote of the people?

John Walstad: There is no vote of the people requirement to authorize the loans.

Chairman Wesley R. Belter: No further discussion.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1458
February 9, 2011
#14287

☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to establishment of an energy infrastructure development office and grant program and an energy infrastructure development fund for deposit of certain oil and gas gross production tax revenues; relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to provide an appropriation; to provide a continuing appropriation; and to provide an effective date.

Minutes:

Vice Chairman Craig Headland: There is a little change on page 7 number 7 that was brought to us by the tax commissioners changing number 60 to 30 and I think we agreed that was reasonable. **Made a motion to move the amendments 11.0392.1007 with that change.**

Representative Bette Grande: Seconded.

VOICE VOTE: MOTION CARRIED.

Chairman Wesley R. Belter: What are your wishes on this?

Vice Chairman Craig Headland: I move a DO PASS AS AMENDED.

Representative Bette Grande: Seconded.

Representative Shirley Meyer: I plan to oppose this amendment. We've had very little time to look at this. It is very problematic to me the requirement that this has to go to the budget section. I think it will delay the process and really serves no purpose that I can see. I believe we have an alternate bill which is 1013 coming that the counties has spent months working on together as a group and we've also plugged in the Upper Great Plains Transportation Institute's study that took many dollars to compile. To me, that is the piece of legislation that we should be trying to support from our oil and gas producing counties. When the process is done like this I think there are too many flaws in it, it hasn't been looked at in enough detail, and it creates a level of bureaucracy to the tune of $1.2 million to duplicate an effort that is already being done and handled very well in our state land department.

Chairman Wesley R. Belter: I certainly share your concerns on the complexity of the bill. Unfortunately this committee didn't have the option of looking at both pieces of legislation. It would have been nice if we could have had both bills here. Yes, we could have spent more time on this bill but on the other hand we did spend probably more time on this bill than any other bill we've had granted it's probably the most important piece of legislation that is coming out of this committee. I would hope that we would support the bill and then we'll send it on to appropriations where they have the other bill and then they have the opportunity to look at both pieces of legislation. I can understand the concern of the oil producing counties, however, we've made a number of changes to it and because of the complexity of it and just amongst ourselves we've had a lot of difficulty understanding it so it's easy to understand why the counties would also have difficulty understanding it. I think then we should pass it on and give appropriations the opportunity to look at both pieces of legislation.

Representative Bette Grande: I also think it's a good thing to pass along to appropriations. We have done a good job of looking at this, granted it's complex. We've taken a look at it then send it down there and you have a whole new set of eyes to look at it and go through it, whereas the other bill has the one set and the rest of us haven't seen it. I think this is a chance for a lot of people who have seen this, heard this, and look at it before a final decision is made. I think this is something we should push forward.

Representative Shirley Meyer: The difference of 1013 we've spent months as a county as all 17 oil and gas counties have met and have gone over line by line by line. We've had the input from the Upper Great Plains Transportation Institute to plug into that piece of legislation. Many eyes have seen 1013 and also 1012. To assume that in the space of 10 minutes 1458 never had a hearing to get technical here. We came in with one legislator who had a hog house amendment and tacked this on. We've had one day with us few people in this room versus this other piece of legislation that has been worked on for virtually months. There have been many eyes in the counties. This bill affects me and my county big time as it does a few of us in here. To say this has had more hearing time than 1013 I disagree with that. I hope you can resist this motion.

Chairman Wesley R. Belter: A point of clarification, Representative Meyer, I understand that the oil producing counties have worked on this for a long time but the legislative process is a duty of legislators and so I guess I take issue with your notion that because a certain group has worked on a piece of legislation for a long time that that's the best piece of legislation. That may very well be the best legislation but legislation is passed by us and not associations or other groups. So I think it's important that we as legislators look at every piece of legislation and not just pass something because a certain group supports it.

Vice Chairman Craig Headland: I just wanted to make sure my motion was understood that it would be re-referred to appropriations.

Representative Steven L. Zaiser: Certainly I don't have an understanding of how this works out in the western part of the state but I do have an understanding how different groups work with an executive director of running a large operation. My concern on this really involves the budget section. There are a couple concerns that come out; one is that it is bureaucratic by the fact that it goes through this impact office and then the budget section can overrule this director and having been in that situation that really presents an awkward situation with the director. I don't know what chance there is for him to be overruled on a recommendation he might make but to me it is like duplication. Redundancy has value but here I don't see as much redundancy for protection as I see bureaucracy and potential conflict. I was hoping that could be eliminated in this bill. For that reason I am going to oppose the motion.

Representative Patrick Hatlestad: Representative Zaiser, my interpretation of that section is that the budget section would merely determine the amount of money not individual grants but the amount of money that would be spent in that particular year. So a difference of interpretation I guess.

Representative Shirley Meyer: The language says "Grants under the subdivision must obtain prior approval from the budget section." So it doesn't say money it says grants. Unless you want that language clarified it does not state that. This is on the top of page 9. That's been my concern is that it is going to cause a time delay and it will not be workable for the counties in my opinion.

Chairman Wesley R. Belter: No further discussion.

A roll call vote was taken for DO PASS AS AMENDED AND RE-REFERRED TO APPROPRIATONS.
YES 9 NO 4 ABSENT 1
Representative Glen Froseth will carry HB 1458.

FISCAL NOTE

Requested by Legislative Council
02/11/2011

Amendment to: HB 1458

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				($35,000,000)		
Expenditures						
Appropriations			$172,600,000			

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
				$35,000,000				

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).*

Engrossed HB 1458 establishes an energy infrastructure development fund and makes changes to the allocation of oil and gas gross production tax revenues.

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, Engrossed HB 1458 will re-allocate existing oil and gas gross production tax revenues. The bill creates an energy infrastructure development fund, which is expected to receive approximately $80 to $90 million in the 2011-13 biennium from revenues that would otherwise be deposited in the permanent oil tax trust fund. (Both of these are "other funds" above, and therefore, cancel out).

In Section 3, there are special allocations to cities meeting specific criteria that may result in additional city revenue of $35 million for the 2011-13 biennium. This will result in a reduction in permanent oil tax trust fund revenue of $35 million.

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.*

Engrossed HB 1458 will require substantial modifications to computer systems within the Office of State Treasurer. The expected costs of system changes are 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.*

Section 9 is an appropriation from the general fund of $172.5 million to the infrastucture development office.

Section 10 is an appropriation from the general fund of $100,000 to Job Service North Dakota for upgrading employment data.

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	02/12/2011

FISCAL NOTE

Requested by Legislative Council
02/07/2011

REVISION

Bill/Resolution No.: HB 1458

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				($36,000,000)		
Expenditures						
Appropriations			$102,100,000			

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
				$36,000,000				

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).*

HB 1458 establishes an energy infrastructure development fund and makes changes to the allocation of oil and gas gross production tax revenues.

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 1458 will re-allocate existing oil and gas gross production tax revenues. The bill creates an energy infrastructure development fund, which is expected to receive approximately $80 to $90 million in the 2011-13 biennium from revenues that would otherwise be deposited in the permanent oil tax trust fund. (Both of these are "other funds" above, and therefore, cancel out). This amount has been revised from the original fiscal note furnished on Feb. 1, 2011.

There will also be some revenue shifted from counties to cities because the per capita city cap is increased. Otherwise, county revenues are expected to be maintained at existing levels.

In Section 3, there are special allocations to cities meeting specific criteria that may result in additional city revenue of $36 million for the 2011-13 biennium. This will result in a reduction in permanent oil tax trust fund revenue of $36 million.

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 1458 will require substantial modifications to computer systems within the Office of State Treasurer. The expected costs of system changes are 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.*

Section 5 is an appropriation from the general fund of $102 million to the energy infrastucture development office.

Section 6 is an appropriation from the general fund of $100,000 to Job Service North Dakota for upgrading employment data.

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	02/07/2011

FISCAL NOTE

Requested by Legislative Council
01/19/2011

Bill/Resolution No.: HB 1458

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				($36,000,000)		
Expenditures						
Appropriations			$102,100,000			

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
				$36,000,000				

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).*

HB 1458 establishes an energy infrastructure development fund and makes changes to the allocation of oil and gas gross production tax revenues.

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 1458 will re-allocate existing oil and gas gross production tax revenues. The bill creates an energy infrastructure development fund, which is expected to receive approximately $149.3 million in the 2011-13 biennium from revenues that would otherwise be deposited in the permanent oil tax trust fund. (Both of these are "other funds" above, and therefore, cancel out).

There will also be some revenue shifted from counties to cities because the per capita city cap is increased. Otherwise, county revenues are expected to be maintained at existing levels.

In Section 3, there are special allocations to cities meeting specific criteria that may result in additional city revenue of $36 million for the 2011-13 biennium. This will result in a reduction in permanent oil tax trust fund revenue of $36 million.

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 1458 will require substantial modifications to computer systems within the Office of State Treasurer. The expected costs of system changes are 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.*

Section 5 is an appropriation from the general fund of $102 million to the energy infrastucture development office.

Section 6 is an appropriation from the general fund of $100,000 to Job Service North Dakota for upgrading employment data.

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	02/01/2011

#1

11.0392.01001
Title.

Prepared by the Legislative Council staff for
Representative Skarphol
February 1, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1458

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 17-09, a new subsection to section 57-51-15, and section 57-51-15.1 of the North Dakota Century Code, relating to establishment of an energy infrastructure development office and grant program, an energy infrastructure development fund, and to provide for deposit and allocation of certain oil and gas gross production tax revenues; to amend and reenact sections 21-06-10 and 57-51-15 of the North Dakota Century Code, relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to repeal sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code, relating to the energy development impact office; to provide for a transfer; to provide appropriations; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 17-09 of the North Dakota Century Code is created and enacted as follows:

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

The energy infrastructure development office is established within the office of the commissioner of the board of university and school lands, the director of which must be appointed by and serve at the pleasure of the governor. The director must be knowledgeable in matters of state and local government and infrastructure development.

The director may employ staff and fix staff compensation within the appropriation made for that purpose. The director may employ a certified public accountant and certified planner among staff members. The director and staff shall monitor and cooperate with political subdivisions awarded grants to assure proper use and reporting of grant funds.

The department of transportation shall provide technical assistance as required by the energy infrastructure development office to evaluate, prioritize, and monitor infrastructure development projects and coordinate commencement of those projects with the department's projects. The department shall monitor county, city, and township infrastructure development contracting to determine if an adequate amount of qualified contractors are available to maintain competitive bidding and timely completion of county, city, and township infrastructure development projects. If the department finds there is an inadequate amount of qualified contractors, the department shall assist counties, cities, and townships to reach a broader audience of qualified contractors with requests for project bids.

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

The energy infrastructure development office director shall:

1. Develop a plan for infrastructure development assistance through financial grants or other means of providing assistance for counties, cities, and townships in energy infrastructure development areas.

2. Establish procedures and prescribe forms for political subdivisions to use in making application for and using grant funds as provided in this chapter.

3. Make and administer grants to counties, cities, and townships as provided in this chapter and chapter 57-51 and within the limits of available funds. In determining the amount of grants for which political subdivisions are eligible, the amount of funds available and revenue to which such political subdivisions will be entitled from property taxes and local, state, federal, and other sources must be considered.

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

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

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

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

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

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

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

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

~~under this subsection must be paid into the county tuition fund and expended according to the law governing that fund.~~

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

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

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto~~deposit all amounts received in a special federal flood control mineral leasing fund in the county treasury. From the federal flood control mineral leasing fund, the county treasurer shall make a payment to each school district in the county that has 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). The payment to a school district is determined by multiplying the lost land acres in the school district times the current average taxable valuation of agricultural property in the county, multiplying the resulting amount by the current school district general fund mill rate before reduction under chapter 57-64, and multiplying that result times ten. However, the total of annual payments to school districts may not exceed fifty percent of the annual deposits in the fund. After the payment to school districts, remaining amounts in the federal flood control mineral leasing fund may be used for infrastructure development by the county, provided through grants to school districts in the county for one-time expenditures, or provided through grants to townships, or for the benefit of unorganized townships, for township road and bridge purposes.

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

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

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

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

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

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

~~mining industry, according to data compiled by job service North Dakota; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   a. The amount received by the county under this section and section 57-51-15.1 in its own behalf, the amount received by the county in federal mineral lease, bonus, and royalty revenue allocations under sections 15.1-27-25 and 21-06-10; the amount received by the county in lease, bonus, or royalty payments from any other source; and the amount of those funds expended for each purpose to which those funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of any of those funds unexpended at the end of the fiscal year; and

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

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

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

SECTION 4. A new subsection to section 57-51-15 of the North Dakota Century Code is created and enacted as follows:

From the revenue that would otherwise be deposited in the state general fund under subsections 1 and 2, the state treasurer shall provide a payment in September of each year, or as soon as funds become available, to each city that has a population of seven thousand five hundred or more which is located in an oil-producing county. The payment must be four hundred thousand dollars for each full or fractional percentage point of the city's private covered employment engaged in the mining industry, but the payment to a city may not exceed ten million dollars. For purposes of this subsection, job service North Dakota shall determine the annual percentage of private covered employment engaged in the mining industry for cities eligible for allocation of funds under this subsection.

SECTION 5. Section 57-51-15.1 of the North Dakota Century Code is created and enacted as follows:

57-51-15.1. Energy infrastructure development fund - Continuing appropriation.

Revenue deposited in the energy infrastructure development fund is appropriated to the state treasurer to be allocated as follows:

1. Eighty percent to counties experiencing a need for energy infrastructure development to implement the plan recommendations of the upper great plains transportation institute submitted to the department of commerce in December 2010. However, a county is ineligible for any funds under this subsection if its current year property tax levies for county road and bridge purposes do not equal or exceed its average property tax levies for county road and bridge purposes for the prior four years.

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

   b. Twenty percent of the funds under this subsection may be awarded by the energy infrastructure development office as grants to counties to supplement funding under subdivision a or to provide full or partial funding for county infrastructure development projects not fully funded under subdivision a. Applications by counties for grant funding under this subsection must be made in a format prescribed by the director. Grants under this subdivision must obtain prior approval from the budget section of the legislative management.

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

3. Eight percent to or for the benefit of townships.

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

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

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

5. Through August 31, 2012, all allocations under this section must be made from funds specifically appropriated for that purpose by the legislative assembly and any amounts deposited in the energy infrastructure development fund under section 57-51-15 after June 30, 2011, must be accumulated and may not be expended until after August 31, 2012.

SECTION 6. AMENDMENT. Section 57-62-03 of the North Dakota Century Code is amended and reenacted as follows:

57-62-03. Loans - Terms and conditions - Repayment.

The board of university and school lands is authorized to make loans to coal development-impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the energy infrastructure development ~~impact~~ office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants must bear interest at a rate not to exceed six percent. The warrants shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor may such loans be considered as indebtedness of the county, city, or school district. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of the loan must provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter must be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The amount withheld by the state treasurer as payment of interest must be deposited in the general fund and the amount withheld by the state treasurer as payment of principal must be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal must be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district is obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 7. REPEAL. Sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code are repealed.

SECTION 8. TRANSFER. As soon as feasible after June 30, 2011, the state treasurer shall close out the oil and gas impact grant fund and transfer any remaining unobligated balance to the energy infrastructure development grant fund.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $103,000,000, or so much of the sum as may be necessary, to the energy infrastructure development office for the purpose of allocation for energy infrastructure enhancement as provided in section 57-51-15.1, for the first fiscal year of the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 10. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $100,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of upgrading collection and use of employment data to correctly identify transportation employees who should be included for statistical purposes in private covered employment engaged in the mining industry, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 11. EFFECTIVE DATE - EXPIRATION DATE. Sections 3 and 5 of this Act are effective for taxable events occurring after June 30, 2011, and through June 30, 2015, and are thereafter ineffective. Section 4 of this Act is effective for taxable events occurring after June 30, 2015."

Renumber accordingly

Here is a summary of the Governor's budget relating to western infrastructure: Testimony #2a.

1) $100 million for oil impact grants
    a. $35 million for large cities (Williston, Dickinson, Minot)
    b. $65 million for other counties, cities, school districts, and political subdivisions
    c. Oil and gas impact grant advisory committee recommends expenditures to Land Board
        i. Advisory Committee
            1. Commissioner of university and school lands
            2. EDIO director
            3. Commerce energy director
            4. DOT
            5. 1 large oil city rep. 1 small oil city rep
            6. 2 oil county reps.
    d. Land Board ultimately awards the grants
        i. 5 statewide elected officials
    e. Emergency Clause

2) $142 million for county and township roads in DOT budget
    a. Based on the Upper Great Plains Transportation study
    b. 100% of the paved road reconstruction in 4 years
    c. 20% of unpaved roads reconstruction in 5 years.

3) $229 for State road reconstruction and expansion in DOT budget

4) $247 million in oil and gas production tax formula (up from $169 million this biennium)

5) $240 million in State/Federal Highway funds

As I mentioned to you, the Association of Oil and Gas Producing Counties has voted to endorse this plan of $958 million for infrastructure. It is simple, familiar, and gets the money out quickly under the oversight of both the land board and the DOT.

Testimony #2b.

Federal Mineral and Flood Payment Summary, 2008 through 2010
Office of State Treasurer

Mineral Royalty Payments

Counties	Fiscal Year Total (July 2008-June 2009)	Fiscal Year Total (July 2009-June 2010)	Fiscal Year to Date (July 2010 to December 2010)
Billings	1,478,442.63	918,049.11	328,479.15
Bowman	4,166,024.88	3,204,040.29	1,731,407.21
Burke	60,738.65	1,254.41	32.09
Divide	226.59	229.23	534.13
Dunn	5,883,178.59	849,301.34	822,789.42
Golden Valley	210,654.44	153,053.56	138,963.57
McKenzie	1,151,326.20	1,476,916.32	891,312.92
McLean	335.20	481.42	146.29
Mercer	175,007.20	66,598.89	32,143.05
Mountrail	112,861.98	175,503.38	233,883.12
Oliver	1,235.67	10,405.79	6,030.57
Renville	2,660.77	14.70	-
Slope	156,156.20	133,638.96	69,180.98
Stark	177,514.30	125,458.49	70,274.31
Ward	45.21	30.51	-
Williams	77,035.28	120,728.25	20,465.37
Total County	13,283,552.63	7,235,704.65	4,345,642.18
State Share	13,283,552.63	7,235,704.66	4,345,642.19
Total	26,567,105.26	14,471,409.31	8,691,284.37

Federal Flood Payments

Counties	July 08-Jun 09	July 09-June 10	July 10 through Dec 10
Dunn	3,438,935.23	67,735.48	13,141.16
McKenzie	1,255,835.94	6,002.99	16,221.94
Mercer		869.62	869.62
Mountrail	28,995,171.50	22,134,922.01	816,244.59
Williams	51,856.13	643.88	
Total County	33,741,798.80	22,210,173.98	846,477.31

Testimony #3

Testimony to the House Finance and Tax Committee
Prepared February 2, 2011
By Aaron Birst, NDACo Legal Counsel

Chairman Belter and members of the House Finance and Tax Committee. The Association of Counties is here today to offer our support to many of the concepts in HB 1458. In particular, the western counties appreciate the role the legislature (both past and present) has played in attempting to address some of the unique needs of this area of the State.

As you know, our 17 oil and gas producing counties have seen a tremendous explosion in growth over the last few years. This growth has been exceedingly beneficial for all North Dakotans. This growth has also come with a price, which is being shouldered by those living in the west.

Normally, political subdivision's can help ease growing pains associated with growth by capturing the additional values on property. However, in the case of this development, much of that value cannot be captured since the industry is taxed through the production and extraction tax, which is in lieu of property taxes.

It is for that reason the western counties and political subdivisions need to continue to work with the legislature to ensure the proper amount of resources are returned back west to allow them to continue to provide services to the people living and working in those communities.

One of the main goals for these western counties and political subdivisions is to increase the amount of dollars in the Energy Impact Grant Fund. Currently, the Impact Grant fund has been used successfully and provides the flexibility to adjust funding in a rapidly changing environment. We support HB 1458's attempt to increase the dollars in this type of fund. However, as currently written, HB 1458 also creates some confusion and uncertainty on how this new distribution mechanism will work which our members do not support at this time.

We hope this committee will be able to continue working with this bill or other bills that will provide increased resource delivery in the most efficient and effective manner.

Amendment #1
2-8-11

11.0392.01006
Title.

Prepared by the Legislative Council staff for
Representative Skarphol
February 7, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1458

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 17-09, a new subsection to section 57-51-15, and section 57-51-15.1 of the North Dakota Century Code, relating to establishment of an energy infrastructure development office and grant program, an energy infrastructure development fund, and to provide for deposit and allocation of certain oil and gas gross production tax revenues; to amend and reenact sections 21-06-10, 57-51-15, and 57-62-03 of the North Dakota Century Code, relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to repeal sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code, relating to the energy development impact office; to provide for a transfer; to provide appropriations; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

17-09-01. Infrastructure development office - Appointment of director - Staff - Assistance of department of transportation.

The infrastructure development office is established within the office of the commissioner of the board of university and school lands, the director of which must be appointed by and serve at the pleasure of the governor. The director must be knowledgeable in matters of state and local government and infrastructure development.

The director may employ staff and fix staff compensation within the appropriation made for that purpose. The director may employ a certified public accountant and certified planner among staff members. The director and staff shall monitor and cooperate with political subdivisions awarded grants to assure proper use and reporting of grant funds.

The department of transportation shall provide technical assistance as required by the infrastructure development office to evaluate, prioritize, and monitor infrastructure development projects and coordinate commencement of those projects with the department's projects. The department shall monitor county, city, and township infrastructure development contracting to determine if an adequate amount of qualified contractors are available to maintain competitive bidding and timely completion of county, city, and township infrastructure development projects. If the department finds there is an inadequate amount of qualified contractors, the department shall assist counties, cities, and townships to reach a broader audience of qualified contractors with requests for project bids.

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

The infrastructure development office director shall:

1. Develop a plan for infrastructure development assistance through financial grants or other means of providing assistance for counties, cities, and townships in energy infrastructure development areas.

2. Establish procedures and prescribe forms for political subdivisions to use in making application for and using grant funds as provided in this chapter.

3. Make and administer grants to counties, cities, and townships as provided in this chapter and chapter 57-51 and within the limits of available funds. In determining the amount of grants for which political subdivisions are eligible, the amount of funds available and revenue to which such political subdivisions will be entitled from property taxes and local, state, federal, and other sources must be considered.

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

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

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

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

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

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

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

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

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

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

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto~~deposit all amounts received in a special federal flood control mineral leasing fund in the county treasury. From the federal flood control mineral leasing fund, the county treasurer shall make a payment to each school district in the county that has 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). The payment to a school district is determined by multiplying the lost land acres in the school district times the current average taxable valuation of agricultural property in the county, multiplying the resulting amount by the current school district general fund mill rate before reduction under chapter 57-64, and multiplying that result times ten. However, the total of annual payments to school districts may not exceed fifty percent of the balance of the fund. After the annual payment to school districts, remaining amounts in the federal flood control mineral leasing fund may be used for infrastructure development by the county, provided through grants to school districts in the county for one-time expenditures, or provided through grants to townships, or for the benefit of unorganized townships, for township road and bridge purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~subsection and the amount exceeding this limitation must be reallocated among the other cities in the county~~.

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

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

   a. The amount received by the county under this section and section 57-51-15.1 in its own behalf, the amount received by the county in federal mineral lease, bonus, and royalty revenue allocations under sections 15.1-27-25 and 21-06-10; and the amount received by the county in lease, bonus, or royalty payments from any other source; and the amount of those funds expended for each purpose to which those funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of any of those funds unexpended at the end of the fiscal year; and

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

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

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

SECTION 4. A new subsection to section 57-51-15 of the North Dakota Century Code is created and enacted as follows:

From the revenue that would otherwise be deposited in the state general fund under subsections 1 and 2, the state treasurer shall provide a payment in September of each year, or as soon as funds become available, to each city that has a population of seven thousand five hundred or more which is located in an oil-producing county. The payment must be four hundred thousand dollars for each full or fractional percentage point of the city's oil and gas-related private employment, but the payment to a city may not exceed ten million dollars. For purposes of this subsection, job service North Dakota shall determine the annual percentage of oil and gas-related private employment for cities eligible for allocation of funds under this subsection.

SECTION 5. Section 57-51-15.1 of the North Dakota Century Code is created and enacted as follows:

57-51-15.1. Energy infrastructure development fund - Continuing appropriation.

Revenue deposited in the energy infrastructure development fund is appropriated to the state treasurer to be allocated as follows:

1. Eighty percent to counties experiencing a need for energy infrastructure development to implement the plan recommendations of the upper great plains transportation institute submitted to the department of commerce in December 2010. However, a county is ineligible for any funds under this subsection if its current year property tax levies for county road and bridge purposes do not equal or exceed its average property tax levies for county road and bridge purposes for the prior three years.

   a. Eighty percent of the funds under this subsection must be allocated directly to counties to fully or partially fund county infrastructure development projects.

   b. Twenty percent of the funds under this subsection may be awarded by the infrastructure development office as grants to counties to supplement funding under subdivision a or to provide full or partial funding for county infrastructure development projects not fully funded under subdivision a. Applications by counties for grant funding under this subsection must be made in a format prescribed by the director. Grants under this subdivision must obtain prior approval from the budget section of the legislative management.

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

3. Eight percent to or for the benefit of townships.

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

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

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

5. Through August 31, 2012, all allocations under this section must be made from funds specifically appropriated for that purpose by the legislative assembly and any amounts deposited in the energy infrastructure development fund under section 57-51-15 after June 30, 2011, must be accumulated and may not be expended until after August 31, 2012. The amount that may be expended from the energy infrastructure development fund after August 31, 2012, is subject to determination by the budget section of the legislative management, after receiving the recommendation of the infrastructure development office.

SECTION 6. AMENDMENT. Section 57-62-03 of the North Dakota Century Code is amended and reenacted as follows:

57-62-03. Loans - Terms and conditions - Repayment.

The board of university and school lands is authorized to make loans to coal development-impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the ~~energy~~ infrastructure development ~~impact~~ office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants must bear interest at a rate not to exceed six percent. The warrants shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor may such loans be considered as indebtedness of the county, city, or school district. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of the loan must provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter must be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The amount withheld by the state treasurer as payment of interest must be deposited in the general fund and the amount withheld by the state treasurer as payment of principal must be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal must be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district is obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 7. REPEAL. Sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code are repealed.

SECTION 8. TRANSFER. As soon as feasible after June 30, 2011, the state treasurer shall close out the oil and gas impact grant fund and transfer any remaining unobligated balance to the energy infrastructure development grant fund.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $172,500,000, or so much of the sum as may be necessary, to the infrastructure development office for the purpose of allocation for energy infrastructure enhancement as provided in section 57-51-15.1, for the first fiscal year of the biennium beginning July 1, 2011, and ending June 30, 2013. From the amount appropriated in this section, the infrastructure development office may transfer $350,000, or so much of the sum as may be necessary, to the Upper Great Plains Transportation Institute for the purpose of updating its December 2010 report on energy infrastructure development and monitoring progress on implementation of the recommendations that report by political subdivisions, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 10. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $100,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of upgrading collection and use of employment data to correctly identify transportation and other employees who should be included for statistical purposes in oil and gas-related employment, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 11. EFFECTIVE DATE - EXPIRATION DATE. Sections 3 and 5 of this Act are effective for taxable events occurring after June 30, 2011, and through June 30, 2015, and are thereafter ineffective. Section 4 of this Act is effective for taxable events occurring after June 30, 2015."

Renumber accordingly

Prepared by the Legislative Council staff for
House Finance and Taxation
February 8, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1458

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 17-09, a new subsection to section 57-51-15, and section 57-51-15.1 of the North Dakota Century Code, relating to establishment of an energy infrastructure development office and grant program, an energy infrastructure development fund, and to provide for deposit and allocation of certain oil and gas gross production tax revenues; to amend and reenact sections 21-06-10, 57-51-15, and 57-62-03 of the North Dakota Century Code, relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to repeal sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code, relating to the energy development impact office; to provide for a transfer; to provide appropriations; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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17-09-01. Infrastructure development office - Appointment of director - Staff - Assistance of department of transportation.

The infrastructure development office is established within the office of the commissioner of the board of university and school lands, the director of which must be appointed by and serve at the pleasure of the governor. The director must be knowledgeable in matters of state and local government and infrastructure development.

The director may employ staff and fix staff compensation within the appropriation made for that purpose. The director may employ a certified public accountant and certified planner among staff members. The director and staff shall monitor and cooperate with political subdivisions awarded grants to assure proper use and reporting of grant funds.

The department of transportation shall provide technical assistance as required by the infrastructure development office to evaluate, prioritize, and monitor infrastructure development projects and coordinate commencement of those projects with the department's projects. The department shall monitor county, city, and township infrastructure development contracting to determine if an adequate amount of qualified contractors are available to maintain competitive bidding and timely completion of county, city, and township infrastructure development projects. If the department finds there is an inadequate amount of qualified contractors, the department shall assist counties, cities, and townships to reach a broader audience of qualified contractors with requests for project bids.

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

The infrastructure development office director shall:

1. Develop a plan for infrastructure development assistance through financial grants or other means of providing assistance for counties, cities, and townships in energy infrastructure development areas.

2. Establish procedures and prescribe forms for political subdivisions to use in making application for and using grant funds as provided in this chapter.

3. Make and administer grants to counties, cities, and townships as provided in this chapter and chapter 57-51 and within the limits of available funds. In determining the amount of grants for which political subdivisions are eligible, the amount of funds available and revenue to which such political subdivisions will be entitled from property taxes and local, state, federal, and other sources must be considered.

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

Grants distributed by the infrastructure development office under section 57-51-15.1 must be used by grantees to meet energy infrastructure development needs. Grants distributed by the infrastructure development office from the energy infrastructure development grant fund must be used by grantees to meet initial impacts affecting basic governmental services, and directly necessitated by oil and gas development. As used in this section, "basic governmental services" do not include activities relating to marriage or guidance counseling or services or programs to alleviate other sociological impacts. All grant applications and presentations to the infrastructure development office must be made by an appointed or elected government official.

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

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

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

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

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

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

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

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

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto~~deposit all amounts received in a special federal flood control mineral leasing fund in the county treasury. From the federal flood control mineral leasing fund, the county treasurer shall make a payment to each school district in the county that has 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). The payment to a school district is determined by multiplying the lost land acres in the school district times the current average taxable valuation of agricultural property in the county, multiplying the resulting amount by the current school district general fund mill rate before reduction under chapter 57-64, and multiplying that result times ten. However, the total of annual payments to school districts may not exceed fifty percent of the balance of the fund. After the annual payment to school districts, remaining amounts in the federal flood control mineral leasing fund may be used for infrastructure development by the county, provided through grants to school districts in the county for one-time expenditures, or provided through grants to townships, or for the benefit of unorganized townships, for township road and bridge purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. ~~The amount received by the county in its own behalf, the amount of those funds expended for each purpose to which funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year~~The county's statement of revenues and expenditures; and

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

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

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

SECTION 4. A new subsection to section 57-51-15 of the North Dakota Century Code is created and enacted as follows:

From the revenue that would otherwise be deposited in the state general fund under subsections 1 and 2, the state treasurer shall provide a payment in September of each year, or as soon as funds become available, to each city that has a population of seven thousand five hundred or more which is located in an oil-producing county. The payment must be four hundred thousand dollars for each full or fractional percentage point of the city's oil and gas-related private employment, but the payment to a city may not exceed ten million dollars. For purposes of this subsection, job service North Dakota shall determine the annual percentage of oil and gas-related private employment for cities eligible for allocation of funds under this subsection.

SECTION 5. Section 57-51-15.1 of the North Dakota Century Code is created and enacted as follows:

57-51-15.1. Energy infrastructure development fund - Continuing appropriation.

Revenue deposited in the energy infrastructure development fund is appropriated to the infrastructure development office to be allocated as follows:

1. Eighty percent to counties experiencing a need for energy infrastructure development to implement the plan recommendations of the upper great plains transportation institute submitted to the department of commerce in December 2010. However, 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.

   a. Eighty percent of the funds under this subsection must be allocated monthly directly to counties and allocated among counties in proportion to their shares of total oil production in the state. Funds received by counties under this subdivision must be used to fully or partially fund county infrastructure development projects.

   b. Twenty percent of the funds under this subsection may be awarded by the infrastructure development office as grants to counties to supplement funding under subdivision a or to provide full or partial funding for county infrastructure development projects not fully funded under subdivision a. Applications by counties for grant funding under this subsection must be made in a format prescribed by the director. Grants under this subdivision must obtain prior approval from the budget section of the legislative management.

2. Twelve percent may be awarded by the infrastructure development office as grants to cities with a population of fewer than seven thousand five hundred to meet energy infrastructure development needs.

3. Eight percent to or for the benefit of townships.

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

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

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

5. Through August 31, 2012, all allocations under this section must be made from funds specifically appropriated for that purpose by the legislative assembly and any amounts deposited in the energy infrastructure development fund under section 57-51-15 after June 30, 2011, must be accumulated and may not be expended until after August 31, 2012. The amount that may be expended from the energy infrastructure development fund after August 31, 2012, is subject to determination by the budget section of the legislative management, after receiving the recommendation of the infrastructure development office.

SECTION 6. AMENDMENT. Section 57-62-03 of the North Dakota Century Code is amended and reenacted as follows:

57-62-03. Loans - Terms and conditions - Repayment.

The board of university and school lands is authorized to make loans to coal development-impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the ~~energy~~ infrastructure development ~~impact~~ office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants must bear interest at a rate not to exceed six percent. The warrants shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor may such loans be considered as indebtedness of the county, city, or school district. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of the loan must provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter must be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The amount withheld by the state treasurer as payment of interest must be deposited in the general fund and the amount withheld by the state treasurer as payment of principal must be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties, and the proceeds of such sale which constitute principal must be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district is obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 7. REPEAL. Sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code are repealed.

SECTION 8. TRANSFER. As soon as feasible after June 30, 2011, the state treasurer shall close out the oil and gas impact grant fund and transfer any remaining unobligated balance to the energy infrastructure development grant fund.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $172,500,000, or so much of the sum as may be necessary, to the infrastructure development office for the purpose of allocation for energy infrastructure enhancement as provided in section 57-51-15.1, with not more than $102,500,000 of that amount to be expended during the first fiscal year of the biennium beginning July 1, 2011, and ending June 30, 2013. From the amount appropriated in this section, the infrastructure development office may transfer $350,000, or so much of the sum as may be necessary, to the upper great plains transportation institute for the purpose of updating its December 2010 report on energy infrastructure development and monitoring progress on implementation of the recommendations that report by political subdivisions, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 10. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $100,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of upgrading collection and use of employment data to correctly identify transportation and other employees who should be included for statistical purposes in oil and gas-related employment, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 11. EFFECTIVE DATE - EXPIRATION DATE. Sections 3 and 5 of this Act are effective for taxable events occurring after June 30, 2011, and through June 30, 2015, and are thereafter ineffective. Section 4 of this Act is effective for taxable events occurring after June 30, 2015."

Renumber accordingly

Adopted by the Finance and Taxation Committee

February 8, 2011

VR
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1458

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 17-09, a new subsection to section 57-51-15, and section 57-51-15.1 of the North Dakota Century Code, relating to establishment of an energy infrastructure development office and grant program, an energy infrastructure development fund, and to provide for deposit and allocation of certain oil and gas gross production tax revenues; to amend and reenact sections 21-06-10, 57-51-15, and 57-62-03 of the North Dakota Century Code, relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to repeal sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code, relating to the energy development impact office; to provide for a transfer; to provide appropriations; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

17-09-01. Infrastructure development office - Appointment of director - Staff - Assistance of department of transportation.

The infrastructure development office is established within the office of the commissioner of the board of university and school lands, the director of which must be appointed by and serve at the pleasure of the governor. The director must be knowledgeable in matters of state and local government and infrastructure development.

The director may employ staff and fix staff compensation within the appropriation made for that purpose. The director may employ a certified public accountant and certified planner among staff members. The director and staff shall monitor and cooperate with political subdivisions awarded grants to assure proper use and reporting of grant funds.

The department of transportation shall provide technical assistance as required by the infrastructure development office to evaluate, prioritize, and monitor infrastructure development projects and coordinate commencement of those projects with the department's projects. The department shall monitor county, city, and township infrastructure development contracting to determine if an adequate amount of qualified contractors are available to maintain competitive bidding and timely completion of county, city, and township infrastructure development projects. If the department finds there is an inadequate amount of qualified contractors, the department shall assist counties, cities, and townships to reach a broader audience of qualified contractors with requests for project bids.

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

The infrastructure development office director shall:

1. Develop a plan for infrastructure development assistance through financial grants or other means of providing assistance for counties, cities, and townships in energy infrastructure development areas.

2. Establish procedures and prescribe forms for political subdivisions to use in making application for and using grant funds as provided in this chapter.

3. Make and administer grants to counties, cities, and townships as provided in this chapter and chapter 57-51 and within the limits of available funds. In determining the amount of grants for which political subdivisions are eligible, the amount of funds available and revenue to which such political subdivisions will be entitled from property taxes and local, state, federal, and other sources must be considered.

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

Grants distributed by the infrastructure development office under section 57-51-15.1 must be used by grantees to meet energy infrastructure development needs. Grants distributed by the infrastructure development office from the energy infrastructure development grant fund must be used by grantees to meet initial impacts affecting basic governmental services, and directly necessitated by oil and gas development. As used in this section, "basic governmental services" do not include activities relating to marriage or guidance counseling or services or programs to alleviate other sociological impacts. All grant applications and presentations to the infrastructure development office must be made by an appointed or elected government official.

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

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

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

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

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

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

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

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

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto~~deposit all amounts received in a special federal flood control mineral leasing fund in the county treasury. From the federal flood control mineral leasing fund, the county treasurer shall make a payment to each school district in the county that has 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). The payment to a school district is determined by multiplying the lost land acres in the school district times the current average taxable valuation of agricultural property in the county, multiplying the resulting amount by the current school district general fund mill rate before reduction under chapter 57-64, and multiplying that result times ten. However, the total of annual payments to school districts may not exceed fifty percent of the balance of the fund. After the annual payment to school districts, remaining amounts in the federal flood control mineral leasing fund may be used for infrastructure development by the county, provided through grants to school districts in the county for one-time expenditures, or provided through grants to townships, or for the benefit of unorganized townships, for township road and bridge purposes.

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

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

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

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

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

4~~b~~"

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

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

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

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

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

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

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

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

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

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

   b. Thirty-five percent of all revenues allocated to any county for allocation under this subsection must be apportioned by the county

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. ~~The amount received by the county in its own behalf, the amount of those funds expended for each purpose to which funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year~~The county's statement of revenues and expenditures; and

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

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

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

SECTION 4. A new subsection to section 57-51-15 of the North Dakota Century Code is created and enacted as follows:

From the revenue that would otherwise be deposited in the state general fund under subsections 1 and 2, the state treasurer shall provide a payment in September of each year, or as soon as funds become available, to each city that has a population of seven thousand five hundred or more which is located in an oil-producing county. The payment must be four hundred thousand dollars for each full or fractional percentage point of the city's oil and gas-related private employment, but the payment to a city may not exceed ten million dollars. For purposes of this subsection, job service North Dakota shall determine the annual percentage of oil and gas-related private employment for cities eligible for allocation of funds under this subsection.

SECTION 5. Section 57-51-15.1 of the North Dakota Century Code is created and enacted as follows:

57-51-15.1. Energy infrastructure development fund - Continuing appropriation.

Revenue deposited in the energy infrastructure development fund is appropriated to the infrastructure development office to be allocated as follows:

1. Eighty percent to counties experiencing a need for energy infrastructure development to implement the plan recommendations of the upper great plains transportation institute submitted to the department of commerce in December 2010. However, 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.

   a. Eighty percent of the funds under this subsection must be allocated monthly directly to counties and allocated among counties in proportion to their shares of total oil production in the state. Funds received by counties under this subdivision must be used to fully or partially fund county infrastructure development projects.

   b. Twenty percent of the funds under this subsection may be awarded by the infrastructure development office as grants to counties to supplement funding under subdivision a or to provide full or partial funding for county infrastructure development projects not fully funded

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under subdivision a. Applications by counties for grant funding under this subsection must be made in a format prescribed by the director. Grants under this subdivision must obtain prior approval from the budget section of the legislative management.

2. Twelve percent may be awarded by the infrastructure development office as grants to cities with a population of fewer than seven thousand five hundred to meet energy infrastructure development needs.

3. Eight percent to or for the benefit of townships.

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

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

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

5. Through August 31, 2012, all allocations under this section must be made from funds specifically appropriated for that purpose by the legislative assembly and any amounts deposited in the energy infrastructure development fund under section 57-51-15 after June 30, 2011, must be accumulated and may not be expended until after August 31, 2012. The amount that may be expended from the energy infrastructure development fund after August 31, 2012, is subject to determination by the budget section of the legislative management, after receiving the recommendation of the infrastructure development office.

SECTION 6. AMENDMENT. Section 57-62-03 of the North Dakota Century Code is amended and reenacted as follows:

57-62-03. Loans - Terms and conditions - Repayment.

The board of university and school lands is authorized to make loans to coal development-impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the ~~energy~~ infrastructure development ~~impact~~ office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants must bear interest at a rate not to exceed six percent. The warrants shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor may such loans be considered as indebtedness of the county, city, or school district. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of the loan must provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter must be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The amount withheld by the state treasurer as payment of interest must be deposited in the general fund and the amount withheld by the state treasurer as payment of principal must be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal must be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district is obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 7. REPEAL. Sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code are repealed.

SECTION 8. TRANSFER. As soon as feasible after June 30, 2011, the state treasurer shall close out the oil and gas impact grant fund and transfer any remaining unobligated balance to the energy infrastructure development grant fund.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $172,500,000, or so much of the sum as may be necessary, to the infrastructure development office for the purpose of allocation for energy infrastructure enhancement as provided in section 57-51-15.1, with not more than $102,500,000 of that amount to be expended during the first fiscal year of the biennium beginning July 1, 2011, and ending June 30, 2013. From the amount appropriated in this section, the infrastructure development office may transfer $350,000, or so much of the sum as may be necessary, to the upper great plains transportation institute for the purpose of updating its December 2010 report on energy infrastructure development and monitoring progress on implementation of the recommendations that report by political subdivisions, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 10. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $100,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of upgrading collection and use of employment data to correctly identify transportation and other employees who should be included for statistical purposes in oil and gas-related employment, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 11. EFFECTIVE DATE - EXPIRATION DATE. Sections 3 and 5 of this Act are effective for taxable events occurring after June 30, 2011, and through June 30, 2015, and are thereafter ineffective. Section 4 of this Act is effective for taxable events occurring after June 30, 2015."

Renumber accordingly

Date: 2-8-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ____________

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

Motion Made By ____________ Seconded By ____________

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

Total (Yes) ____________ No ____________

Absent ____________

Floor Assignment ____________

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

VOICE VOTE

MOTION CARRIED

Date: 2-8-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ____________

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
R. Meyer's comments
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By ____________ Seconded By ____________

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

Total (Yes) ____________ No ____________

Absent ____________

Floor Assignment ____________

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

VOICE VOTE

MOTION FAILED

Date: 2-8-11 afternoon committee meeting
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

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 ✓ change amendments from 60 to 30 days.

Motion Made By Rep. Headland Seconded By Rep. Meyer

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

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

VOICE VOTE

MOTION CARRIED.

Date: 2-9-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment .01007 p.7 section

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Headland Seconded By Rep. Grande

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

Total (Yes) No

Absent

Floor Assignment

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

VOICE VOTE

MOTION CARRIED

Date: 2-9-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

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. Headland Seconded By Rep. Grande

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) 9 No 4

Absent 1

Floor Assignment Rep. Froseth

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

REPORT OF STANDING COMMITTEE

HB 1458: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1458 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 17-09, a new subsection to section 57-51-15, and section 57-51-15.1 of the North Dakota Century Code, relating to establishment of an energy infrastructure development office and grant program, an energy infrastructure development fund, and to provide for deposit and allocation of certain oil and gas gross production tax revenues; to amend and reenact sections 21-06-10, 57-51-15, and 57-62-03 of the North Dakota Century Code, relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to repeal sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code, relating to the energy development impact office; to provide for a transfer; to provide appropriations; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

17-09-01. Infrastructure development office - Appointment of director - Staff - Assistance of department of transportation.

The infrastructure development office is established within the office of the commissioner of the board of university and school lands, the director of which must be appointed by and serve at the pleasure of the governor. The director must be knowledgeable in matters of state and local government and infrastructure development.

The director may employ staff and fix staff compensation within the appropriation made for that purpose. The director may employ a certified public accountant and certified planner among staff members. The director and staff shall monitor and cooperate with political subdivisions awarded grants to assure proper use and reporting of grant funds.

The department of transportation shall provide technical assistance as required by the infrastructure development office to evaluate, prioritize, and monitor infrastructure development projects and coordinate commencement of those projects with the department's projects. The department shall monitor county, city, and township infrastructure development contracting to determine if an adequate amount of qualified contractors are available to maintain competitive bidding and timely completion of county, city, and township infrastructure development projects. If the department finds there is an inadequate amount of qualified contractors, the department shall assist counties, cities, and townships to reach a broader audience of qualified contractors with requests for project bids.

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

The infrastructure development office director shall:

1. Develop a plan for infrastructure development assistance through financial grants or other means of providing assistance for counties, cities, and townships in energy infrastructure development areas.

2. Establish procedures and prescribe forms for political subdivisions to use in making application for and using grant funds as provided in this chapter.

3. Make and administer grants to counties, cities, and townships as provided in this chapter and chapter 57-51 and within the limits of available funds. In determining the amount of grants for which political subdivisions are eligible, the amount of funds available and revenue to which such political subdivisions will be entitled from property taxes and local, state, federal, and other sources must be considered.

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

Grants distributed by the infrastructure development office under section 57-51-15.1 must be used by grantees to meet energy infrastructure development needs. Grants distributed by the infrastructure development office from the energy infrastructure development grant fund must be used by grantees to meet initial impacts affecting basic governmental services, and directly necessitated by oil and gas development. As used in this section, "basic governmental services" do not include activities relating to marriage or guidance counseling or services or programs to alleviate other sociological impacts. All grant applications and presentations to the infrastructure development office must be made by an appointed or elected government official.

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

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

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

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

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

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

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

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

~~federal lands in the county. The county must be allocated a similar proportionate share based on the area of these lands in the county not within an organized township.~~

~~This section applies to all funds heretofore received or to be received by the counties entitled thereto~~deposit all amounts received in a special federal flood control mineral leasing fund in the county treasury. From the federal flood control mineral leasing fund, the county treasurer shall make a payment to each school district in the county that has 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). The payment to a school district is determined by multiplying the lost land acres in the school district times the current average taxable valuation of agricultural property in the county, multiplying the resulting amount by the current school district general fund mill rate before reduction under chapter 57-64, and multiplying that result times ten. However, the total of annual payments to school districts may not exceed fifty percent of the balance of the fund. After the annual payment to school districts, remaining amounts in the federal flood control mineral leasing fund may be used for infrastructure development by the county, provided through grants to school districts in the county for one-time expenditures, or provided through grants to townships, or for the benefit of unorganized townships, for township road and bridge purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Twenty percent of all revenues allocated to any county for allocation under this subsection must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 5 which totals more than seven hundred fifty 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 ~~4~~6, ~~the allocation to~~ that city receives no allocation under this subsection ~~is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county~~.

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

b. Thirty-five percent of all revenues to be allocated ~~to~~under this subsection must be deposited in the county infrastructure fund ~~under subsections 3 and 4 must be allocated~~for allocation by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs ~~or~~

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

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

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

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

a. ~~The amount received by the county in its own behalf, the amount of those funds expended for each purpose to which funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year~~The county's statement of revenues and expenditures; and

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

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

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

SECTION 4. A new subsection to section 57-51-15 of the North Dakota Century Code is created and enacted as follows:

<u>From the revenue that would otherwise be deposited in the state general fund under subsections 1 and 2, the state treasurer shall provide a payment in September of each year, or as soon as funds become available, to each city that has a population of seven thousand five hundred or more which is located in an oil-producing county. The payment must be four hundred thousand dollars for each full or fractional percentage point of the city's oil and gas-related private employment, but the payment to a city may not exceed ten million dollars. For purposes of this subsection, job service North Dakota shall determine the annual percentage of oil and gas-related private employment for cities eligible for allocation of funds under this subsection.</u>

SECTION 5. Section 57-51-15.1 of the North Dakota Century Code is created and enacted as follows:

<u>**57-51-15.1. Energy infrastructure development fund - Continuing appropriation.**</u>

<u>Revenue deposited in the energy infrastructure development fund is appropriated to the infrastructure development office to be allocated as follows:</u>

<u>1.</u> <u>Eighty percent to counties experiencing a need for energy infrastructure development to implement the plan recommendations of the upper great plains transportation institute submitted to the department of commerce in December 2010. However, 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.</u>

<u>a.</u> <u>Eighty percent of the funds under this subsection must be allocated monthly directly to counties and allocated among counties in proportion to their shares of total oil production in the state. Funds received by counties under this subdivision must be used to fully or partially fund county infrastructure development projects.</u>

<u>b.</u> <u>Twenty percent of the funds under this subsection may be awarded by the infrastructure development office as grants to counties to supplement funding under subdivision a or to provide full or partial funding for county infrastructure development projects not fully funded</u>

under subdivision a. Applications by counties for grant funding under this subsection must be made in a format prescribed by the director. Grants under this subdivision must obtain prior approval from the budget section of the legislative management.

2. Twelve percent may be awarded by the infrastructure development office as grants to cities with a population of fewer than seven thousand five hundred to meet energy infrastructure development needs.

3. Eight percent to or for the benefit of townships.

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

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

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

5. Through August 31, 2012, all allocations under this section must be made from funds specifically appropriated for that purpose by the legislative assembly and any amounts deposited in the energy infrastructure development fund under section 57-51-15 after June 30, 2011, must be accumulated and may not be expended until after August 31, 2012. The amount that may be expended from the energy infrastructure development fund after August 31, 2012, is subject to determination by the budget section of the legislative management, after receiving the recommendation of the infrastructure development office.

SECTION 6. AMENDMENT. Section 57-62-03 of the North Dakota Century Code is amended and reenacted as follows:

57-62-03. Loans - Terms and conditions - Repayment.

The board of university and school lands is authorized to make loans to coal development-impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the ~~energy~~ infrastructure development ~~impact~~ office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants must bear interest at a rate not to exceed six percent. The warrants shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor may such loans be considered as indebtedness of the county, city, or school district. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of the loan must provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter must be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The amount withheld by the state treasurer as payment of interest must be deposited in the general fund and the amount withheld by the state treasurer as payment of principal must be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal must be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district is obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 7. REPEAL. Sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code are repealed.

SECTION 8. TRANSFER. As soon as feasible after June 30, 2011, the state treasurer shall close out the oil and gas impact grant fund and transfer any remaining unobligated balance to the energy infrastructure development grant fund.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $172,500,000, or so much of the sum as may be necessary, to the infrastructure development office for the purpose of allocation for energy infrastructure enhancement as provided in section 57-51-15.1, with not more than $102,500,000 of that amount to be expended during the first fiscal year of the biennium beginning July 1, 2011, and ending June 30, 2013. From the amount appropriated in this section, the infrastructure development office may transfer $350,000, or so much of the sum as may be necessary, to the upper great plains transportation institute for the purpose of updating its December 2010 report on energy infrastructure development and monitoring progress on implementation of the recommendations that report by political subdivisions, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 10. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $100,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of upgrading collection and use of employment data to correctly identify transportation and other employees who should be included for statistical purposes in oil and gas-related employment, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 11. EFFECTIVE DATE - EXPIRATION DATE. Sections 3 and 5 of this Act are effective for taxable events occurring after June 30, 2011, and through June 30, 2015, and are thereafter ineffective. Section 4 of this Act is effective for taxable events occurring after June 30, 2015."

Renumber accordingly

2011 HOUSE APPROPRIATIONS

HB 1458

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

HB 1458
2/16/11
14615

☐ Conference Committee

Committee Clerk Signature Julia Fiegle

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to establishment of an infrastructure development office and grant program, an energy infrastructure development fund, and to provide for deposit and allocation of certain oil and gas gross production tax revenues; relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; relating to the energy development impact office; to provide for a transfer; to provide appropriations; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

Minutes:

You may make reference to attachment ONE - FOUR

Chairman Delzer: Called the meeting to order. Roll was called and a quorum was declared. Chairman Delzer opened hearing on HB 1458 and gave an overview of how the discussion of the bill would go; including which individuals would be giving input as well as hearing support and opposition to the bill. The bill title was read.

Representative Skarphol: Prime sponsor, introduced the bill. I'll try to explain the logic behind what's here, and propose some minor changes. Section 1 sets up what is to be referred to as infrastructure development office. The word impact to me is not the correct term anymore (as the Majority Leader of the House agrees) to solve the problems in western ND, thus we need to get rid of that terminology. The office is to remain in the land department, with a reduced roll. There will be more responsibilities put to the counties. Their major roll will be to ensure that the development taking place is done in a fashion that's commensurate with the UGPTI study.

Rep. Skarphol read over beginning of the bill. He states: The political subdivisions are in competition with the oil companies that are requiring the same type of work. If we are going to appropriate the dollars, this is an effort to ensure that the dollars get spent when they should be spent and not being putting the bank in debt because "we can't get the work done." The roads need to get fixed and it's about other infrastructure besides the roads.

In going to the next subsection of section one (17-09-02), the grant process should not be erroneous and it's up to the office to develop that grant process. If the committee desires we can put language in there to indicate legislative intent to make the grant process as simple as possible, thus assisting anybody wanting to make those grant applications. The reason for the grant process (only applicable to a portion of the county money, the $16.4 reflected in the fiscal year) that's the only part of the grant process that the counties need to do that would be required. Explained flow chart labeled as attachment **ONE** and attachment **TWO**. This is a flexible plan for everybody involved. This is not about the legislature demanding anything other than that the money get utilized for the purpose intended. This section is self explanatory.

Page 2, the next subsection, on line 24 I would take out *energy* used by grantees to meet the infrastructure development needs as water and sewer lines in cities are energy infrastructure development needs thus the word energy is unnecessary. There is some angst among some people about what infrastructure means. If the committee desires, we could try to create a definition for that. Infrastructure to me doesn't mean a new community center in this case. It means the type that is essential to either the transportation needs in western ND or the needs of citizens in the communities in ND that are necessities i.e. water and sewer lines, trunk lines going out to a development, etc.

Line 27-29 there is existing language elsewhere in the code with regard to basic governmental services as to what should not be included such as marriage or guidance counseling or programs to alleviate sociological impacts.

Top of pg 3, creates the fund, that's the place the money will flow. It will go to the energy infrastructure development fund. We did leave the word energy there in order to differentiate what could conceivably become a new fund called the state infrastructure fund, therefore we left energy in front of that only to make the differentiation that doesn't make it necessary to use it only for energy purposes.

Chairman Delzer: there are actually two funds being developed there. Does it need to be two or does it all need to be done under one?

Representative Skarphol: The reason there are two funds is the one pool of money ($16.4M) is grant money and needs to be segregated. If it's all put in there it would still need to be kept separate on paper. It is a grant fund. Resumed presentation of bill, on page 4 in regard to the federal fund money and the utilization of those dollars, there was discussion about the money that did become available to counties and whether or not it was distributed in a fashion that fully (inaudible couple of words) today. This new language attempts to address the fact that school districts lost land to Lake Sacagawea and because of that; there was a loss of revenue to the school districts. Rep. Drovdal and Rep. Rust worked on this language. I am open to language simplification. Over a couple years Montrail county did receive $53 in flood money. Half of it had to go the schools. A quarter of it went to the townships and the remainder went to the county. Two school districts received a fairly substantial amount of money ($22M and $5M) and one township received $500M with 9 miles of road. Proposals are out there to address this distribution.

If we keep the current language, I suggest we delete the language on page 4, line 16, starting with the word provided through line 18. In going to the bottom of pg 4 in section 3, you will see $8M goes to the oil impact fund and is not reflected on the flow charts and is unrestricted in use. On pg 5 we address the energy infrastructure development grant fund to ensure it goes in the right place. The language in subsection 3 on the bottom of pg 5 was an attempt to correct something that happened in 1304 that made it fairly complex as to the distribution of the tax dollars. This would not correct in the event of major population changes within those counties, however if that happens it can be corrected at the next legislative session.

Beginning of section 2 page 5 is the formula change I proposed. Currently, anything about $18M in the formula is distributed 90% to the state, 10% to the counties. The funding mechanism for this is partially a funding change in that area in which is goes from 90-10 to 75-25. A portion of the funding is a result of that 15% and there's an additional appropriation required in this bill that I'll get into at the end, that would be required to get the funding level to where the funding level is in this bill. On pg 6, there's a change in line 4 which removes a hyphen. The language at the bottom that is over struck is the language was removed because of the changes that were made on pg 5 with regards to the school distributions in order to simply that.

Mr. Walstad can talk more about pg 8. We run into the hyphen again on line 10. Lines 17 and 18 removes schools from being eligible for the dollars from the infrastructure funds. I recommended Dr. Sanford for schools to address concerns about this with. I want it to apply to schools statewide; not just oil-patch areas. Other schools have these same issues that we have refused to address such as sharp increases in populations. I feel it's important to fix the roads before we buy buses.

On pg 9, subsection 6, the distribution is set up for cities over 7500. It uses the same criteria that exists in the law today with regards to the distribution to the larger cities as far as the percentages, but allows for a larger distribution of money. Under this scenario, Williston engaged in the mining industry is over 12% and they would be eligible for $10M. Communities that are between 2 and 12% would be eligible for $5M (i.e. Dickinson). Communities with measureable, but less that 2% employment in that category would receive $2.5M. That distribution would continue until 2015, when it would switch to a different formula. The reason for the shift would be for job service (through the finance and tax committee) \with an appropriation from general funds (they are not allowed by law to use federal funds to do the type of work that's been requested of them), look at employment, but to refine the categories within job services to give us, what some believe, a more accurate representation of what employment percentages are attributable to oil and gas in western ND. On pg 10 is their suggested language on lines 28-29. That would require the job service do more polling of employers in western ND on requiring of a more defined distribution of their employees within their business.

The reason to delay the implementation of the new formula is simply in order to collect the kind of history that we typically ask for and require to make that kind of judgment and allow four years. I'm happy to change if that's what this group wants. In going back a few pages, to page 7, there are requirements in here with regards to the counties providing information to the treasurer's office and their office providing it to us. I am not as concerned about the reporting requirements because we need a stronger corporation with regard to the monitoring to be as requested and done by the Upper Great Plains Transportation Institute. Whatever the counties ask to provide should be in the format that the counties currently use, not in something new and different. Back to top of page 10 which is all about the reporting requirements. I'm inclined to only ask for what the counties already have available and already provide perhaps, as long as the monitoring cooperation is there with Upper Great Plains. Section 4 of the bill is the new section that would take effect at the end of the two biennia with regard to how to distribute the money to cities above 7500. With the refining of the job service information, I believe that it's more appropriate to let cities earn a level of funding based on that percentage, up to some number (that could be changed by legislative assembly). What this does is say that a city can earn $10M if their employment (oil and gas related) percentage is 25% or more. In other words you earn $400,000 per percentage i.e. 10% = $4M. The evaluation will be done annually on a date that is yet to be set (job service recommended a date). There are cities that feel the current formula isn't fair. I am open to further debate on the numbers I provided.

Page 11-12 gets into the flow chart you see projected on the screens, see attachment **ONE**. Due to listening to conversations from political subdivisions over the past several years and the moneys they receive and how it's not timely enough to allow for bidding and making their plans, my intent was to get the money out there. Not to have some application process that you had to run through the impact office and quarterly find out how much money you were going to get. Rep. Skarphol went through the flow chart.

Attachment **ONE:** In regards to segregated money; counties aren't going to rob from the cities under 7500 or the townships nor are the townships going to rob from the county. They are not going to have to compete for the same pool of money, but they are going to know what dollars are available. That $82M is split into two groups; 80% (goes to counties) of which goes out to spend on infrastructure and report to Upper Great Plains on progress on the plan that the oil and gas counties paid for and believe is the plan that needs to be implemented. I believe there should be provisions to allow for exceptions. The infrastructure office strategic grants of $16.4 is the money that counties who want to work together can use to help compliment what they are trying to do. If you look at the township money, there are townships with 0 dollars. They've spent it all. This is simply an attempt to put some money into the hands of the townships so if the counties want to work with the townships and require a matching dollar amount, they have some money available. A portion of this is distributed on a per well basis on a formula. The balance of that money going to the townships would be given to the counties to a large extent to address those needs in townships. I would hope this committee would provide the energy infrastructure office with the capability to have some of that money available to address the needs of townships that are not in oil and gas counties because there are damaged roads in neighboring counties that need to get addressed and counties that don't have production get zero. There needs to be some money available to address those needs. For the most part, since DOT is involved from start to finish, UGPTI will report to us and to the counties as to their progress. Counties would be responsible for oversight on the townships, which should substantially reduce the workload of the Bismarck office. Carry forward authority is on page 12. In cases where there's not sufficient grants or grants that the office feels are warranted for funding, they don't have to spend the money and it will get carried it forward to the next biennia in order to have a larger pool of dollars to address issues.

Subsection 5 addresses the grant oversight, which was a request of the majority leader. I don't believe it will be onerous; it's more just keeping us apprised of what is happening. Page 14, the repealers, I'll let Mr. Walstad address. The transfer in section 8 is to get rid of the oil impact fund. The appropriation in section 9 is $172,500,000 to fund the first distribution and that would be the $100M and $2.5M and the $17.5M. There is no emergency clause, but I would ask the committee to seriously consider putting one on. The first distribution is for fiscal year 2012, $70M of it would go into the accumulating money in conjunction with the normal oil and gas production taxes collected in the 15% category that is estimated by the tax dept to amount to $80M. At the end of 2012, in addition to the $120M already distributed, there will be another $150M available to be distributed in the event that the progress that's been suggested in the Upper Great Plains plan is actually being made. If that progress isn't being made, then that would give the DOT enough money to warrant putting out a bid somewhat to see if they get attract some outside contractor to come in and do some of the work that we are not able to get done because of shortage of contractors. If there's no indication of that shortage of contractors and the work is getting done, the money gets distributed. In that section, on line 16, I would like to get rid of the word energy and include county and township. Also in section 9 is the $350,000 that would flow to the Upper Great Plains Transportation Institute (UGPTI) that would provide them with some software to more adequately do what they've been asked to do but the oil and gas counties previously and monitor the progress.

Section 10 is $100,000 appropriation for the job service folks to do the reclassifying of jobs in order to ensure we have a more adequately refined capability to evaluate the statistics in the large cities. As far as section 11 and the sunsets, my intent is not to sunset the existing formula. It would be my intent to sunset the change from 90-10 to 75-25, so we revisit that in 4 years as to which is most appropriate. I am now prepared to stand for questions.

Chairman Delzer: On the appropriation for 172, it says the first year is 102.5, and then 17.5. Where's the other 52?

Representative Skarphol: The mechanics of this will have to be addressed by Mr. Walstad. The distribution to the large cities that is reflected, the first distribution, is a formula change and not shown as an appropriation necessarily, but it would be part of the cost.

Chairman Delzer: And then the $70M is to cover the 150 in the second year.

Representative Skarphol: In addition to 80 that would flow from the formula.

Chairman Delzer: And this is set up that is oil production increases, or the prices increase or decrease, it'll change that $80M that you are expecting from here.

Representative Skarphol: Correct, it is a funding formula change and it would be affected from changes in revenue.

Representative Dahl: Going back to the first section of the bill, it's not clear to me what this office looks like. So, this person would be appointed by the governor and there's a commissioner of this dept. How many staff are we looking at to implement this entire plan?

Representative Skarphol: Staff would be determined in the land department's budget. We did advise them to hire a CPA or certified planner among the staff members. I would assume there would be an estimate on the part of the land dept as to their staffing needs based on this particular bill if it passes, versus what is proposed in the governor's budget.

Chairman Delzer: On the first page, the language says, 'and', you wish to change that to 'or'?

Representative Skarphol: Not necessarily, there may be enough need to need both. That's something they are going to have to recommend from the land dept's perspective as to what the workload would look like to them.

Representative Hawken: Why is this in the land office instead of the commerce department?

Representative Skarphol: Oil and gas impact office is currently in the land department, and this is to leave it there because of the existing knowledge base that's there and let them manage it as they have in the past.

Representative Hawken: How would the changes in the monies going to the schools affect the current formula that affects all of the schools in ND because some of that money has been jackpotted.

Representative Skarphol: As I stated earlier, the change for the schools was requested and recognized as a result of 1304's passage. 1304 made the job of the auditors' and treasurers' job at the county level more complex because of the changes that were made. These changes do not necessarily result in a big monetary change, but just simplify their process. It gets rid of a percentage requirement in the lower tiers of the funding that goes out and it should not really be affected.

Representative Hawken: When I subtract out the 102 and the 17.5 out of the 172, I come up with 52.5 and I'm figuring you have to have the $100,000 for job service and the 350 for Great Plains, so does the office get $52 million?

Representative Skarphol: The 17.5 does not need to be subtracted out. That is done by a formula mechanism elsewhere. There's not an appropriation for the 17.5. Secondly, if you subtract the 100 and 2.5 from the 172, you get $170M. The appropriation for the $100,000 and the 350 will come out of that and numbers are estimates so it will slightly reduce the overall funding that will be distributed to the cities, counties, and townships by $450,000. There's $295M in this bill so I don't think $450,000 is significant.

Representative Hawken: How much would you have for the people who are in the land dept?

Representative Skarphol: That needs to be resolved on the budget process on the land department.

Vice Chairman Kempenich: would we be taking some of this (oil and impact leasing money) or would that be something we have to work through on the budget on the land dept?

Representative Skarphol: From my perspective, whoever is in charge of the land department's budget will visit with the land dept about what they perceive to be their personnel needs and they will get funded from whatever mechanism we typically fund.

Vice Chairman Kempenich: On the flow chart going out to the counties, that 65.6 on top of the gross production or is that part of it?

Representative Skarphol: The money reflected as a county distribution would be over and above what they're currently getting.

Chairman Delzer: We're going to have Speaker Drovdal speak next.

Representative Dave Drovdal, District 39, Speaker of the House: This is a new approach to funding the impact caused by oil development. It's outside the box, which is a good thing. This is the most important piece of legislation for oil and gas counties, cities and schools that we're going to see in this session. It addresses the impact not only prevalent today caused by the past, but also had in the future including the (load) problems identified in the Upper Great Plains study. However, I have a concern that maybe it doesn't have the flexibility to cover the impact in all areas the oil development has caused. In the financial forecast that was presented Feb 14, several items were pointed out that restrict the oil development and also cause needs in the oil industry to include the water needs, housing, workers, regulations. We need to have this bill address as many of these as possible for past, present and future. Two years ago we passed an oil impact bill. We had about 40 rigs drilling and cost was about $40 a barrel. We were concerned about the trigger price kicking in which would reduce our revenue. Nobody saw the turn around that happened. When the 61st legislative session considered impact funding, our focus was on those. Today there are 170 rigs, and oil prices are around $85 a barrel. All services, both public and private, have been affected in western ND. Even though we increased funding, we capped the schools and put the additional dollars into a county infrastructure fund and allowed that for the township. HB 1458 allows schools to be able to apply for money they were capped at. I don't think that's right and I hope you take another look at that. The bill targets some specific goals and objectives. The grant program for townships is one. One of the problems we've had is the damage is done right away when they start the development, but it's up to a year before any of that money starts rolling in from the oil impact grant fund. HB 1458 addresses shortage language we put in last session where we shorted schools funding. That's good. Econo was made on the house floor yesterday that said the state does not collect property tax. That is not true. When the 5% tax was put on oil industry back in the 50s, it was put on in lieu of property tax. The counties, cities, oil companies agreed that they would not have a property tax because this was a substitute, therefore it is a property tax and that money comes to the state. That's the dollars we are talking about. Money from the 5% that the schools, the state, the counties, the cities are asking for. School funding comes from two sources, state foundation aid and property tax. In the oil and gas producing counties, tax from the business (inaudible word) in each of these oil wells is a new business. HB 1458 not only restricts schools from receiving additional dollars, it actually takes money away from schools. There's no other place in ND where when a business comes in, the schools are restricted from getting property tax when there's impact in their district. Thus this is an oil impact bill off of the property tax.

Cities from the impacted area have many needs, but they are restricted to $30M (goes away in four years). This amount goes away quickly due to money dedicated to laying pipe in a ground, etc. The valuation of these cities has not grown, as many of the workers live in larger communities. The property tax dollars are limited by the state and studies show that there are infrastructure needs in these communities that they cannot be met within the framework of this funding method. I think we need to increase the funding from the 12 to 20%. I am grateful that HB 1077 was passed out which would remove that $750 per resident cap on these cities. One of the problems we have was that the residency is by census and many of these workers do not consider these communities as their residency.

We still have the budget committee involved, but many do not have experience in oil impact. My concern is the flexibility on it and it does provide money for townships which is positive, however many of the counties who are impacted does not have or have few townships. Over the years, the county has taken over the roadwork so we need to have that flexibility in there.

Bottom line, this bill needs modifying.

Chairman Delzer: Thank you. We'll call on Mr. Walstad next for mechanics of the bill.

John Walstad, Legislative Council: I am neither for nor against the bill, I am just the mechanic. Representative Skarphol explained the bill very well. Just a few things I want to point out that the committee had some questions on. On page 3 line 6, the infrastructure development fund and infrastructure development grant fund continue an appropriation allocated for distribution through grants. That is not all that happens with that money. After the word through, we need to add allocations and grants because some of it is direct allocations that doesn't require application. Also, energy infrastructure development fund will handle all the money that shows up on the chart; with the exception of the little box on the upper right on each one that's not connected by lines to anything, which is the allocation to the larger cities, and it is out of the formula. It does not need to be appropriated. It is new money so it shows up on this chart. Also not on this chart is the $8 million which is the current impact fund. It now will be handled by this energy infrastructure development office and that money is what is deposited in the energy infrastructure development grant fund. There are grants provided in the new chapter, but those monies will be granted out of the development fund. The grant fund is that $8M in current law which is going to be subject to the same conditions as the grants available now. That money is available to school districts and it's the language on page 2 line 25, from the energy infrastructure development grant fund used by grantees to meet initial impacts effecting basic governmental services directly necessitated by oil and gas development. If you recognize what governmental services means is if you recognize that language, it's because it's in current law and is moved here because the energy infrastructure development office is being eliminated and replaced. The repeals section at the end of the bill also takes that current office language from where it is and puts it in this new chapter in the energy title which I think is more appropriate. It's been in the coal tax laws since the 70s because it was established as a coal development impact office.

Chairman Delzer: the $8M is the only one that's in the grant one?

Walstad: Correct. It is segregated and won't be comingled with any other funds.

Chairman Delzer: The strategic grant money ($16.4M) is another fund?

Walstad: That will come directly from the energy infra development fund, no grant.

Chairman Delzer: Since we're getting rid of the impact office and that $8M, is that expected to go forward into the next biennium and be there for this grant office again?

Walstad: The language that will make the $8 million deposit in the next biennium is on page 4 line 27, but over on page 5 line 5 that $8 million will now go to the grant fund. On page 14 line 8 there is a transfer, as soon as feasible after we get into the next biennium, this would require the trigger to close out the oil and gas impact grant fund (where the $8M goes now) and transfer anything left into the new energy infra development grant fund.

Representative Kaldor: The current $8 million I think I understand, but the repealer, would this legislation change the purposes for which that $8 million can now be used?

Walstad: I don't believe that it would if you are referring to coal impact still being eligible.

Representative Kaldor: During the interim, the energy committee was deliberating on this legislation. There's fire and ambulance grants that can be received out of that $8M and is that still eligible under this legislation?

Walstad: Yes, those kinds of projects would be eligible for funding and Representative Skarphol was determined that, that fund would still be available for what it has been available for before. Thus, the language that we have here about initial impacts, basic governmental services, is the same language that's been in there since 1975. It won't change anything about who is eligible. I think it's just political subdivisions. The other significant thing is that fund, current law, is $8M. The requests that have been made for some of that $8M, are like $40M. The current office perceived that infrastructure was the primary concern. Most of those grants went to township road projects. Now township roads will be funded through a different mechanism, which means that the $8M might be more available to schools, fire, ambulance, and those types of projects. That's a policy question I am giving you opinion on.

Vice Chairman Kempenich: On page 2 subsection 3 to pull 'energy' out of that so it is differentiated. Is that something so you differentiate?

Walstad: The reason I put the word energy in there is that the Upper Great Plains report is in two parts. One is in energy area road issues and the other is more of statewide road issue.

Vice Chairman Kempenich: Isn't that the section regarding the $8M or is it a completely different issue?

Walstad: No, that's not the $8 million grant program. This one talks about grants under 57-51-15.1. that is the new section that is created by section five of this bill and there are some grants within the office and this formula, but those grants don't go in that grant fund, fund.

Vice Chairman Kempenich: isn't it still getting pulled into that 102?

Walstad: No, because it is current law and is a direct allocation provided by law. It's unchanged except for the name of the fund that it goes into.

Chairman Delzer: On the 17.5, that's by formula, and would that be over and above the change from 90-10 to 75-25?

Walstad: Correct. In the first year, there are 102.5 from the appropriation that will go through the formula. There is 17.5 from the existing statutory allocation that will not go through this allocation formula, but it's new money so it could be considered to be added which would bring us to $120M total new money in year one and it could also be added onto the second year where there's 150 combined that would go through the new flow plus 17.5.

Chairman Delzer: Those are supposed to be September 1?

Walstad: Correct. The treasurer's office suggested that, that would be the appropriate time.

Representative Kaldor: The allocation of cities over 7500 is 17.5. That's separated out and run out on the what we would describe as the normal allocation?

Walstad: It's the production tax allocation formula.

Representative Kaldor: What would the normal allocation be for the cities under 7500?

Walstad: Under the existing formula, those cities get money directly out of the formula and it's not a grant program. It's a direct allocation among counties based on population. If, within that county, one of those larger cities (7500 plus) is there, that city is factored out and the allocation is made among the smaller cities. There's money going there already and they're eligible for grant funds already.

Vice Chairman Kempenich: Most of what's in the box is new money and we're not talking about the gross production tax, any of the old formula money.

Walstad: Correct. The formula that distributes money now goes to counties and within the counties is allocated and there's an infrastructure fund at the county level and there's no change there.
Page 11 line 18, we were talking about the 20% discretionary money for counties that can be used to supplement funding and when Representative Skarphol was talking about that, I noticed that on line 18, we talk about funding for infrastructure projects now fully funded under subdivision A. That's okay, but I think we should add after subdivision A, the words

'or from other sources' so that we aren't just looking at subdivision A. We're looking at all of the money available to counties for these kinds of projects wherever it comes from.

Representative Skarphol: Do you believe it would be appropriate to have an emergency clause on this?

Walstad: I'm not sure why we would need one. What needs to be speeded up?

Representative Skarphol: What do you see as a timeframe for the allocation of the $102.5M?

Walstad: That will become available July 1.

Chairman Delzer: Because these have appropriations in them, this thing will become effective July 1 versus August 1.

Walstad: Correct

Vice Chairman Kempenich: It references the general fund, so in theory it's not available until September 1. Putting 102 million coming out right out front is going to make the general fund look pretty good or ugly; whichever way you want to put it. That doesn't worry me too much because the funds will be available, but it's just the timing of when it shows up on the reports is going to look ugly.

Walstad: Correct, and that's one of the reasons Representative Skarphol picked general fund money for the first year which is available July 1. It's not necessary to wait for the 15% revenue to start to go into this new fund.

Chairman Delzer: I think we need to check with Treasurer's Office to see how that actually works.

Walstad: One last thing. There have been some questions about section 3. Due to there being an expiration date on those changes, people are concerned there won't be an allocation formula in four years. The legislature likes to put 2-4 year sunsets on things and when that sunset occurs to an amended section, it doesn't mean the whole section disappears. The section goes back to what it was before the amendment. The amendments disappear. The formula will still be there in four years, but it'll be what it is now. With the exception of that subsection six, that is in section 4 of the bill that is a new section. That will kick in, in four years and become part of that formula. Section 5 of the bill is all new law and that will disappear in four years. Section 3 will not disappear and will be back to what it is right now.

Chairman Delzer: Walk through a little bit about section 2 and the changes in there from the current. When we say flood money, you might explain that to start with.

Walstad: The acquisition of federal lands back in the 1940s when the flood control of the Missouri River was undertaken by the federal govt. Much land was acquired up the Missouri River. We think of it as the land under water, but I think it's also up to the cake line the corps of engineers controls all along the reservoir. Federal law contains a provision providing that from the revenue to the feds from the land they took, 75% of the money that the feds receive comes back to the state, but it's not for the state to determine exactly how it's used. Federal law says it goes back to the counties that lost the land and expenses of county govt, benefit of public schools and roads of the county. Feds say it goes to that county, school districts in that county and probably townships because it talks about public roads. Those are the uses the feds will allow and that's what's being implemented. The law that exists now was enacted in 1979 to implement that, but it handled a couple thousand dollars here and there. All of the sudden last summer, Mr. Engleson from the impact office started to see some big and odd numbers showing up and pointed it out to the interim tax committee. For instance, $52M went into Montrail County over a period of 17 months. $22.5M went into the New Town school. This changes it considerably. The current law says half of it goes school districts, a quarter goes to the county and remainder to township. This changes that. The tax committee in the house set this up. When that money is received, the first thing that happens is a payment goes to school districts that lost land; the number of acres they lost times the average ag value in the county times the mill rate of the school district times ten (ten years of property tax replacement money goes to school districts). It can't exceed more than half of what's there and at least half will be guaranteed to go to the county.

Chairman Delzer: Thank you. Questions by the committee? Audience, is there any that wish to support HB 1458? How about opposition?

Ron Anderson, McKenzie County Commissioner and Executive Direction of Oil and Gas Producing counties, presented testimony in opposition to HB 1458 and is labeled as attachment **THREE**. He requested that sponsor remove section 3 of the bill.

Representative Skarphol: You're saying it's cumbersome for the cities under 7500 to have to go through the grant process?

Anderson: I think the other bills are simpler.

Representative Skarphol: Your concern is going through the grant process under this, but at the same time they have to go through the grant process under the other bills as well, so tell me the difference?

Anderson: I didn't single out the small cities. I said that because of the emergency clause. They're going to go through the grant process under either bill. We have not found a mechanism yet to address the small cities. The infrastructure problems, to get that water and sewer going to those new subdivisions is the biggest problem we're going to have in the next 2-4 years.

Chairman Delzer: Do you have any idea of the expected growth....the 7500, how many cities may go over that in the next 2 years, and what census are we using?

Anderson: Stanley or Watford City would be the next ones.

Representative Skarphol: The treasurer's office seemed to be concerned about the appropriation going on July 1 with regard to 1458. If the emergency clause were included in the other proposal, would it not be equally problematic for the 100 million.

Anderson: You can see it's a huge problem with the construction season in ND.

Shawn Kessla, City Administrator for Dickinson; Oil and Gas Producing Counties executive board member: I want to discuss flexibility and bureaucracy. As I have tracked HB 1458, it has improved with helpful amendments being adopted. Oil impacts are consistent in their impact to western ND, but they're inconsistent in their impacts to selected counties, townships, cities and schools. We don't the impact of the Tyler formation on Dickinson and other cities in the southwest corner of ND. The oil industry can gear up in 30 days or less so having flexibility to address needs that may not be apparent today is important. 1458 provides guaranteed funding streams for selected cities such as Dickinson, for up to four years. This is much needed funding. Under another bill being considered, it provides some flexibility that would allow us to exceed the guarantees in 1458 in one year, when our demands are high and allow funding to a lesser degree when our demands are less. We have identified over $80M of those demands. Moving on to bureaucracy. I am going to provide what we've done in Dickinson over the course of the last two years, We are proud of the services we offer and we want to make sure they are efficient and effective. I am going to use the police department as an example of what we have done. We had a hierarchy in the police dept that had a police chief, a captain, four lieutenants, sergeants, senior police officers and police officers. This is not atypical for a city of our size. We decided we needed more officers on the street and less behind desks. Thus we added a captain and eliminated the lieutenants. When we eliminated those lieutenants, we used one of those positions to add the captain's position. We added a police officer to the streets and we let the remaining fall to the bottom line. This shows we provide what our citizens want (more officers on the street at a less cost). Because we allowed some of those dollars to fall to the bottom line, it meant our mil-levis could be decreased, meaning property taxes, hopefully, go down. We also did this in our public works dept. 1458 creates a level of bureaucracy that may not be needed and we hope could be eliminated. The overarching purpose of my testimony is to communicate the flexibility the bill lacks and the bureaucracy it creates. I hope that they could be addressed in amendments or future bills.

Chairman Delzer: What does Dickinson get under the current formula/

Kessla: We get about half a million a year. Since we are a low production county, we rely on that specific allocation to meet the increasing demands.

Representative Skarphol: Please explain how this bill creates bureaucracy, because in my view that the existing impact director could do the job all by himself. I understand in the other legislation you are referring to, there is a great deal more mechanism than there is here.

Kessla: In this bill, you're creating a staff that doesn't currently exist, and you're allowing for additional staff to be added as this body sees fit to fund. In other bills, those additional staffing aren't there. It creates instead a body of individuals to provide notice or opinions before it goes before the land board.

Chairman Delzer: I'd be surprised if they could go from $8M to $100M and do it without requesting more staff.

Representative Kaldor: On pg 12 of the bill, the energy infrastructure development fund is subject to determination by budget section of the legislative management after receiving recommendations from the infrastructure development office. Budget section meets quarterly. Does that play into your concerns at all? Or is quarterly enough?

Kessla: In my opinion quarterly would be often enough as long as all of the granting entities are prepared for those meetings.

Representative Nelson: These formulas are very confusing, but usually you can 'follow the money.' You referenced that you get $500,000 currently and it seems like you could get more with this bill. Explain why you are standing in opposition to the bill.

Kessla: That's a piece we really like, in 1458, so it's hard to stand in opposition. You have to balance the need between a continued grant process that has $35M for larger cities that doesn't sunset versus a guarantee over the next four years. That's not an easy decision.

Lynn James, President of the City Commission of Bowman; President of League of Cities, City representative for Association of Oil and Gas Producing Counties, testified in opposition to HB 1458. Testimony labeled as attachment **FOUR.**

Chairman Delzer: Have you seen the version that is 02000 of the bill? I believe the issue you were concerned about the cap of the cities is not in the new version. If it's in there then it would be melded so that it would change in this bill and that's according to Legislative Council.

Cindy Hempill, Finance Director for the City of Minot: Minot is one of the three cities in western ND that's being impacted by oil and gas development. I am concerned with the language Representative Skarphol used as he was going through the bill. He said cities my size, over 7500, can earn funding based on the level of percentage of the amount of covered employment. My needs far exceed my level of employment that I have at that percentage. It doesn't diminish the needs the city of Minot has because of oil and impact development in western ND. I would really like to see that language be changed and that we have the opportunity to have grant funds put in there for those three cities that we can apply for, based on need versus having to earn it based on the percentage of employment.

Chairman Delzer: Questions by the committee? Further testimony in opposition?

Steve Holen, Superintendent of schools from McKenzie County school district number 1 located in Watford City; member of executive committee for ND Oil and Gas Producing Counties: 1458 I recognize as a vehicle to bring money out to western ND, but schools are the biggest losers in this bill. The change in language in section 3, refers to HB 1304, that there was a provision or intent to keep schools held harmless and whatever money they got up to that point. The formula was constructed that schools would be contributing to an infrastructure fund before they even got to the cap so we did have a number of schools that went backwards. I recognize this language was a positive change to make. I also recognize that you keep the school districts as a direct allocation at some level. I do think the language can be simpler in the bill.

I understand the challenge of defining infrastructure, but I see schools as part of that no matter how you define it. We are infrastructure. I think the governor tried to recognize that in HB 1013. I am concerned that we would not be included in some of the exchanges to address our infrastructure needs. My perspective is that this issue does not belong in front of the education committee. That is the state function for financing schools and what we are addressing is local contribution. As Rep. Drovdahl stated, we are talking about property tax and the ability to tax was taken away and now school district has to come back and recapture that to address its needs. You are going to see more burden on the local taxpayer to address these needs, if those monies are not brought back. We are a part of the oil and gas production tax, going back to the 1950s. It is because of the lost property tax revenue that we do not receive from the industry to address our needs and I'm concerned with 1458, making the determination that we no longer need to be involved. The infrastructure fund last session took our allocation away and put it to the discretion of the county. That's all fine. We just said this is more than buses and perhaps we could be involved in some other way. 1458 even takes that away. With all the things happening to schools in western ND, we are really taking a step backwards. We have a difficult time supporting any legislation that does not give us, at the ability to, ask for a grant or provide a case to even our county about infrastructure needs. There will be more inequity without including us in oil and gas production tax legislation and we are just asking for our share back to address these needs. If we aren't able to meet those needs, are putting an unfair burden on our local taxpayer and we may be on a shorter playing field than some of our constituents in other parts of the state.

Representative Monson: What are your infrastructure needs?

Holen: They are numerous. One problem is we're seeing a steady enrollment decline. We've have seen some schools do the appropriate thing which is to reduce, but at the same time, when you are faced with a rapid incline, how do make that quick adjustment? There are some building issues. In the short term they could be portable building solutions. There are transportation infrastructure issues. We have a teacher housing issues. We have at least five districts in our area that have had to build their own housing so that they can hire a teacher and have them come. We cannot hire teachers in our area and have them live in a camper or tent or literally have no place to put them. We're competing with the oil field, especially in maintenance and bus drivers.

Representative Monson: I understand your housing issue as infrastructure, but wage competition isn't infrastructure.

Holen: Maybe the best term would be impact thus it is a direct impact of oil development that we have to account for.

Francis Ziegler, Director of Department of Transportation: Over the last two days we have spent a lot of time looking at the federal highway bill. We don't know the funding numbers right now. What we do know is the federal govt has been listening to us. The federal highway administration has proposed taking 55 programs and reducing them to 5. What that does for DOT is providing flexibility; the flexibility in the state handling the federal aid. From the perspective of that, we know best where the priorities lie. I will draw an analogy to that conversation and to that process that we just went through with the federal govt to the one here today. In the interim when we were working with the counties and townships and with the UGPTI and the dept of commerce, a number us went out to 12 meetings to the oil and gas producing counties. We took much input. That was the genius what's in 1012 and other bills that you will be looking at. We worked with their needs. We believe that other bills you are going to be dealing with will also help us work with their needs. When the counties and townships come to us and say they need transportation and they need it quickly, this is the first time that the dept has had funding from the oil source. The whole idea that you will find in 1012 is that what we will do is work with those counties and townships and our job is to make sure there is an integrated systems so that the state highways that connect to the counties, townships and oil fields have continuity. With the flexibility that we have in the transportation bill, that's before you 1012, we believe that is a vehicle that can take care of the infrastructure needs for roads and bridges. There has been some discussion this morning about emergency clause and it's urgent to have an emergency clause. Our dept is over there designing projects right now. We can't wait for a bill to come out and then start the process. We suggested (back in Dec at our meetings) to the oil and gas producing counties to take a look at the UPGTI study's top priorities and what they are going to have to do to design though as it takes time to design those (with or without federal aid). The DOT is designing and having to move forward. We need to be ready. We cannot lose a construction season to roads. (Mr. Ziegler provided anecdotal information to support what he is communicating above). Emergency clause is necessary for this construction season to be effective to get a lot of this transportation completed.

Chairman Delzer: I have a comment. I almost took what you said to mean that you feel the legislative branch does not have a position in listening to everybody and deciding on how things are done. That concerns me.

Ziegler: I apologize if that's how you took that comment. My intention was to communicate the needs from the oil and gas producing counties that we work closely with.

Representative Skarphol: Is there anything in 1458 that would preclude you from working with the oil and gas producing counties?

Ziegler: No.

Representative Skarphol: Then why are you standing in opposition to us giving us $50M more than your recommendation to them?

Ziegler: I feel that the transportation bill (1012) is a vehicle to take care of the transportation needs for the roads in those oil producing counties.

Representative Skarphol: You don't feel this one would do that.

Ziegler: There are a lot of formulas there that would take away from flexibility.

Representative Skarphol: I would assume that you could have a reduction in FTEs because you don't have to do that work then.

Ziegler: What we're doing with the oil and gas producing counties is above and beyond our normal state highway issues and efforts.

Chairman Delzer: But you're currently doing that with the FTE's you have.

Ziegler: The $142M that we will be working with the oil and gas producing counties and township is going to be done without adding FTEs. We will be hiring consultants to help us with the efforts.

Chairman Delzer: Further questions? Thank you. Further testimony in opposition? Seeing none, is there any neutral testimony? Can the treasurer's office step forward for questions.

Chairman Delzer: What consternations does the emergency clause for 1458 cause the treasurer for money being available at either time?

Carlee McCloud, Deputy State Treasurer: We would have to evaluate at the time you make a decision what funds are available in which areas to make transfer the you determine. For instance, if you decide this comes from the general fund, we'll need to tell you at that time if the money is available in the general fund. 1458 puts most of the emphasis on the additional money running through the formula and if this were an appropriation that were to be funded from the formula, bringing in oil and gas revenue, at this time that money is all in the permanent oil trust fund. Thus we could not just pull it from the general fund if you meant it to come from oil and gas revenue.

Chairman Delzer: If for some reason we switched everything from perm oil to the general fund, then that's not an issue.

McCloud: That particular point is not an issue and at that point, we would just see what's in the general fund at the time you want the transfer made.

Vice Chairman Kempenich: Is the software you have capable of handling this?

McCloud: Our system is able to handle the current distribution. We'll need to reprogram for any changes you make.

Vice Chairman Kempenich: do you have funds for that?

McCloud: We have not included that in our budget because they're speculative at this time, but we will be getting quotes from the ITD to determine that and bring it forward.

Chairman Delzer: Last biennium we put extra money through the counties and cities. Is that still in place?

McCloud: I believe you're referring to the weather related distribution.

Chairman Delzer: The road distribution; the $59M. It wasn't weather related. It was because of flooding, but not snow removal money.

McCloud: We do still have that in place and it's ready to go with you would appropriate with the same mechanism.

Chairman Delzer: Wouldn't that work for some of what you are doing here?

McCloud: That was set up to distribute funds to all of the cities and counties and townships of the entire. If what you want to do is limit that to oil impacted areas, we'll need to change the programming.

Chairman Delzer: Thank you. Questions by the committee? Further testimony?

Dan Yurand, Manager of New Town School District: I want to comment on the statement about New Town getting more money unjustly. We have 42,000 acres under that Corp Land that we haven't collected property taxes on in over 50 years. The school district started in 1951. The year before we got the payment for the minerals, the revenue off of that was $14,000, so $22.5 over 50 years not being able to collect property tax, I don't think is getting something unjustly. We were able to do some things that we could have done over the last 50 years. We built a gym in our elementary school, where before the gym and cafeteria was the same room, for instance.

Chairman Delzer: I don't think 'unjust' was said in a negative way and the intent was to question whether the formula was still valid for the change that has happened since the formula was put in. It's understood that what you got was done by the formula.

Yurand: That money came from lease money. We won't generate that kind of revenue anymore. You gave us time to spend that $8.2M. We got $14.3M after that fiscal year ended so it ended up being $22.5M. The $8.2 was put into the education formula and you guys passed the ecologicalization formula. Immediately there was $668,000 available that the school no longer and goes back to the state.

Chairman Delzer: What's your consideration about what's before us that would use the county property valuation by the mils times ten?

Yurand: You'll cap us out at some point.

Chairman Delzer: It'll be capped at 50% which is what it is now. Have you had a chance to look at the formula that's before you?

Yurand: I went through it with the county auditor the other day. My understanding is it's going by the taxable valuation. Under this formula, it would cap out the New Town school district at $954,000 and the rest is going to go to the county. We've already capped out on the production tax so now you want to put another cap on us. It's like any other school district in the state.

Chairman Delzer: Is the flood money strictly from leasing or is there mineral rights in there.

Yurand: There are mineral rights we are starting to receive.

Chairman Delzer: Thank you. Further

David Eenek, Chairman of Board of Montrail County Commissioners: The vast majority, 90+% of that flood money that has been received was lease bonus money. For instance, in January 2010, Montrail County received $12,173,198.65. In Jan 2011, we received $103,117.43. I wanted to reinforce the point that the lease money is gone, never to return, and we are into the royalty phase. Unless there is unbelievable production under that lake, we're not going to be dealing with those huge sums of money in the future.

Chairman Delzer: Questions by the committee? Further testimony? If not, we'll close the hearing on HB 1458, and thank you for coming in. Committee, we'll dismiss for now. We'll come in 15 minutes after floor session.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

HB 1458
2/17/11
14707

☐ Conference Committee

Committee Clerk Signature Julia Geigle

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact chapter 17-09, a new subsection to section 57-51-15, and section 57-51-15.1 of the North Dakota Century Code, relating to establishment of an infrastructure development office and grant program, an energy infrastructure development fund, and to provide for deposit and allocation of certain oil and gas gross production tax revenues; to amend and reenact sections 21-06-10, 57-51-15, and 57-62-03 of the North Dakota Century Code, relating to allocation of revenues from federal flood control mineral leases and oil and gas gross production tax allocation; to repeal sections 57-62-03.1 and 57-62-04 of the North Dakota Century Code, relating to the energy development impact office; to provide for a transfer; to provide appropriations; to provide a continuing appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

Minutes:

Chairman Delzer: We'll start with HB 1458, are there some amendments?

Representative Skarphol: Yes (distributed amendment .02001 to committee members). I move we adopt amendment .02001.

Representative Monson: Second.

Chairman Delzer: We have a motion and a second. Can you discuss the amendment?

Representative Skarphol reviewed amendment .02001 (see amendment .02001). Content from the amendment was discussed on the hearing of HB 1458 on February 16 with most of amendment suggestions coming from John Walstad, Legislative Council.

Chairman Delzer: questions?

Voice vote carried and amendment .02001 adopted.

Representative Monson: There are a few spots where we talk about county superintendent, do we need to clean that up with 'or designee', since not all counties have a superintendent? On pg 6, line 9 and on pg 6, line 26, after superintendent of schools, I think we should insert "or designee." I move to further amend .02001.

Representative Skarphol: I would suggest that if this is found in other places besides the two indicated that council clean up the language.

Voice vote carried and amendment .02001 further amended.

Vice Chairman Kempenich distributed two more amendments, .02002 and .02003 and explained amendment .02002 (see amendment .02002).

Chairman Delzer: what you are trying to do is make sure the $8M is available the same way it currently is.

Vice Chairman Kempenich: It would be a direct appropriation to those political subdivisions from the infrastructure fund, but it gives information on who could apply for it. I move to adopt .02002.

Representative Skarphol: second

Voice vote carried and amendment .02002 adopted.

Representative Skarphol proposed language changes to bill as voice amendment which is on line 21, pg 1, where it says the director may employ a certified planner and certified public accountant, I propose saying and/or between these professionals, so you could have one or both professional. Also, on pg 2, line 5, I think the fifth word in should be changed from amount to number. I move to make these two changes to the bill.

Representative Monson: There's another amount that should be number on line 7 as well. I second this.

Voice vote carried and voice amendment adopted (language changes).

Vice Chairman Kempenich explained amendment .02003. I move to adopt .02003

Representative Dosch: Second.

Chairman Delzer: Further discussion?

Representative Nelson: I don't why we would take the CEO of the state out of this process and it looks like in this particular case we are.

Vice Chairman Kempenich: the governor is part of that party.

Representative Nelson: the way it reads is the director would serve under the pleasure of the university and school land board

Vice Chairman Kempenich: currently, the impact office is run under the university and school land board and the governor is part of that process. The way that office works is technically like a state agency; they run on their own money and most of it is common schools trust fund money.

Representative Nelson: The change is fairly significant because he or she would choose that position under the current bill, and he'd be one voice on the entire board under the change.

Chairman Delzer: Correct

Vice Chairman Kempenich: The governor is one of five board members.

Representative Nelson: we'd be diluting the power of the governor by 80%.

Representative Skarphol: In the current law it doesn't really talk about that situation. It says the governor must be chairman of the board, secretary of the state must be vice chairman and the director of the office must be the secretary. It doesn't have any language about serving at the pleasure of at all.

Voice vote take and motion failed thus amendment .02003 not adopted.

Chairman Delzer: We have the amended, amended, amended bill before us

Representative Skarphol: I move Do Pass as Amended

Representative Monson: Second

Representative Skarphol: We need to be aware of the money available. Over four years, the monies available would be over $420M.

Chairman Delzer: The next legislative assembly would have to appropriate, how much? Would they have to appropriate the full $150?

Representative Skarphol: With the formula change that's in the plan, you are correct.

Representative Pollert: I come from a district where we feel we were maybe not treated well in the DOT budget and when we were going through the testimony, there was talk about an extra $50M that could be allocated. I am in support of helping western ND, but what about the rest of the state?

Chairman Delzer: This is the main vehicle for the western oil counties. If this passes, HB 1012 will be the main vehicle for the other counties. The problem we have procedurally is until this either passes or fails the floor, it is difficult for us to draft the amendments for 1012. Part of putting $50M to the other counties would be shifting the excise tax back to the general fund, using general fund for the $50M. We need to make sure we have matching money for the state highway dept for any federal money that comes. The intention is to do for the non oil counties. There is a bill that's going to be coming across from the Senate that deals with snow removal. This can't be guaranteed either as it hasn't passed the floor.

Representative Skarphol: I too feel a great need to put at least $50M in the rest of the state. If you look at the UGPTI study for the balance of the state, their road needs more dramatic work than the west. The perception at this time is that the western ND's needs are more immediate. If we do a four year program like this, the needs in the west drop dramatically by comparison. If you put $420M in the west as per the UGPTI plan for the next 2 biennia, it drops to under $50M in need after that for the next 8 biennia. Whereas the study that's been done on the other 36 counties suggests they need $200M per biennia for the next 10 biennia. Currently, 3/4s of the truck traffic in ND is in 17 oil counties. That's the immediate need. That's the logic behind this proposal.

Chairman Delzer: Part of the problem is this came out of Finance and Tax with an 8-6 vote. We heard a lot of opposition here yesterday. Until we have an answer on HB 1458, it's difficult to examine DOT.

Representative Nelson: I would be the last one to say I understand this issue in the detail it was presented; it is very complex. I am not concerned about this bill affecting other parts of the state, because we will address that later in the session. The opposition yesterday was significant with county commissioners (both from large and smaller cities), school districts, etc. testifying against the bill. I'm wondering if the better way to go would be to follow the executive budget.

Representative Glassheim: Could you go over the money again? Where is it coming from, where is it going, how much is new money? As I read the fiscal note, it looks like the permanent oil trust fund, which will be the general fund, is being shorted by $150-160M this biennium. Where is the money coming from for all of this? I see the $172; where is the other $50?

Chairman Delzer: The difference between this and the executive budget is that the executive budget has $100M in it for infrastructure in 1013. In 1012, it has $142 in it for oil producing county roads. The understanding is if this bill passed, those two amounts would come out, and then this money would be here to pay for this bill. This bill on top of that will require about $53M more for this biennium.

Representative Skarphol: I think your assessment is pretty accurate. The governor's recommendation is $142M and $242M in general fund money. It's a formula change that puts $100M into the impact fund. This one is a formula change as well as a direct appropriation. The total money is $295M. The difference is the $52 that is there as well as how the money is distributed and the assurance that some of the money is going to get distributed to the various entities. In the governor's budget there is very little assurance on that $100M as to who is going to get what. They've made a commitment of the $35 out of the $100 is going to go to the large cities but the remaining is soft in all directions and there is no commitment that, that money is going anywhere.

Representative Klein: All the opposition came from the oil counties. We haven't even heard from the rest of the state. We are getting pressure from there saying we want our share too. I have real problems with this bill.

Chairman Delzer: One thing that should be stated, is that this bill changes the formula so when it gets down to the last split, it's a 90-10 split (90% going to general fund, 10% going to the counties) and this changes it to 75-25 split. During that time, if oil revenues increase, the amount going to the counties through this formula would be higher; if they decrease, it would be lower.

Representative Dahl: question for Representative Skarphol; the $142 was discussed in our subsection and how the DOT had a specific plan so that we don't end up with a patchwork of 5 miles fixed in one county, but that's not integrated with the next county. If we go with the structure of 1458, do we have any assurances that we would have integration between all those counties and those different highways?

Representative Skarphol answered question by referring to first sentence on pg 2 of the bill. I'm not sure how it can get any more explicit that they are going to have a role in this.

Representative Dahl: I read it that they are advisory, so that plan that the DOT set out does not have to be followed. They can be there to assist in the process, but there are no assurances that their plan will be followed.

Representative Skarphol: I'm not familiar with the plan that the DOT set out. It's the UGPTI that developed the plan and that's the same plan that's being required to be significantly followed by this piece of legislation. He clarified it says this on pg 11, subsection 1. It's fully intended to be that. Whether the language is explicit enough is arguable.

Representative Klein: My other concern is with time. We're setting up this office. We all understand if we don't have the contracts ready to go by early spring, your contracting season is over.

Representative Skarphol: I believe there are a number of contracts that have been done by the counties and it will take time to get done before there would be any need for this money. They have money flowing into their treasuries that they're planning for right now. I don't perceive there will be any kind of delay in the implementation of what they can do this construction season.

Vice Chairman Kempenich: I question an emergency clause, but if there's no need I guess there's no need.

Chairman Delzer: I don't know how you'd handle an emergency clause on it.

Representative Skarphol: The Treasurer's office expressed some discomfort with an emergency clause on any of them as it depends on when you want to deliver the money.

Chairman Delzer: Further discussion?

Representative Glassheim: Where does the $290 million come from? Where does the extra money come from as I only see the 172 and 35?

Chairman Delzer: The other money comes from the formula changes (90-10 to 75-25). There's the $17.5M per year comes out of a formula change thus it would come out of the formula before it would go to the general fund. It would go to here. $35M goes to the cities (3 large cities).

Representative Hawken: My concern on this is that we had a whole bunch of people in here saying can we slow down. Is there any way to do this kind of thing not so fast? We do a lot of studies before we do things. Are there pieces of this that could be helpful in looking at the whole picture, so in the next biennium it could be explained and have the communities involved are all on board? Could it be studied?

Representative Williams: The problem is out there now and is manifesting itself every day. We do not have a lot of time. I really feel we should push this through, let the second tier look at it, but there is not a time for a study on the western roads.

Chairman Delzer: I would guess if the committee decided that's what we wanted to do, but that's not what is before us.

Representative Hawken: This takes the transportation people, who have a plan, out of it, and I find that concerning as well as all the individuals representing various subsections who are against it. There hasn't been a chance for anybody to understand it. It might be the best thing since sliced bread. I am concerned about the level of govt on it.

Chairman Delzer: That's why we had the second full hearing on it, to give us the opportunity to hear that. Further discussion?

Representative Skarphol: The oil and gas counties contracted through the commerce dept for UGPTI to do the study. The UGPTI will talk about the severity of the problem and the criticalness of doing something now, otherwise, what's deteriorating will deteriorate even more rapidly. I'm not sure who else is going to study it to come up with any more information.

Representative Hawken: And maybe that's not the right piece. But not utilizing the jobs that are ready to go through the transportation dept is perplexing.

Representative Skarphol: There is a significant amount of other dollars flowing to the counties at this time, that they are already receiving and utilizing.

Chairman Delzer: The commitment is here in the legislative body to address these road issues; the question is which direction we go. In 1012 there's $228M perm oil money for state roads within the oil producing county on top of this.

Vice Chairman Kempenich: The problem is if counties don't get money to fix their roads they are going to have to start dropping the weight limits on it and that's going to impact this revenue stream.

Representative Nelson: I don't think there's any question this doesn't need to be studied anymore, that's what Upper Great Plains did. However, in Ron Anderson's testimony yesterday, he stated "the distribution of the resources in HB 1458 are at least partially cumbersome and do not necessarily correspond with the UGPTI study. Although HB 1458 includes the UGPTI study as a factor for awarding money, the study becomes secondary to the funding formula and grant process." This work is going to get done under either one of these plans, but they people that are closest to this, from the political subdivision perspective, prefer the other way.

Representative Skarphol: Upper Great Plains did not address the cities at all, it was only highways. The money is here was done without indication of the money that's going to be going into Upper Great Plains. To address Representative Pollert's concern, if this bill should go forward, and we see a need for additional money later the session for the additional counties, I'm not averse to taking some of the money out here.

Representative Glassheim: On page 12, the grant program for the second year is to be approved by the budget section. I'm concerned about the concentration of power in budget section and legislative management, during the interim. When you have a bureau set up to do it, why would we have to approve the grants?

Representative Skarphol: It was to give us some degree of knowledge of what's transpiring so that we can feel more re-assured that what is expected to happen is happening.

Representative Glassheim: I wonder if a report wouldn't accomplish the same this, but to have us approve it, almost makes us like a new agency.

Representative Kaldor: I had a problem with that area too. I would feel more comfortable if we were getting reports because they are accountable. This puts us in an executive roll.

Representative Skarphol: If that's a deal breaker, I don't have a problem with having them report to budget section.

Chairman Delzer: I don't care one way or the other; we do that with Centers of Excellence.

Representative Nelson: Paging through 1012, there is an emergency clause for 1012 that would get this process started. Perhaps we need to look at adding an emergency clause to 1458.

Representative Skarphol: I move for a do pass with a substitute motion of emergency clause being added to the bill.

Representative Monson: second

Voice vote carries substitute motion (for the bill to be amended to add the emergency clause).

Representative Glassheim: I propose to take the determination of the budget section away and to say to report to the budget section (wherever needed in the bill).

Representative Kaldor: second

Voice vote carries voice amendment for language change.

Representative Skarphol: I move for a do pass as amended for HB 1458

Vice Chairman Kempenich: second

Representative Nelson: where would the emergency clause fit in this bill?

Legislative Council: we'll discuss it with our legal staff and find a spot.

Chairman Delzer: it can certainly go on the bill when the whole bill takes effect as soon as it's signed by the governor. The formulas are set by date so they wouldn't change.

Representative Skarphol: I would hope that the emergency clause applies only to the appropriated money.

Chairman Delzer: We'll have Legislative Council check this out, but my understanding is the effective dates would still be July 1.

Vice Chairman Kempenich: We went around about this on the DOT budget too because they had that emergency clause on there, but the money wasn't going to show up until the end of July.

Chairman Delzer: It is a good question whether the formula changes are earlier or not. The process can begin either way, because you have money available to handle some of that until this money arrives; either in this case or 1012.

Becky Keller, LC: What do you want the emergency clause to cover?

Chairman Delzer: the bill, but I think the bill also addresses the times when the formula changes happen so it has to address what is not addressed in the bill, because you are putting it on the whole bill.

Representative Monson: to clarify, if we approve this Do Pass, but it doesn't have a 2/3s majority, then it goes forth without the emergency clause?

Chairman Delzer: that doesn't make a difference here. The emergency clause is on the floor.

Representative Wieland: This doesn't affect my county, it's very complicated, and a lot of thought and work has gone into it. I'm not going to be able support this on the floor. I'll help get it onto the floor because I think the whole body should have the opportunity to hear it and have a vote on it.

Due to not further discussion, clerk called roll call vote on Do Pass as Amended for HB 1458, resulting in 12 yes, 9 no, and 0 absent, thus motion carried and committee's recommendation will be HB 1458 DPA. **Representative Skarphol** was assigned to be the carrier of the bill.

Chairman Delzer closed hearing on HB 1458.

11.0392.02001
Title.

Prepared by the Legislative Council staff for
Representative Skarphol
February 16, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1458

Page 2, line 24, remove "energy"

Page 3, line 6, after "through" insert "allocations and"

Page 4, line 16, remove ", provided through grants to school districts in the county for one-time expenditures, or"

Page 4, remove line 17

Page 4, line 18, remove "road and bridge purposes"

Page 10, line 27, after the underscored comma insert "in June of each year"

Page 11, line 18, after "a" insert "or from other sources"

Page 14, line 16, remove "energy"

Renumber accordingly

Date: 2/17
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Appropriations Committee

Legislative Council Amendment Number 02001

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Skarphol Seconded By Rep. Monson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

motion carries voice vote

Date: 2/17
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Appropriations Committee

Legislative Council Amendment Number ______

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Monson Seconded By Rep Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

further amend insert 'or designee' after superintendent
p 6 line 9, line 26

voice vote carries

11.0392.02002
Title.

Prepared by the Legislative Council staff for
Representative Kempenich
February 17, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1458

Page 2, line 27, after the underscored period insert "Eligible grantees under the energy infrastructure development grant fund include a county, city, school district, township, rural ambulance service district, rural fire protection district, hospital district, park district, water district, and any other political subdivision that can demonstrate initial impact affecting basic governmental services it provides, directly necessitated by oil and gas development."

Renumber accordingly

Date: 2/17

Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Appropriations Committee

Legislative Council Amendment Number .02002

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kempenich Seconded By Rep. Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) ____________ No ____________

Absent ____________

Floor Assignment ____________

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

Further amend

voice vote carries

Date: 2/17
Roll Call Vote #: 4

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Appropriations Committee

Legislative Council Amendment Number ______

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Skarphol Seconded By Rep. Monson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

Further amend bill page 1 line 21 &/or lines 5&7 page 2 amount → number

voice vote carries

Prepared by the Legislative Council staff for
Representative Kempenich
February 17, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1458

Page 1, line 18, replace "governor" with "board of university and school lands"

Renumber accordingly

Date: 2/17
Roll Call Vote #: 5

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

House Appropriations Committee

Legislative Council Amendment Number 02003

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kempenich Seconded By Rep Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

voice vote fails

Date: 2/17
Roll Call Vote #: 6

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Appropriations Committee

Legislative Council Amendment Number

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Skarphol Seconded By Rep Monson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) ________ No ________

Absent ________

Floor Assignment ________

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

Substitute

Date: 2/17

Roll Call Vote #: 7

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Appropriations Committee

Legislative Council Amendment Number

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Skarphol Seconded By Rep. Kempenich

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) No

Absent

Floor Assignment

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

add emergency clause

voice vote carries

Date: 2/17
Roll Call Vote #: 8

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Appropriations Committee

Legislative Council Amendment Number

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Glassheim Seconded By Rep. Kaldor

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

report to budget section

motion carries voice vote

11.0392.02004
Title.03000

Prepared by the Legislative Council staff for
House Appropriations
February 18, 2011

VR
2/21/11
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1458

Page 1, line 10, remove "and"

Page 1, line 10, after the second "date" insert "; and to declare an emergency"

Page 1, line 21, replace "and" with "or"

Page 1, line 21, after "planner" insert ", or both,"

Page 2, line 5, replace "amount" with "number"

Page 2, line 7, replace "amount" with "number"

Page 2, line 24, remove "energy"

Page 2, line 27, after the underscored period insert "Eligible grantees under the energy infrastructure development grant fund include a county, city, school district, township, rural ambulance service district, rural fire protection district, hospital district, park district, water district, and any other political subdivision that can demonstrate initial impact affecting basic governmental services it provides, directly necessitated by oil and gas development."

Page 3, line 6, after "through" insert "allocations and"

Page 4, line 16, remove ", provided through grants to school districts in the county for one-time expenditures, or"

Page 4, remove line 17

Page 4, line 18, remove "road and bridge purposes"

Page 6, line 8, overstrike "county superintendent of"

Page 6, line 9, overstrike "schools" and insert immediately thereafter "superintendent of public instruction"

Page 6, line 21, overstrike "county superintendent of schools of each"

Page 6, line 22, overstrike "oil-producing county" and insert immediately thereafter "superintendent of public instruction"

Page 6, line 22, after "treasurer" insert "of each oil-producing county"

Page 6, line 26, overstrike "county superintendent of schools" and insert immediately thereafter "superintendent of public instruction"

Page 9, line 17, after "year" insert "beginning with the fiscal year ending June 30, 2012,"

Page 9, line 23, after the underscored period insert "The payment under this subsection for the fiscal year ending June 30, 2012, may be made by the state treasurer as soon as funds are available after the effective date of this subsection."

Page 9, line 23, after the underscored comma insert "in June of each year"

Page 10, line 27, after the underscored comma insert "in June of each year"

Page 11, line 18, after "a" insert "or from other sources"

Page 11, line 20, replace "Grants" with "The infrastructure development office shall provide an annual report on grants"

Page 11, line 20, remove "must obtain prior"

Page 11, line 21, replace "approval from" with "to"

Page 14, line 12, remove "first fiscal year of the"

Page 14, line 13, replace "biennium beginning July 1, 2011," with "period beginning with the effective date of this Act "

Page 14, line 13, after the period insert "During the period from the effective date of this Act through June 30, 2011, the energy development impact office shall perform the functions of the infrastructure development office under this section and section 57-51-15.1 relating to direct allocation of funds to political subdivisions but not including making of grants under section 57-51-15.1."

Page 14, line 16, remove "energy"

Page 14, after line 28, insert:

"**SECTION 12. EMERGENCY.** Sections 1 and 2, that portion of section 3 designated as subsection 6 of section 57-51-15, and sections 5, 9, and 11 of this Act are declared to be an emergency measure."

Renumber accordingly

Date: 2/17
Roll Call Vote #: 9

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1458

House Appropriations Committee

Legislative Council Amendment Number ____

Action Taken: [X] Do Pass [ ] Do Not Pass [X] Amended [ ] Adopt Amendment

[ ] Rerefer to Appropriations [ ] Reconsider

Motion Made By Rep. Skarphol Seconded By Rep. Kempenich

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson		X
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim		X
Representative Bellew		X	Representative Kaldor		X
Representative Brandenburg		X	Representative Kroeber		X
Representative Dahl		X	Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken		X			
Representative Klein		X			
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 12 No 9

Absent ____

Floor Assignment Rep. Skarphol

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

REPORT OF STANDING COMMITTEE

HB 1458, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 9 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1458 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "and"

Page 1, line 10, after the second "date" insert "; and to declare an emergency"

Page 1, line 21, replace "and" with "or"

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Renumber accordingly

2011 TESTIMONY

HB 1458

Testimony #1
#1458 2-8-11
Carlee ~~Mueller~~ McLeod, Deputy State Treasurer

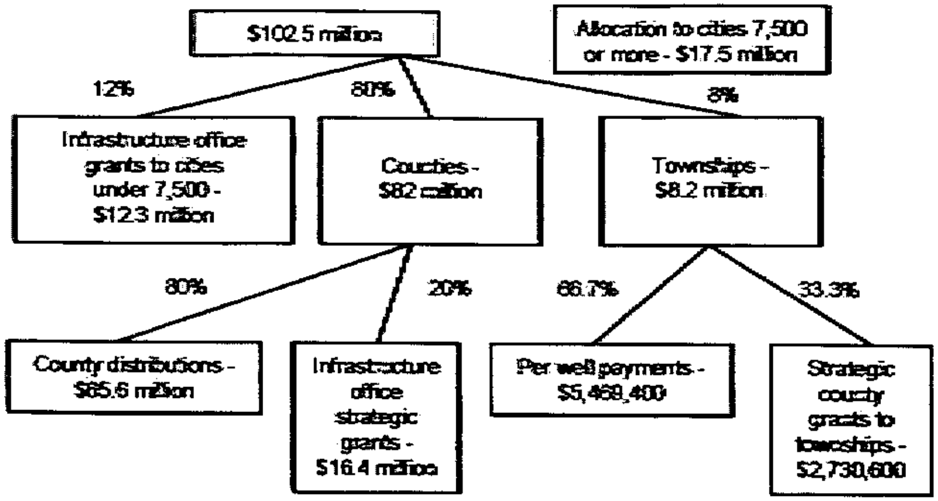
Amendment language relating to mill levy averages:

Page 8, section 5.

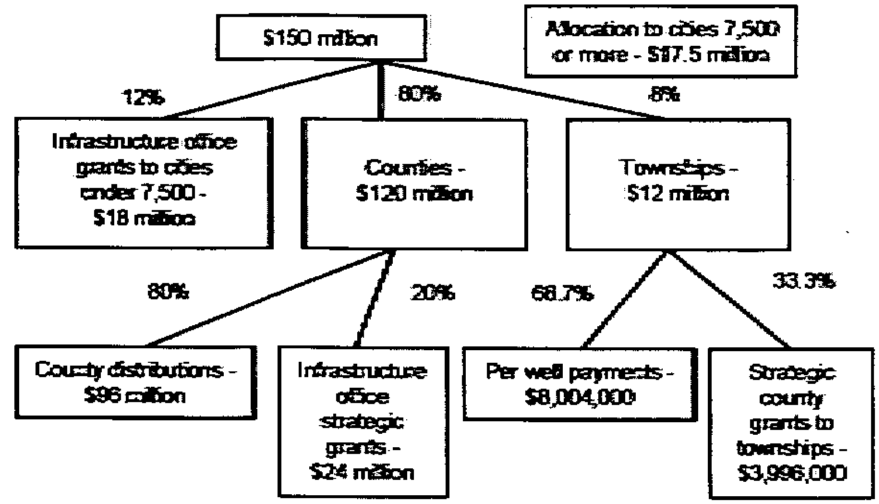
However, a county is not eligible to receive funds under this subsection during a fiscal year, if the county commission has diminished, from the average of the three preceding fiscal years, the appropriation, in dollars, derived from the mill levy for county road and bridge purposes.

Prepared by the North Dakota Legislative [illegible]cil staff
February 16, 2011

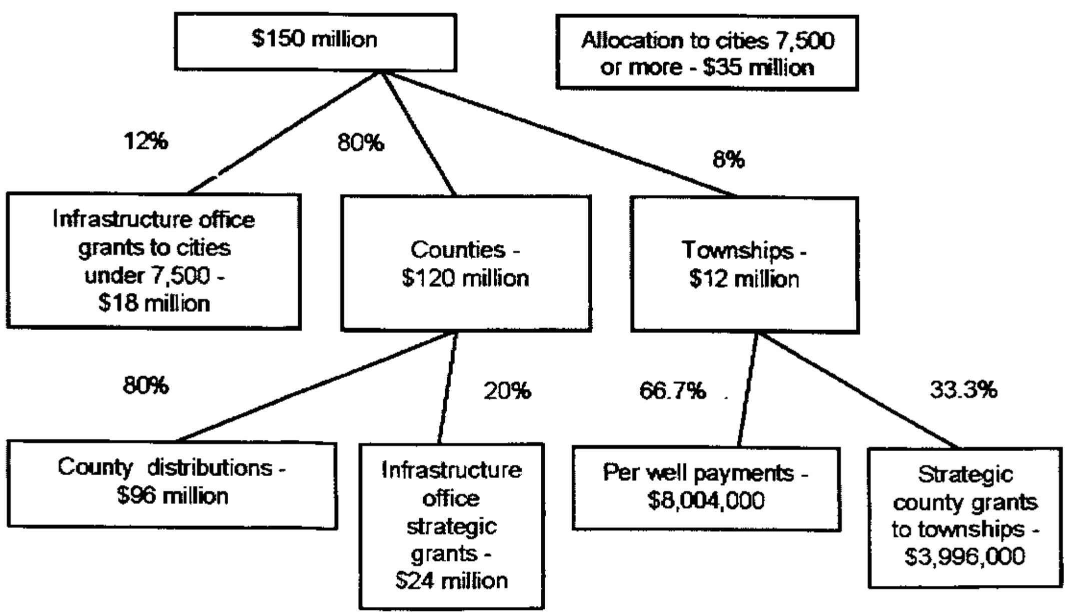
Fiscal Year 2012



Fiscal Year 2013



2013-15 Biennium



-Feb 16, 2011
-HB 1458
-Attachment ONE
-LC/Rep. Skarphol

11.9154.03000

Prepared by the North Dakota Legislative Council staff

February 2011

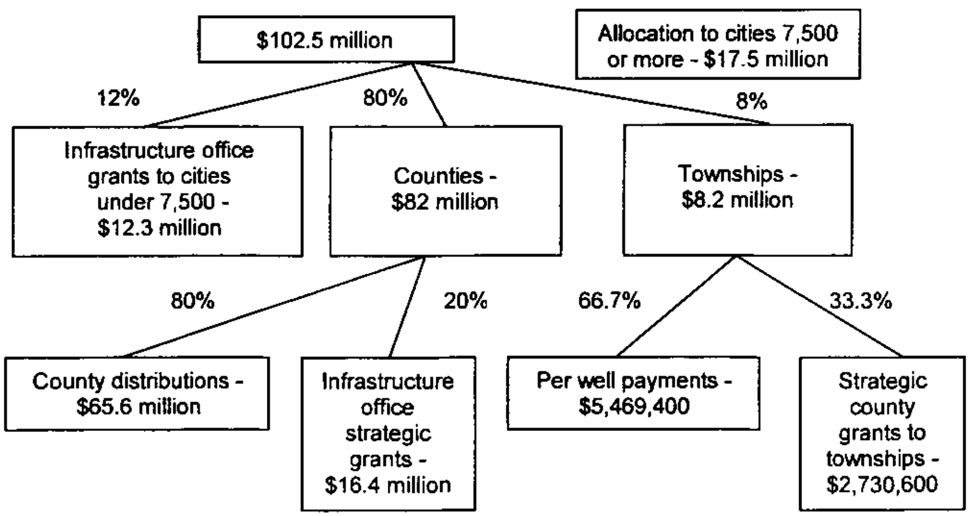
ESTIMATED FISCAL IMPACT OF HOUSE BILL NO. 1458 (AS AMENDED)

Pursuant to provisions of House Bill No. 1458, as amended by amendment LC 11.0392.01007, the energy infrastructure development fund will receive 15 percent of the state's share of oil and gas gross production tax revenue provided for in North Dakota Century Code Section 57-51-15(2)(e). Based on information received from the Tax Department, this amount is estimated to total $80 million for the 2011-13 biennium. In addition, the bill provides an appropriation of $172.5 million from the general fund to the infrastructure development office for the purpose of allocation for energy infrastructure enhancement. A total of $252.5 million is estimated to be available for the 2011-13 biennium. Provisions limit expenditures to $102.5 million during the first fiscal year of the 2011-13 biennium. The remaining $150 million may be expended in the second year of the 2011-13 biennium.

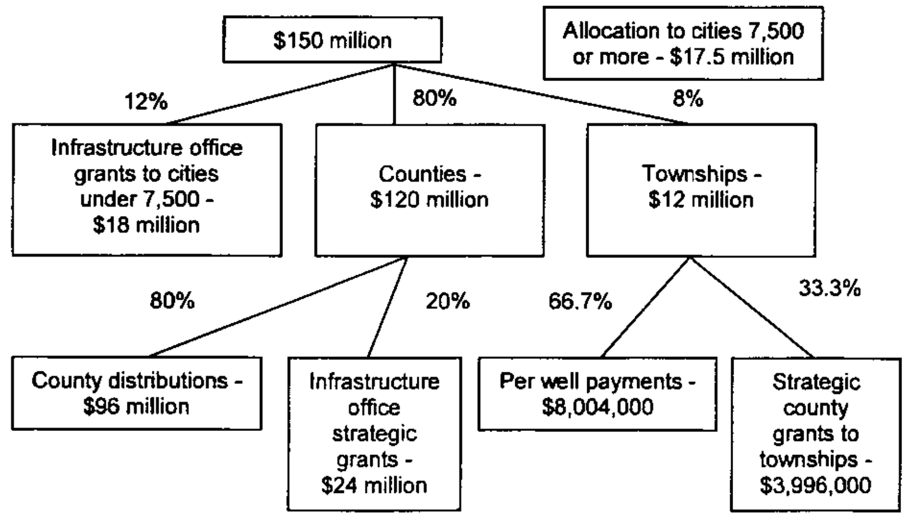
In addition, for cities with populations of 7,500 or more, the bill as amended provides a direct allocation in the gross production tax formula of $35 million per biennium.

For the 2013-15 biennium, 15 percent of the state's share of oil and gas gross production tax revenue under Section 57-51-15(2)(e) is estimated to total $92 million. When added to an anticipated general fund appropriation of $58 million for the 2013-15 biennium, a total of $150 million would be available for energy infrastructure enhancements for the 2013-15 biennium. The flowcharts below provide information on the estimated distributions for energy infrastructure enhancements during each year of the 2011-13 biennium and for the 2013-15 biennium and the direct allocation in the gross production tax formula to cities with populations of 7,500 or more:

Fiscal Year 2012

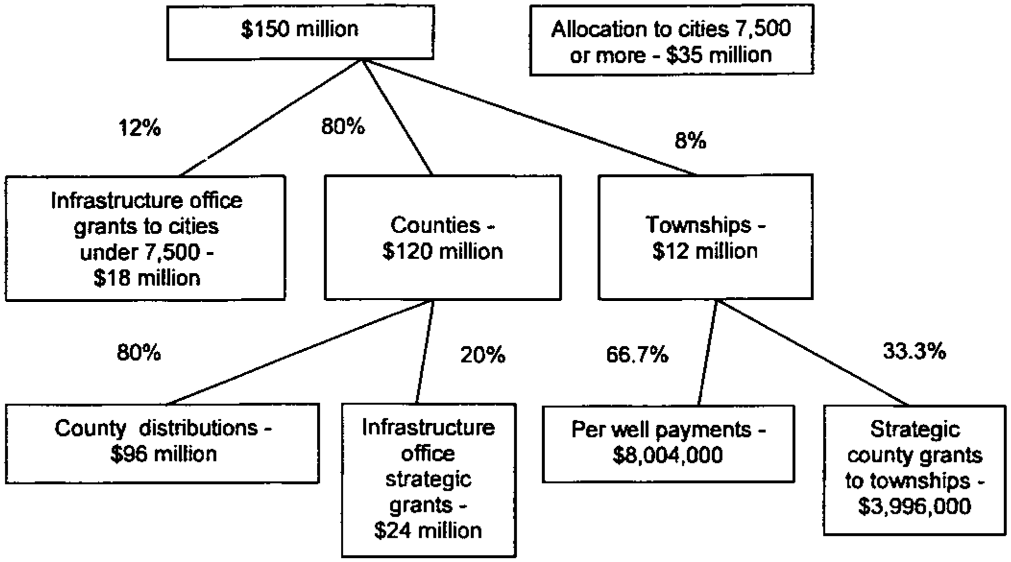


Fiscal Year 2013



- Feb 16, 2011
- HB 1458
- Attachment TWO/
Rep. Skarphol

2013-15 Biennium



- Attachment THREE

TESTIMONY TO THE HOUSE APPROPRIATIONS COMMITTEE

By Ron Anderson, McKenzie County Commissioner

February 16, 2011

CONCERNING HB 1458

Chairman Delzer and members of the house appropriations committee, thank you for allowing us to express our opinion on HB 1458 and to express our appreciation that the legislature continues to address the oil impacted areas of our state.

As you are aware, the western part of our State has been dealing with this explosive growth of the oil industry for a number of years now. As you also know, this is not the first legislative session we have asked for your support to get more resources to the impacted political subdivisions in the west. Last session, the legislature agreed to some formula changes which were very helpful. However, the legislature was clear with the political subdivisions receiving the Gross Production Tax Revenue that they were expected to spend the money in a strategic way. The legislature was also clear they would institute oversight over the way this money was spent by creating a reporting mechanism which would be reviewed during the following session.

Under this understanding, the political subdivisions in the energy impacted areas sought direction and input from all sources including the legislative branch, the executive branch, local political subdivisions, industry and ordinary citizens impacted by the oil boom. Numerous public town hall meetings were held throughout the region and countless hours were spent between government officials to find some solutions to a pressing problem. It was quickly recognized this development had such a fast paced movement and long term potential that it was important to not simply put dollars into infrastructure in a haphazard manner but a long term plan was required.

One of the most significant developments in our efforts during the interim was to engage the Upper Great Plains Transportation Institute to develop a strategic plan to ensure road infrastructure met this long range planning. UGPTI conducted a road by road analysis of the entire region overlying well locations, pipeline corridors, rail locations and other distribution points. The purpose was not to determine what percentage of dollars the state, county, city or township roads needed. The purpose was to drill down and decide the exact roads and infrastructure that were needed to continue this remarkable industrial revolution that was happening in the west.

The ultimate result of this effort was to go back to the legislature in 2011 and seek funding based on the strategic plan laid out by the UGPTI study. Currently, the bills that most embraced these concepts created during the interim are found in two agency bills. HB 1012 and HB 1013. It is for these reasons we cannot support HB 1458. Certainly, HB 1458 provides some potentially very helpful resources to our western counties, cities and townships but the overall structure of the bill does not mesh with the strategic plan that we embraced as a result of the legislature's directives last session.

Some examples of why we see HB 1458 as a more problematic bill are as follows:

1) The distribution of the resources in HB 1458 are at least partially cumbersome and do not necessarily correspond with the UGPTI study. Although HB 1458 includes the UGPTI study as a factor for awarding money, the study becomes secondary to the funding formula and grant process. In addition, the local input that can be found on the advisory commission in HB 1013 is sacrificed in exchange for a new untested bureaucracy. This new infrastructure office has potential constitutionally suspect inefficiencies. This is because the director serves at the pleasure of the Governor but must seek legislative budget section approval for expenditures after August 31, 2012

2) HB 1458 lacks the same sense of urgency as HB 1012 which provides an emergency clause. An emergency clause is essential to ensure that such an office and the appropriated money flow immediately so as not to lose an entire construction season.

3) Section 11 of HB 1458 sunsets the provisions of the bill which provides for the distribution of resources to counties, cities and townships. The sunset provision expires in June of 2015 which is well before the impacts of production will be gone. The legislature surely has the authority to review all legislation every session. The placement of this arbitrary sunset provision only creates another uncertainty in planning. Ironically, the new infrastructure office continues under this bill but the reasons for its creation are no longer addressed.

4) This bill does not address the impacts being felt by local schools districts. This will then continue to put pressure on the local property tax budgets. Although the State has to balance equality for education State-wide, by not addressing the Energy Impacted Schools this bill does not take into account school districts cannot capture new growth since much of the energy industry is taxed in lieu of property tax and any future increases in terms of State educational formulas will not come soon enough to adequately address their needs.

We thank this committee and the bill sponsors for attempting to address the oil impacted areas of our state but at this time we believe this bill cannot address the needs of the west in the same effective way as other bills provide.

Thank you.

- Attachment Four

Testimony for House Bill 1458

Presented February 16, 2011

To: Chairman Delzer and the House Appropriations Committee

Good morning Chairman Delzer and members of the House Appropriations Committee.

My name is Lyn James. I am the President of the City Commission in Bowman. I also serve as the President of the North Dakota League of Cities, and am speaking as a city representative for the Association of Oil and Gas Producing Counties as well. While we appreciate the efforts put forth in this bill, we cannot support it as it stands.

Although the proposed dollars dollars would be much greater than in the years past, it appears that the procedure of awarding these impact funds would still be left to one person's discretion. That person does not experience the day to day issues and needs in oil impacted cities. The establishment of an advisory board with local representation would provide a broader perspective of those issues and needs. These local leaders are living and breathing the trials and tribulations of oil impact.

Although this bill allocates $35,000,000.00 in the 2013-2015 biennium specifically to small cities, we prefer the concept where counties, cities and other political subdivisions will have opportunity to apply for this funding. We believe that the advisory board input would insure that the funds would be directed with priority to the areas with the greatest of need.

I was under the impression that this bill also has a sunset provision which causes concern for the future. Some of those concerns were addressed earlier by Representative Skarphol. Could you verify that the gross production tax does not have a sunset clause? Thank you. Impacts continue, grow and change as the exploration moves to production and as the field moves throughout western North Dakota. Also, the sustainable funding needs that are addressed through the gross production tax are so very important to the future of all of these impacted cities for the budget process. It is imperative that the gross production tax does not sunset, but pays out according to production, so that cities can continue to employ staff as needed and provide for the cities needs as they relate to impact.

We have a concern about the language in Section 3, item number 3 relating to the $750.00 caps for cities. I have been assured that House Bill 1077 would take care of this issue, but am unclear why this language is in this bill as stated, leaving the caps in place.

I have spoken with Brent Sanford, Mayor of Watford City. He is unable to be here today as he is busy addressing urgent city issues relating to oil. He expressed the very same concerns I have stated in my testimony today. One thing he did add was the urgency of getting funding out to the cities in need as soon as possible, thus the importance of an emergency clause for cities. In the grant process, cities cannot even apply until July, much less get started on any projects. Cities would have to apply for grants, wait for grant rewards after quarterly review by the Budget Committee, and possibly miss a construction season.

Mike Hynek, Mayor of Stanley has also shared his concerns which mirror ours. Stanley is opposed to this bill as it stands, as well.

Thank you for your time and attention to these very important and urgent oil issues at hand.

Respectfully submitted,

Lyn James

President, Bowman City Commission

President, North Dakota League of Cities

City Representative for Association of Oil and Gas Producing Counties